STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF MANITOWOC

Requesting a Declaratory Ruling Pursuant to §111.70(4)(b), Stats.,
Involving a Dispute Between Said Petitioner and

LOCAL 368, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO

Case ID: 285.0013
Case Type: DR_M

DECISION NO. 38313

Appearances:

Mark L. Olson and Brian J. Waterman, Buelow Vetter Buikema Olson & Vliet, LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appearing on behalf of the City of Manitowoc.

Timothy E. Hawks and Jason Perkiser, Hawks Quindel S.C. 222 East Erie Street, Suite 210, Milwaukee, Wisconsin, appearing on behalf of Local 368, International Association of Fire Fighters, AFL-CIO.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

On February 26, 2019, the City of Manitowoc filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to § 111.70(4)(b), Stats. as to its duty to bargain with Local 368, International Association of Fire Fighters over certain matters. The parties thereafter successfully sought to narrow the scope of the dispute but were not able to resolve all duty to bargain disputes between them.

The parties submitted written argument as to the matters remaining in dispute and the record was closed on February 25, 2020.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following:

FINDINGS OF FACT

1. The City of Manitowoc, herein the City, is a municipal employer that provides public safety services to its citizens.

2. Local 368, International Association of Fire Fighters, AFL-CIO, herein the Union, is a labor organization that serves as the collective bargaining representative of certain public safety employees of the City's Fire Department.

3, During collective bargaining over the terms of a successor collective bargaining agreement, the Union made the following proposals as to which the City asserts it has no duty to bargain.

ARTICLE 4 – HOURS OF WORK

In recognition of the fact that firefighters must be physically and mentally capable of facing challenging situations throughout a 24-hour tour of duty, the parties agree to establish standard hours in which full duties will be performed, as well as standard hours during which employees are essentially on stand-by for calls.

On Monday through Saturday, the standard workday for training and other regular, routine duties shall commence at 0700 hours and terminate at 1630 hours. The standard standby time shall begin 1630 hours.

Vehicle, equipment, and floor maintenance shall commence at 16:30 hours each day as a standard. After this maintenance is complete, standard stand-by time will begin. Stand-by time is defined as that period during which employees are in a ready state for emergency and non-emergency calls. During this period of time, standard work assignments shall be limited to those maintenance duties which are essential for response to calls for service and station safety.

Work on Sundays and Holidays: Sundays and holidays (as designated in Article 10, Section 2,) shall consist, as a standard, of the duties necessary for efficient response to alarms, normal station housework, and vehicle equipment checks and maintenance. Standard company level training that would fall on a Sunday or a holiday would be completed on a day prior to or after the Sunday or holiday on which it might fall.

The city shall pay employees a half-time premium for all regular, routine duties that they are assigned to work outside of the standard workday.

ARTICLE 114 – PARKING

The City shall furnish three (3) parking stalls in the block in which Station One is located and four (4) parking stalls in the Tenth Street parking lot for the use of on duty Station One personnel covered by this contract.

ARTICLE 184 – SAFETY

Fire Fighter Safety. In an effort to provide a minimum amount of safety to firefighters, the City shall comply with the first sentence of SPS 330.14(3)(a) and SPS 330.11(1)(a) as of January 1, 2020, and as they may be amended from time to time.

ARTICLE 264 – LINEN AND LAUNDERING

Manitowoc Fire Department agrees that on-duty Local 368 members shall not be required to wash and dry bed linen or towels other than kitchen towels, kitchen wash cloths, and assorted drying rags used in the course of drying vehicles. Specifically, no ambulance linen shall be washed by Local 368 members.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSION OF LAW

The proposals set forth in Finding of Fact 3 are primarily related to wages and/or conditions of employment within the meaning of § 111.70(1)(a), Stats.

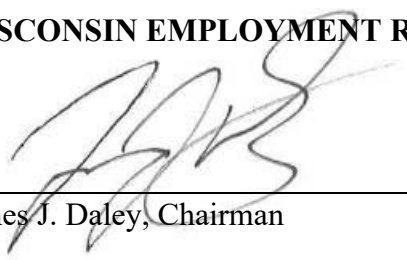
Based on the above and forgoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following:

DECLARATORY RULING

The proposals set forth in Finding of Fact 3 are mandatory subjects of bargaining and the City of Manitowoc has a duty to bargain within the meaning of § 111.70(1)(a), Stats. with Local 368, International Association of Fire Fighters over said proposals.

Issued at the City of Madison, Wisconsin, this 5th day of March, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Analysis of whether a contractual proposal is a mandatory or permissive subject of bargaining for public safety employees begins with a consideration of the relevant statutory provisions.

Section 111.70(1)(a), Stats., defines "collective bargaining" as:

> … the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours, and conditions of employment for public safety employees or transit employees and with respect to wages for general municipal employees, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and firefighting services under s. 60.553, 61.66, or 62.13 (2e), except as provided in sub. (4) (mb) and (mc) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to any public safety employees under ch. 164. Collective bargaining includes the reduction of any agreement reached to a written and signed document.

Section 111.70(4)(p), Stats., specifies:

> (p) Permissive subjects of collective bargaining; public safety and transit employees. A municipal employer is not required to bargain with public safety employees or transit employees on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of the public safety employees or of the transit employees in a collective bargaining unit.

