

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WAUPACA COUNTY, COMPLAINANT,

vs.

WAUPACA COUNTY LAW ENFORCEMENT OFFICERS ASSOCIATION AND
WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW ENFORCEMENT
EMPLOYEE RELATIONS, RESPONDENT.

Case ID: 298.0011

Case Type: COMP_MP

DECISION NO. 39427-A

Appearances:

James Macy, Attorney, von Briesen & Roper, S.C., 55 Jewelers Park Drive, Suite 400, Neenah, Wisconsin, appearing on behalf of Waupaca County.

Andrew D. Schauer, Attorney, Wisconsin Professional Police Association, 660 John Nolen Drive, Suite 300, Madison, Wisconsin appearing on behalf of Waupaca County Law Enforcement Officers Association and Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 2, 2022, the Waupaca County filed a complaint with the Wisconsin Employment Relations Commission alleging that Waupaca County Law Enforcement Officers Association had committed prohibited practices within the meaning of Wis. Stat. § 111.70(3)(a) 3. and 4. of the Municipal Employment Relations Act. On May 6, 2022, the Commission appointed Peter G. Davis as the hearing examiner in this matter.

On June 6, 2022, Waupaca County Law Enforcement Officers Association filed an Answer.

On June 16, 2022, Examiner Davis conducted a hearing in Waupaca, Wisconsin. The parties thereafter filed briefs and supplemental argument at the Examiner's request-the last of which was received March 2, 2023.

Having considered the record and being fully advised in the premises, I make and issue the following:

FINDINGS OF FACT

1. The Waupaca County Law Enforcement Officers Association, WPPA/LEER, hereinafter referred to as the Union, is a labor organization that serves as the collective bargaining representative of certain public safety employees of Waupaca County.

2. Waupaca County, herein after referred to as the Employer, is the employer of certain public safety employees represented by the Union.

3. On March 8, 2022, the Union and Employer signed a 2022-2024 collective bargaining agreement. That agreement contained the following provisions:

Arbitrator: Any grievance that cannot be settled through the above procedures may be submitted to an arbitrator. The parties shall request a list of five (5) arbitrators from the Wisconsin Employment Relations Commission. The parties shall alternately strike names from the list until one (1) remains, who shall be appointed the Arbitrator. A toss of a coin shall determine which party shall make the first strike.

If any article or part of this Memorandum of Agreement is held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of an article or part should be restrained by such tribunal, the remainder of this Memorandum of Agreement shall not be affected thereby and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such article or part.

4. On April 7, 2022, the Union filed a request that the Commission provide a panel of five “WERC commissioners/staff members” from which the parties would select an arbitrator as to a one-day suspension.

5. On April 7, 2022, the Commission did not employ five “commissioners/staff members”. On April 11, 2022, the Commission provided a panel of all three “commissioners/staff members” then employed.

6. The County thereafter refused to select an arbitrator from the April 11 panel because it did not contain five potential arbitrators.

7. The County thereafter asked the Union to bargain over an alternative arbitration provision and the Union refused to do so.

8. In related proceedings in Waupaca County circuit court, the Union did not seek to circumvent the collective bargaining relationship between the County and the Union or the collective bargaining agreement.

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

CONCLUSIONS OF LAW

1. By refusing to bargain an alternative arbitration provision, Waupaca County Law Enforcement Officers Association, WPPA/LEER did not commit prohibited practices within the meaning of Wis. Stat. § 111.70(3)(a) 3. or 4.

2. By participating in related proceedings in Waupaca County circuit court, Waupaca County Law Enforcement Officers Association, WPPA/LEER did not commit prohibited practices within the meaning of Wis. Stat. § 111.70(3)(a) 3. or 4.

3. The positions taken by Waupaca County in the context of this litigation are not “frivolous” within the meaning of Wis. Stat. § 227.483(1).

Based on the foregoing Findings of Fact and Conclusions of Law, the Examiner makes and issues the following:

ORDER

1. The complaint is dismissed.

2. Waupaca County Law Enforcement Officers Association, WPPA/LEER’s request for attorney fees and costs is denied.

Issued at the City of Madison, Wisconsin, this 27th day of April 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

Complainant County contends that because the Commission was unable to provide a five-person panel, the Respondent Union was obligated to bargain over an alternative arbitration provision. Respondent Union asserts that the existing contractual provision is enforceable and thus that there was no need or obligation to bargain an alternative. In the alternative, Respondent Union argues that the obligation to bargain is only triggered by the determination of a “tribunal of competent jurisdiction” that the existing provision is “invalid.”

In a related decision issued today involving the same parties, I concluded that the Complainant County was not contractually obligated to utilize the existing contractual arbitration provision. Applying that conclusion to the second paragraph of the contractual language in Finding of Fact 3, it is my view that a determination has now been made by a “tribunal of competent jurisdiction” that the arbitration provision is “invalid.” Until such a determination was made, the duty to bargain an alternative was not triggered. Thus, the prior refusal of the Respondent Union to bargain does not constitute a prohibited practice. But now that the determination has been made, the duty to bargain a replacement has been triggered.

Remaining for resolution is the Complainant County’s allegation that Respondent Union has been taking action in concert with the County District Attorney to undermine the parties’ collective bargaining relationship and the provisions of the collective bargaining agreement. While the evidence presented by the Respondent County certainly creates inferences that support this allegation, I conclude that the evidence falls short of the applicable statutory “clear and satisfactory” standard. Therefore, this complaint allegation has also been dismissed.

Issued at the City of Madison, Wisconsin, this 27th day of April, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Peter G. Davis, Examiner