STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of WAUWATOSA BOARD OF EDUCATION Involving Employes of WAUWATOSA BOARD OF EDUCATION	Case IX No. 11699 ME-339 Decision No. 8300-A

Appearances:

Lamfrom, Peck, Ferebee & Brigden, Attorneys at Law, by Mr. W. B. Ferebee, for the Municipal Employer.

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Employe Organization

ORDER DISMISSING PETITION FOR ELECTION

Wauwatosa Board of Education having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an election or elections among certain of its employes to determine appropriate bargaining units and representation, and with respect to the latter, whether certain of its employes desire to continue their representation by District Council 48 and Local 1561 of the American Federation of State, County and Municipal Employees, AFL-CIO, and hearing on said petition having been conducted by the Commission on October 27, 1967, Chairman Morris Slavney and Commissioner Zel S. Rice II being present; and the Commission, having reviewed the evidence, arguments and briefs of Counsel, and being satisfied that no question concerning representation exists among the employes involved;

NOW, THEREFORE, it is

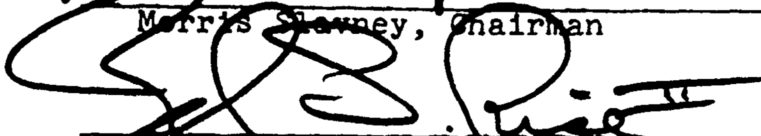
ORDERED

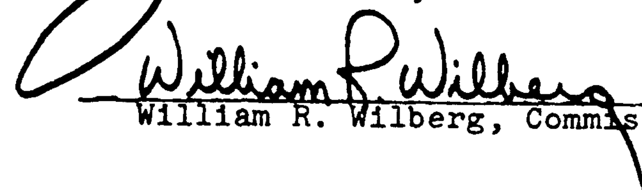
That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal
at the City of Madison, Wisconsin,
this 28th day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of WAUWATOSA BOARD OF EDUCATION Involving Employes of WAUWATOSA BOARD OF EDUCATION	Case IX No. 11699 Me-339 Decision No. 8300-A

MEMORANDUM ACCOMPANYING ORDER DISMISSING PETITION FOR ELECTION

The instant proceeding was initiated by a petition filed on September 26, 1967, by the Wauwatosa Board of Education, hereinafter referred to as the School Board, requesting the Commission to conduct an election, pursuant to Section 111.70, Wisconsin Statutes, to determine whether its employes employed in a claimed appropriate collective bargaining unit, consisting of "all custodial and maintenance employes, excluding carpenter, plumber, electrician, electrician helper, cafeterial employes, clerical employes, supervisors, professional and executive employes", desired to be represented for the purposes of conferences and negotiations by Local 1561 and District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union. In its petition the School Board claimed that

> "in the election held on February 20, 1963, the eligible employes inappropriately included certain craft and supervisory employes, as well as cafeteria employes who constitute a separate department or division and who have not had an opportunity to indicate whether they wish to be represented separately, the total of which employes if appropriately excluded might well change the results of the election."

The petition also stated that

> "the bargaining representative by recent statement(s) and activities has indicated a practice and intent to distinguish between 'union' employes and 'non-union' employes (i.e., employes who are members of the Union and employes who are not members of the Union) in its representation of employes currently in the bargaining unit."

On March 6, 1963, following an election conducted by it, the Commission certified the Union as the exclusive collective bargaining representative of "all custodial and maintenance employes of the

Wauwatosa Board of Education, including the stock clerk, and all cooks, but excluding the electrician, carpenters, clerical employes and all other employes, supervisors, professional employes and executives." Said election had been conducted pursuant to a stipulation therefor executed by the parties, wherein they had stipulated to the appropriate unit. On or about December 12, 1966, the parties entered into a collective bargaining agreement covering the wages and working conditions of the employes in the certified unit. The agreement became effective on January 1, 1967, and was to remain in effect from year to year thereafter unless either party requested a change by June 1 of the year preceding the year in which its proposed changes were to become effective. The agreement also set forth that if changes were requested, bargaining thereon would commence in September.

On May 6, 1967, following a proceeding for the clarification of the bargaining unit, which involved a determination with respect to the supervisory status of certain classifications of employes, the Commission amended its Certification to reflect that the classifications of supervising custodian and supervising custodian and swimming pool operator were considered included in the appropriate bargaining unit.

Hearing on the instant petition was held on October 12, 1967. Subsequently the Union filed a motion requesting that the Commission reopen the hearing for the purpose of admitting evidence alleged to be relevant to the conduct of the School Board with respect to negotiations with the Union. The Commission on November 24, 1967, denied the motion on the basis that it pertained to matters affected by the pending petition. On February 5, 1968, the Union again filed a similar motion. The dismissal of the petition herein necessitates no ruling on the motion.

The primary issue raised by the petition, pleadings, and arguments and briefs of counsel is whether there presently exists a question of representation among the custodial and maintenance employes of the School Board.

The School Board contends that a question of representation presently exists for the following reasons:

1. The presently existing certified collective bargaining unit is inappropriate in that it includes certain craft employes.