As is evidenced by the text of these statutory provisions, bargaining is mandatory as to wages, hours, and conditions of employment but permissive as to subjects reserved to management and direction of the governmental unit. Because many contractual provisions or proposals have a relationship both to wages, hours, and conditions of employment and to the management and direction of the governmental unit, the Commission and the courts have historically answered the mandatory/permissive question by balancing these competing relationships and determining where the "primary" relationship exists. *City of Brookfield v. WERC*, 87 Wis.2d 819 (1979); *Unified School District No. 1 v. WERC*, 81 Wis.2d 89 (1977); *Beloit Education Association v. WERC*, 73 Wis.2d 43 (1976). If a provision or proposal is found to primarily relate to wages, hours, and conditions of employment, then it is a mandatory subject of bargaining. If a provision or proposal is found to primarily relate to the management and direction of the governmental unit, then it is a

permissive subject of bargaining. While the current above-quoted statutory provisions differ from the statutory definitional provisions in effect when the "balancing test" was first adopted, the fundamental but competing interests of wages, hours, and conditions of employment versus the management and direction of the governmental unit continue to be statutory focal points. Thus, the Commission is persuaded that a balancing of interests continues to be the appropriate analytical tool to be applied when resolving mandatory/permissive issues. *City of Waukesha*, Dec. No. 37481 (WERC, 8/18).

ARTICLE 4 – HOURS OF WORK

The Union contends that the proposal allows the City to assign any duty at any time subject only to the cost impact specified therein. In response to City concerns that the proposal impermissibly interferes with management judgments regarding how the work day will be allocated, the Union asserts that the only function served by the phrase "standard workday" is to determine what an employee will be paid when performing certain types of work during certain hours. The Union argues that under the precedent of *School District No. 5, Franklin,* Dec. No. 21846 (WERC, 7/84), the proposal is a "mandatorily bargainable compensation proposal."

While there is language in the proposal that could create some ambiguity as to its meaning, the combination of the proposal's last sentence and the Union's assertions as to how the proposal is to be interpreted/implemented make it sufficiently clear that this a "wage" proposal that leaves the City free to assign duties as its sees fit. Therefore, the proposal is a mandatory subject of bargaining.

ARTICLE 11 – PARKING

The parking fringe benefit in question is limited to those employees on shift at Station One. The Union asserts that the proposal is a mandatory subject of bargaining under the rationale of the Commission's decision in *City of Milwaukee*, Dec. No. 19091 (WERC, 10/81). The City contends that the proposal is primarily related to its control over its physical facilities and thus is a permissive subject of bargaining. The City argues that the *City of Milwaukee* precedent is distinguishable because the benefit in that matter only applied to those employees required to use their personal vehicle when performing their duties. After balancing the relationship to employee "wages" against the impact on City control of its physical facilities, the Commission concludes that the "wage" relationship predominates and thus the proposal is a mandatory subject of bargaining.

ARTICLE 18 – SAFETY

The proposal provides a contractual forum for enforcement of certain Wisconsin Administrative Code provisions related to firefighter safety. The Union asserts that issues of employee safety have often been viewed as mandatory subjects of bargaining. *Beloit Education Association v. WERC*, 73 Wis.2d 43 (1976); *City of Fond du Lac*, Dec. No. 22372 (WERC, 2/85). Citing *Blackhawk Teachers Fed. v. WERC*, 109 Wis.2d 415, 442-443 (Ct.App. 1982) and *Milwaukee Public Schools*, Dec No. 20979 (WERC, 9/83), the Union more generally contends that seeking a contractual forum for enforcement of legal rights is a mandatory subject of bargaining. The City asserts that operational issues are best left to City policy judgements and that the Union-

cited precedent is limited to contractual enforcement of statutory and constitutional rights-not matters of administrative regulation.

Administrative code provisions are legally binding on the City. The code provisions in question do relate to employee safety. Consistent with the Blackhawk and Milwaukee precedent cited by the Union, the Commission concludes that the proposal is a mandatory subject of bargaining because it creates a contractual forum for enforcement of the legal obligation related to employee safety.

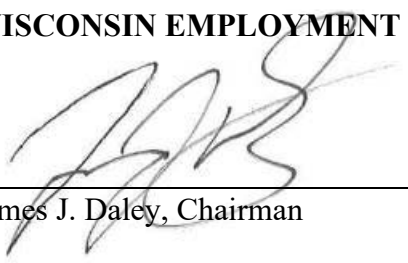
ARTICLE 26 – LINEN AND LAUNDERING

The focal point of the parties' dispute is the last sentence of the proposal regarding ambulance linens. The City contends that the mandatory or permissive status of this sentence is now moot because ambulance linens are no longer laundered by the City. However, because the status of such linens could change in the future, the Commission concludes the duty to bargain over this sentence is not moot and remains part of this declaratory ruling.

Turning to the parties' arguments as to the mandatory or permissive status of this sentence, the Union focuses on employee safety concerns raised by potential contact with dangerous matter that might be on ambulance linens. The City makes general arguments regarding its right to require employees to perform duties that are fairly within the scope of their responsibilities. While no evidentiary hearing has been held, it appears undisputed that ambulance linens have historically been excluded (via the content of prior bargaining agreements) from the scope of employee responsibilities. Thus, based on the current record, the Commission does not find the City "scope of duties" argument to be persuasive. As the Commission held in *Milwaukee Sewerage Commission*, Dec. No. 17025 (WERC, 5/79) and *City of Glendale*, Dec No. 27907 (WERC, 1/94), if a duty does not fall fairly within the scope an employee's responsibilities, the issue of whether employees can be required to perform that duty is a mandatory subject of bargaining. Therefore, the sentence in question which does not require performance of the duty is a mandatory subject of bargaining. [1]

Issued at the City of Madison, Wisconsin, this 5th day of March, 2020.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James J. Daley, Chairman

[1] To the extent the scope of the dispute extends to the proposal's prohibition against employees being required to wash bed linens or bath towels, it appears that such duties have historically been excluded from the scope of duties required of the firefighters in Manitowoc. Because this duty is outside the scope of matters that the City can unilaterally require firefighters to perform, the issue of whether such a duty can become part of the firefighters' duties is a mandatory subject of bargaining.