

LOCAL 1226, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO,
c/o Jerry Johnson, President
304 W. Prospect St.
Rhineland, Wisconsin 54501

Plaintiff,

vs.

Case No. 130V351
Case Type: Declaratory Judgment Action
(30701)

CITY OF RHINELANDER
135 S. Stevens St.
Rhineland, Wisconsin 54501

Defendant.



COMPLAINT

Plaintiff, Local 1226, American Federation of State, County and Municipal Employees, AFL-CIO, by its attorneys, Hawks Quindel, S.C., and Aaron N. Halstead and Richard Saks, for its Complaint against the Defendant, the City of Rhineland, alleges as follows:

PARTIES

1. Plaintiff, Local 1226, American Federation of State, County and Municipal Employees, AFL-CIO (“Local 1226”) is a labor organization within the meaning of § 111.70(1)(h), Wis. Stats. At all times material to this action, Local 1226 was the certified bargaining representative of the employees of the City of Rhineland’s Department of Public Works, excluding managerial, supervisory and confidential employees. Jerry Johnson is the

elected President of Local 1226. The Union's mailing address is 304 W. Prospect St., Rhinelander, Wisconsin, 54501.

2. Defendant, the City of Rhinelander ("the City"), is a Wisconsin municipality organized and empowered pursuant to Chapter 62 of the Wisconsin statutes. The City is an "employer" within the meaning of § 111.70(1)(j), Wis. Stats. Valerie Foley is the City Clerk, and her business address is 135 S. Stevens St., Rhinelander, Wisconsin 54501.

FACTS

3. Local 1226 and the City were parties to a series of collective bargaining agreements negotiated, ratified and executed pursuant to § 111.70(1)(a), Wis. Stats, including, most recently, an agreement for the period January 1, 2010 through December 31, 2012.

4. On or about December 7, 2012, the parties reached a tentative agreement for a successor collective bargaining agreement, for the period January 1, 2013, through December 31, 2013, which included a 1% base wage increase for employees represented by Local 1226 ("2013 Agreement").

5. Shortly after the parties reached their tentative agreement, the Common Council posted a public agenda ("Agenda") for its scheduled December 10, 2012 meeting, which Agenda included notice of the following potential action at that meeting:

Possible Executive Session ... regarding agreement negotiations to discuss/approve: ... Public Work and etc. Union Local 1226 Labor Agreement.

6. At its December 10, 2012 meeting, the City's Common Council convened in Executive Session. During that Executive Session, the Common Council unanimously voted to reject the tentative agreement its bargaining team had reached with Local 1226 on December 7,

2012, and, instead, to unilaterally implement the terms of the parties' tentative agreement, including the 1% wage increase, by way of Resolution No. 2012-38, a resolution which made the wages of Local 1226's employees subject to a Public Works, Water, Wastewater, Parks and Golf Course Employees Personnel Policies and Employee Manual ("Employee Manual").

7. Resolution No. 2012-38 had not been included in the Agenda for the December 10, 2012 meeting, was not discussed at any time during the open session of that meeting, and is nowhere mentioned in the official Minutes of that meeting, published shortly thereafter.

8. Following the Executive Session, the City gave Local 1226 no notice, either on December 10, or at any other time in December, 2012, that it had rejected the parties' tentative agreement or that it had voted to unilaterally implement the terms of the parties' tentative agreement by way of the above-described resolution and Employee Manual, rather than by a collective bargaining agreement.

9. As part of the first payroll following January 1, 2013, the employees represented by Local 1226 received paychecks reflecting a 1% wage increase, and Local 1226 believed that this wage increase was pursuant to the tentative agreement the parties had reached on December 7, 2012.

10. At no time in January or February 2013 did the City give Local 1226 notice that it had rejected the parties' tentative agreement or that it had voted to unilaterally implement the terms of the parties' tentative agreement by way of the above-described resolution and Employee Manual, rather than by a collective bargaining agreement.

11. At its March 11, 2013 meeting, the Common Council voted to approve the minutes of the December 10, 2012 Executive Session, and, further, adopted City of Rhinelander

Ordinance No. 02-13, which provided that the salaries of all City employees were to be henceforth established by the Employee Manual.

12. On various occasions, Local 1226, by its representatives, requested that the City execute a collective bargaining agreement reflecting the terms of the tentative agreement the parties reached on December 7, 2012.

13. To date, the City refuses to execute a collective bargaining agreement that incorporates the terms of the tentative agreement.

14. Moreover, in the months following the December 7, 2012 tentative agreement, the City reduced by \$4.00/hour the wages of newly-hired employees, in violation of the terms of the parties' tentative agreement, claiming authority for such reductions under the Employee Manual.

**FIRST CAUSE OF ACTION:
VIOLATION OF MUNICIPAL EMPLOYMENT RELATIONS ACT**

15. It is a prohibited practice within the meaning of §§ 111.70(3)(a)1., 4. and 5., Wis. Stats., for a municipal employer to refuse to collectively bargain in good faith with a representative of a majority of its employees in an appropriate collective bargaining unit, including the refusal to execute a collective bargaining agreement previously agreed upon and to violate any collective bargaining agreement affecting general municipal employees that was previously agreed upon by the parties with respect to wages.

16. The City's actions, in refusing to sign a collective bargaining agreement that incorporated the terms of the parties' tentative agreement and insistence on retaining complete control over all contract terms that reflect mandatory subjects of bargaining, are a refusal to bargain in good faith with Local 1226.

17. By its actions, as described above, the City has committed multiple prohibited practices under the Wisconsin Municipal Employment Relations Act.

18. Sections 111.07(1) and 111.70(4)(a), Wis. Stats., authorize this Court to grant Local 1226 both legal and equitable relief for any prohibited practices the City has committed.

**SECOND CAUSE OF ACTION:
REQUEST FOR DECLARATORY JUDGMENT**

19. Under §§ 806.04(1) and (2), Wis. Stats., the circuit courts of Wisconsin have the power to declare the rights of the parties to contracts and resolve uncertainties and disputes between the parties under such agreements.

20. This Court's declaration of the parties' respective rights and obligations under the parties' tentative agreement, including whether the City: a) illegally refused to sign a collective bargaining agreement with Local 1226; and b) negotiated and otherwise acted in bad faith and should thereby be estopped from asserting the non-existence of a mutually binding collective bargaining agreement.

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment in its favor and against the Defendant, as follows:

A. Finding that the City has violated the Wisconsin Municipal Employment Relations Act by committing prohibited practices within the meaning of §§ 111.70(3)(a)1., 4. and 5. of the Wisconsin Statutes.

B. Declaring that an enforceable agreement exists between the parties per the terms of the parties' December 7, 2012 tentative agreement, and ordering the City to execute said agreement.

C. Ordering that the City pay to the employees affected by its commission of prohibited practices an amount equal to the wages they would have earned had the City operated according to the parties' agreement.

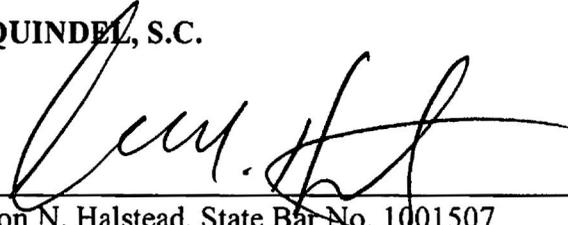
D. Ordering that the City pay the Plaintiff's reasonable attorney's fees and costs of this action.

E. Granting Plaintiff its statutory attorney's fees and costs, along with any and all other relief permitted in law and equity.

Dated this 2nd day of December, 2013.

HAWKS QUINDEL, S.C.

By: _____


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