STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

EAU CLAIRE CITY EMPLOYEES, LOCAL 284, AFSCME, AFL-CIO, Complainant,

vs.

CITY OF EAU CLAIRE, Respondent.

Case 275
No. 67008
MP-4351

Decision No. 32159-A

Appearances:

Attorney Bruce F. Ehlke, Hawkes, Quindel, Ehlke & Perry, S.C., Madison, Wisconsin 53701-2155, appearing on behalf of the Eau Claire City Employees, Local 284, AFSCME, AFL-CIO.

Attorney Stephen L. Weld, Weld, Riley, Prenn & Ricci, S.C., 3624 Oakwood Hills Parkway, Eau Claire, Wisconsin 54702, appearing on behalf of the City of Eau Claire.

EXAMINER'S ORDER DEFERRING IN PART AND RETAINING JURISDICTION

On May 31, 2007, the Eau Claire City Employees, Local 284, AFSCME, AFL-CIO, filed a complaint of prohibited practices alleging that the City of Eau Claire had violated Sec. 111.70(3)(a)4 and 5, Stats., and derivatively, Sec. 111.70 (3)(a)1, Stats., by attempting to unilaterally modify the health insurance plan design, and Sec. 111.70(3)(a)3 by threatening potential layoffs, reductions in services or reductions in work if plan design changes could not be accomplished.

Informal attempts to resolve the matter failed and the Commission, on July 13th, 2007, appointed a member of its staff, Steve Morrison, to act as the Examiner to make and issue Findings of Fact, Conclusions of Law and Order pursuant to Sec. 111.70(4)(a), and Sec. 111.07, Stats.

Respondent's answer denying that its alleged actions constituted a prohibited practice was filed on August 3, 2007 and its Motion to Defer (in part) and to Dismiss (in part) were filed on June 15, 2007. Complainant's responses thereto were filed on August 3, 2007.

Pursuant to notice, the Examiner conducted a pre-hearing conference in the matter on August 3, 2007, during which the Union agreed to defer the Sec. 111.70(3)(a)5 claim and opposed deferral of the Sec. 111.70(3)(a)4 claim as well as the motion to dismiss the Sec. 111.70(3)(a)3 claim and, further, called upon the Examiner to retain jurisdiction of the remaining claims and hold any hearings on those matters in abeyance pending the outcome of any grievance arbitration proceedings. The City, by its Attorney Mr. Weld, sought deferral of the Sec. 111.70(3)(a)4 and 5 claims and dismissal of the Sec. 111.70(3)(a)3 claim.

Upon consideration of the complaint, the answer and motions to defer/dismiss and the statements of the Union's position, the Examiner is satisfied: that the Sec. 111.70(3)(a)4 & 5 (and the derivative Sec. 111.70(3)(a)1 claim) issues raised by the complaint are clearly addressed and made subject to final and binding grievance arbitration by the parties' Collective Bargaining Agreement; that those issues, while of significance to the instant parties, do not involve important issues of law or policy; that the parties have renounced any technical objections which would prevent a decision on the merits by the grievance arbitrator; that there is, therefore, a substantial probability that deferral to arbitration will resolve the merits of the dispute relating to the Sec. 111.70(3)(a)4,5 and 1 in a manner not repugnant to the underlying purposes of MERA; and that further proceedings regarding the instant complaint should therefore be held in abeyance and deferred pending the results of grievance arbitration regarding those issues.

NOW, THEREFORE, the Examiner issues the following

ORDER

1. The processing of the instant complaint regarding the Sec. 111.70(3)(a)4, 5 and 1 claims is hereby deferred pending the results of grievance arbitration regarding the issues giving rise to those portions of the complaint.

2. The instant complaint shall be held in abeyance pending the results of grievance arbitration regarding the issues in 1 above. Upon a motion by either party, the Examiner will consider whether the arbitration process has resolved the subject matter of those portions of the instant complaint deferred hereby in a manner that is not repugnant to the underlying purposes of the Municipal Employment Relations Act.

3. The Examiner shall retain jurisdiction of the remaining matter (Sec. 111.70(3)(a)3, Stats.) pending the completion of the grievance arbitration process and shall hold the motion to dismiss in abeyance pending same.

4. The hearings scheduled for August 9 and August 16, 2007 are hereby cancelled.

Dated at Wausau, Wisconsin this 6th day of August, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steve Morrison /s/

Steve Morrison, Examiner

CITY OF EAU CLAIRE

MEMORANDUM ACCOMPANYING EXAMINER'S ORDER REFERRING IN PART AND RETAINING JURISDICTION

The history of the instant complaint and the pleadings filed to date are described in sufficient detail in the preface to the Order.

In BROWN COUNTY, DEC. NO. 19314-B (WERC, 6/83) the Commission discussed the principles of deferral which are dispositive here as follows:

> The Commission has previously stated that Sec. 111.70(3)(a)4 refusal to bargain allegations will be deferred to the contract grievance arbitration forum in appropriate cases . . . in which the Respondent objects to the Commission exercise of jurisdiction in the matter. Such deferral advances the statutory purpose of encouraging voluntary agreements . . . by not under-cutting the method of dispute resolution agreed upon by the parties in their collective bargaining agreement. Indeed, if the Commission were to indiscriminately hear and decide every claim that a party's alleged deviation from a contractually specific standard is an unlawful unilateral change refusal to bargain, it would undermine the Commission's longstanding policy of ordinarily refusing to exercise its Sec. 111.70(3)(a)5, Stats., jurisdiction absent exhaustion of contractual grievance procedures.
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> In sum, because Respondent has consistently urged WERC deferral of the disputed claim of unlawful unilateral change in overtime assignment procedures to the contract grievance arbitration procedure and because there is a substantial probability that submission of the merits of that dispute to that arbitral forum will resolve the claim in a manner not repugnant to MERA, deferral is appropriate in this aspect of the case . . .

The Commission has established the following three criteria as necessary to indicate the requisite substantial probability that deferral to arbitration will resolve the merits of the dispute in a manner not repugnant to the underlying purposes of MERA:

(1) The parties must be willing to arbitrate and renounce technical objections which would prevent a decision on the merits by the arbitrator;

(2) The collective bargaining agreement must clearly address itself to the dispute; and

(3) The dispute must not involve important issues of law or policy.

E.g., CENTRAL HIGH SCHOOL OF WESTOSHA, DEC. NO. 29671-A (Mawhinney, 8/99), citing SCHOOL DISTRICT OF CADOTT COMMUNITY, DEC. NO. 27775-C (WERC, 6/94)

Each of those criteria is met in this case.

Accordingly, the further processing of the complaint as relates to the Sec. 111.70(3)(a)4, 5 and 1 claims has been deferred to grievance arbitration and the Examiner retains jurisdiction over the balance of the complaint (Sec. 111.70(3)(a)3) which shall be held in abeyance pending the outcome of the grievance arbitration. Upon a motion by either party, the Examiner will consider whether the arbitration process has resolved the subject matter of the instant complaint in a manner that is not repugnant to the underlying purposes of the Municipal Employment Relations Act. See, e.g., ROCK COUNTY, DEC. NO. 29970-B (WERC, 7/23/01).

Dated at Wausau, Wisconsin this 6th day of August, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steve Morrison /s/
Steve Morrison, Examiner

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