

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

CITY OF MILWAUKEE

Requesting a Declaratory Ruling Pursuant to Wis. Stat. § 227.41,  
Involving a Dispute with

MILWAUKEE POLICE ASSOCIATION

AND

MILWAUKEE POLICE SUPERVISORS' ORGANIZATION,

Case ID: 251.0062

Case Type: DR\_M

DECISION NO. 40246

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Appearances:

James D. Lewis and Lisa A. Gilmore, Attorneys, City of Milwaukee Attorney's Office, 200 E. Wells Street, Suite 800, Milwaukee, Wisconsin, appearing on behalf of the City of Milwaukee.

Brendan P. Matthews, Attorney, MacGillis Wiemer, LLC, 11040 W. Bluemound Road, Suite 100 Wauwatosa, Wisconsin and Zachary J. Flood, Attorney, Crivello, Nichols & Hall, S.C., 710 N. Plankinton Avenue, Suite 500, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Police Association.

Thomas P. Klusman, Labor Negotiator, 2900 W. Forest Home Avenue, Milwaukee, Wisconsin, appearing on behalf of the Milwaukee Police Supervisors' Association.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECLARATORY RULING**

On March 30, 2023, the City of Milwaukee filed a petition with the Wisconsin Employment Relations Commission pursuant to Wis. Stat. § 227.41 seeking a declaratory ruling as to whether the Milwaukee Police Association (MPA) or the Milwaukee Police Supervisors' Organization (MPSO) should receive union dues in a specific disputed circumstance.

After much discussion between the parties, a hearing was held in Milwaukee, Wisconsin on September 27, 2023, before Commission Examiner Peter G. Davis. The parties thereafter filed written argument until January 8, 2024.

On February 2, 2024, Examiner Davis issued a Proposed Findings of Fact, Conclusions of Law and Declaratory Ruling finding, as outlined below, that the City of Milwaukee lacks the legal authority to comply with the terms of the 2019 collective bargaining agreement. The MPSO filed objections to the Proposed Findings on February 22, 2024 and the MPA filed a response to the objections on March 13, 2024.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following:

### **FINDINGS OF FACT**

1. The City of Milwaukee, herein the City, is a municipal employer.
2. The Milwaukee Police Association, herein the MPA, is a labor organization that serves as the collective bargaining representative of certain public safety employees of the City.
3. The Milwaukee Police Supervisors' Organization, herein the MPSO, is a labor organization that serves as the collective bargaining representative of certain supervisory public safety employees of the City.
4. The City has collective bargaining agreements with both the MPA and the MPSO. Pursuant to the terms of those agreements, the City deducts dues from the paychecks of employees who have chosen to be members of the MPA or MPSO and signed a City prepared document authorizing the deduction.
5. From time to time, employees in the MPA bargaining unit seek to be promoted to a position in the MPSO bargaining unit. When a promotion is delayed but ultimately occurs, the City makes the promotion retroactive and the employee retroactively receives all benefits to which they would have been entitled under the MPSO bargaining agreement if there had been no delay.
6. During the delay period, the employee continues to be in the MPA bargaining unit, covered by the MPA bargaining agreement and pays union dues to the MPA if the employee has chosen to be a member. If the promoted employee wants to be a member of the MPSO, the employee signs a City prepared dues authorization card dated on or after the date the employee is advised that the promotion has been approved.
7. In 2019, the City, the MPA and the MPSO reached an agreement under which the City would provide the MPSO with a substantial portion of any MPA membership dues collected by the City during the period of time the promotion was delayed.

8. The MPA subsequently concluded that the 2019 agreement was invalid and asked the City to cease remitting MPA dues monies to the MPSO. The City then filed the instant petition for declaratory ruling.

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

### **CONCLUSIONS OF LAW**

1. At least absent knowing employee consent, Section 111.70(3)(a) 6. of the Municipal Employment Relations Act does not allow for payment of dues monies to a union for any period of time prior to the date an employee authorizes the payment.

2. The 2019 agreement referenced in Finding of Fact 7 is invalid because it authorizes the payment of dues monies to the MPSO for a period of time prior to the date the employee has knowingly authorized such a deduction.

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

### **DECLARATORY RULING**

The City of Milwaukee lacks the legal authority to comply with the terms of the 2019 agreement.

Issued at the City of Madison, Wisconsin, this 29<sup>th</sup> day of April 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECLATORY RULING**

The Findings of Fact lay out the basic framework of the dispute the Commission is being asked to resolve. While the parties have presented a variety of arguments in support of their respective positions, the Commission concludes that there is an underlying threshold statutory issue which is dispositive.

Does Wis. Stats. § 111.70(3)(a)6. authorize a municipal employer to make dues payments to a union for a period of time prior to the date on the authorization card signed by the public safety employee?

The Commission concludes that least absent knowing employee consent, there is no statutory authorization for such payments and thus that the City lacks the legal authority to comply with the terms of the 2019 agreement.

Section 111.70(3)(a) 6. of the Municipal Employment Relations Act authorizes the City to deduct union dues if:

. . . the municipal employer has been presented with an individual order therefor, signed by the employee personally, and terminable by at least the end of any year of its life or earlier by the public safety employee or transit employee giving at least 30 days' written notice of such termination to the municipal employer and to the representative organization . . . .

The City and the MPSO correctly point out that the statutory language itself does not address the question of whether the public safety employee can authorize a municipal employer to deduct dues for a period of time prior to the date the employee signs the “individual order.”<sup>1</sup> However, the Commission concludes it is self-evident that at least absent knowing consent by the employee, the employee is not authorizing payment of union dues for times prior to the date the form is signed. Here, neither the language of the authorization card nor any evidence in the record establishes employee consent for the payment of dues to the MPSO (albeit using MPA dues monies already collected) prior to the date the employee signed the MPSO authorization card. Therefore, the City is not statutorily authorized to comply with the terms of the 2019 settlement agreement.

This decision voids the 2019 settlement agreement, leaves the MPA entitled to retain the dues deducted while the employee remained in the MPA bargaining during the promotional delay,

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<sup>1</sup> The Commission acknowledges that there is case law supporting the legitimacy of retroactive application of dues deductions in the context of a collective bargaining agreement or interest arbitration award. However, there is nothing in those decisions which even suggests that the dues deductions were for periods of time prior to the date an employee signed an authorization for those deductions to occur.

and the MPSO potentially<sup>2</sup> free to persuade the newly promoted employees to authorize retroactive deduction of MPSO dues given the retroactive application of the MPSO bargaining agreement.

Issued at the City of Madison, Wisconsin, this 29<sup>th</sup> day of April 2024.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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James J. Daley, Chairman

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<sup>2</sup> The Commission sees no issue with voluntary retroactive dues authorization but notes that the issue was not litigated and thus no definitive answer can be provided.