

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Joint Petition of
MILWAUKEE DEPUTY SHERIFFS' ASSOCIATION
and MILWAUKEE COUNTY

For Final and Binding Arbitration Involving
Public Safety Personnel in the Employ of

MILWAUKEE COUNTY

Case ID: 161.0086

Case Type: MIA

DECISION NO. 39789

**FINDINGS OF FACT, CONCLUSION OF LAW, CERTIFICATION OF RESULTS
OF INVESTIGATION, AND ORDER REQUIRING ARBITRATION**

The parties having, on August 17, 2022, filed a joint petition with the Wisconsin Employment Relations Commission to initiate compulsory final and binding arbitration pursuant to § 111.77(3) of the Municipal Employment Relations Act, for the purpose of resolving an impasse arising in collective bargaining between Milwaukee Deputy Sheriffs' Association and Milwaukee County on matters affecting the wages, hours, and conditions of employment of public safety employees in the employ of said Employer; and an informal investigation having been conducted by a member of the Commission's staff; and the Commission, being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification of Results of Investigation, and Order Requiring Arbitration.

FINDINGS OF FACT

1. Milwaukee County, hereinafter referred to as the Employer, is a municipal employer maintaining its offices at 200 East Wells Street, Milwaukee, Wisconsin.
2. The Milwaukee Deputy Sheriffs' Association, hereinafter referred to as the Union, is a labor organization maintaining its offices at 821 West State Street, Suite 408, Milwaukee, Wisconsin.
3. At all times material herein the Union has been, and is, the exclusive collective bargaining representative of the public safety personnel in the employ of said Employer.
4. On August 17, 2022, the instant petition was filed with the Wisconsin Employment Relations Commission requesting the Commission to initiate final and binding arbitration,

pursuant to § 111.77(3) of the Municipal Employment Relations Act, with regard to an impasse existing between the parties with respect to wages, hours, and conditions of employment of public safety personnel; a member of the Commission's staff conducted an informal investigation which reflected that the parties were at impasse; said Investigator, having advised the Commission that the parties are at impasse on the existing issues as outlined in their final offers, on January 27, 2023, transmitted those offers along with the Advice to Commission and closed the investigation on that basis.

5. On February 3, 2023, Milwaukee County advised Investigator Daley that it objected to inclusion of an item in the Milwaukee Deputy Sheriffs' Association final offer as being a permissive subject of bargaining and beyond the scope of matters listed in the joint interest arbitration petition. On February 7, 2023, the Association filed a statement in opposition to the County objection.

6. The parties have not established mutually agreed upon procedures for the final resolution of disputes arising in collective bargaining and, further, the parties have not mutually agreed that the arbitrator should have the power to determine all issues in dispute involving wages, hours, and conditions of employment.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following:

CONCLUSION OF LAW

An impasse within the meaning of § 111.77(3) of the Municipal Employment Relations Act exists between the Union and the Employer with respect to negotiations leading toward a new collective bargaining agreement covering wages, hours, and conditions of employment for public safety personnel employed by said Employer.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following:

CERTIFICATION

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of compulsory final and binding arbitration, as required by § 111.77 of the Municipal Employment Relations Act, with respect to negotiations between the Union and the Employer on issues of wages, hours, and conditions of employment of public safety personnel employed by said Employer have been met.

NOW, THEREFORE, it is

ORDERED

1. Compulsory final and binding interest arbitration pursuant to § 111.77(4)(b), Stats., be, and the same hereby is, initiated for the purpose of issuing a final and binding award to resolve the impasse existing between the Union and the Employer.

2. That the parties select an arbitrator within ten (10) days after the issuance of this order from the panel of arbitrators submitted to the parties in the accompanying letter of transmittal, by alternately striking four (4) of the members from said panel for the selection of the neutral arbitrator; and thereupon the parties, or either of them, shall notify the Commission, in writing, of the name of the neutral arbitrator, and the Commission shall then issue an order appointing said neutral arbitrator.

Issued at the City of Madison, Wisconsin, this 17th day of February, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW, AND ORDER REQUIRING ARBITRATION**

On January 27, 2023, Commission Investigator James Daley issued and emailed to the parties a Notice of Close of Investigation and Advice to Commission. On February 3, 2023, Milwaukee County advised Investigator Daley that it objected to inclusion of an item in the Milwaukee Deputy Sheriffs' Association final offer as being a permissive subject of bargaining and beyond the scope of matters listed in the joint interest arbitration petition. On February 7, 2023, the Association filed a statement in opposition to the County objection.

Wisconsin Administrative Code ERC 30.10 provides the following :

ERC 30.10 Procedure for raising objection that a proposal is a non-mandatory subject of bargaining.

(1) TIME FOR RAISING OBJECTION. Any objection that a proposal is a non-mandatory subject of bargaining may be raised at any time after the commencement of negotiations, but prior to the close of the informal investigation or formal hearing.

(a) *During negotiations, mediation or investigation.* Should either party assert, during negotiations or during commission mediation or investigation, that a proposal by the other party is a non-mandatory subject of bargaining, either party may commence a declaratory ruling proceeding before the commission under s. [111.70 \(4\) \(b\)](#), Stats., and s. [ERC 30.11](#)

(b) *After call for final offers.* Should either party assert, after the commission or investigator calls for the parties to exchange proposed final offers and before the close of the informal investigation or formal hearing, that a proposal by the other party is a non-mandatory subject of bargaining, the commission or investigator shall not close the investigation or hearing, but shall direct in writing the objecting party to reduce the objection to writing by commencing, within a reasonable time determined by the commission or investigator, a declaratory ruling proceeding before the commission under s. [111.70 \(4\) \(b\)](#), Stats., and s. [ERC 30.11](#).

As reflected in Wis. Admin. Code § ERC 30.10 (1), an objection that a proposal is a permissive subject of bargaining must be raised **prior** to the close of the investigation. That did not happen here. Thus, the objection is dismissed as untimely.

As to the County objection that the disputed item is beyond the scope of matters identified in the parties joint petition for interest arbitration, ERC 30.03(4)(d) specifies that a petition include “[a] general statement as to the alleged issue or issues at impasse.”

The joint petition indicated that the parties were at impasse “over the wage increase applicable to the members of the bargaining unit for 2021 & 2022.” The disputed item in the Association final offer clearly falls within the scope of that phrase. Most importantly, the information set forth in ERC 30.03(4)(d) is only the starting point for the investigation and the

investigator/mediator's efforts to assist the parties in their efforts to voluntarily settle the dispute. Thus, there is no language in ERC 30 or elsewhere that limits the scope of the issues that can ultimately proceed to interest arbitration. Therefore, this objection is not found to be persuasive.

Given the foregoing, the Commission has ordered that the parties proceed to interest arbitration and provided them with a panel of arbitrators.

Issued at the City of Madison, Wisconsin, this 17th day of February, 2023.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James J. Daley, Chairman