2. The employes employed in the cafeterias constitute a

separate department and employes therein should be given an opportunity to determine for themselves whether they desire to constitute a collective bargaining unit separate and apart from the other custodial and maintenance employes. Further, that regular part-time cafeteria employes, who were excluded from the certified unit by agreement, should have been properly included in the unit.

3. The Union in carrying out its representative status has distinguished between members and non-members.

4. The school board has a good faith doubt as to whether a majority of the employes presently desire representation by the Union.

FACTS WITH RESPECT TO CRAFT INCLUSION

Pursuant to the stipulation executed by the parties, the certified bargaining unit excludes the craft classifications of electrician and carpenters. No other craft classification was called to the attention of the Commission during the initial election proceeding. The School Board also employs a plumber, two painters as well as an electrician helper. During the course of the hearing on the instant petition, parties agreed that the plumbers and painters constitute craft employes within the meaning of Section 111.70(4)(d). The School Board contends that the electrician's helper is also a craft employe. The Union contends otherwise. The record discloses that for at least the past five years the electrician's helper has performed electrical maintenance work. The particular employe who is classified as "Custodian Assigned" has worked with the electrician for the past 11 years and has performed all of the duties performed by the electrician except for the maintenance and repair of the clock system. The helper performs such duties without the direct supervision of the electrician. On occasions the helper has performed some snow plowing and replaced custodial employes when the need has arisen.

The School Board asserts that the Custodian Assigned, as the electrician's helper, should be included in a craft unit with the electrician and therefore should not be in the unit with other employes. It cites in support thereof the Commission's decision in Winnebago County Hospital[1/] where the Commission held that "helpers who are in line of progression in the craft will be included as part of the craft." The School Board contends that the evidence supports a finding that the helper has had on-the-job training equivalent to an electrician's apprenticeship program and that he only needs a license granted by the City of Wauwatosa to become a journeyman electrician. It contends that the classification "Custodian Assigned"

1/ Dec. No. 6043, 7/62.

should not be determinative of the employe's craft status for the reasons that the Commission should look beyond job titles to determine the status of the employe involved.[2]

The Union argues that since the Municipal Employer-Employe Labor Relations Law does not provide that it is a prohibited practice for a municipal employer and a labor organization representing its employes to agree to a collective bargaining unit which includes craft as well as non-craft employes and therefore there is no statutory prohibition preventing the parties from agreeing to such units. Accordingly, the Union contends that there is no reason for the Commission to disregard the stipulated appropriate bargaining unit and that the Commission should encourage the parties to "live up to their contractual commitments" reflected in the stipulated unit and in the collective bargaining unit subsequently executed by the parties.

Cafeteria Employes

The School Board maintains a hot-lunch program for students in 12 schools. Lunches are prepared in seven of the schools, while food is transported to the remaining five schools. The food-service operation has been previously designated by the School Board as its cafeterias, and the employes therein as cafeteria employes. All the employes therein are under the primary supervision of the Supervisor of Cafeterias, who reports to the Director of the Business Services, who in turn reports to the Superintendent of Schools. At the time of the hearing the School Board employed 18 full-time and 35 part-time cafeteria employes. Cafeteria employes are employed only during the school term, they are hourly-paid, they receive no vacation nor holiday pay, they are separately supervised, and they perform duties separate and apart from other employes. The Custodial and Maintenance employes work the full year, are paid monthly, and receive vacation and holiday pay.

The regular part-time cafeteria employes work from two to five hours daily, do not earn sick leave or participate in the life and hospital surgical insurance plans. The nature of their duties and their rate of pay are similar to regular full-time cafeteria employes who are employed six hours a day and who receive sick leave and participate in life and hospital surgical plans.

2/ Village of Shorewood, Dec. No. 6552, 11/63.

With respect to the cafeteria employes, the stipulated bargaining unit includes all full-time cafeteria employes who were designated in the certification as "cooks". However, in negotiations which subsequently followed the certification, the cafeteria employes were broken down into three separate classifications, assistant cook manager, cooks and cook helpers. It would appear that the regular part-time employes have been designated by the Municipal Employer as cook helpers.

The position of the Municipal Employer is that the cafeteria employes and the custodial and maintenance employes are in reality separate departments. It points out that these two groups of employes have distinct duties, work in different locations, and have separate supervision. In addition, it is noted that the hours worked by each group of employes differs, their method of compensation differs in that custodial and maintenance employes are paid a monthly salary and cafeteria employes receive an hourly rate, and certain employe benefits differ, specifically vacation with pay, holiday pay, and sick leave. Therefore, it is argued that the criteria established by the Commission in distinguishing separate departments are present in this instance. In addition, the Municipal Employer argues that the original bargaining unit, established by stipulation and not by Commission determination, included some and not all of the cafeteria employes, and since the Municipal Employer believes that all cafeteria employes are entitled to a separate unit vote based on the fact that they constitute a separate department, it has petitioned the Commission to provide these employes with an opportunity to express their wishes with respect to inclusion or exclusion from the overall maintenance unit.

The Municipal Employer, therefore, asserts that the regular part-time cafeteria employes should be included in a unit, whether it be the overall custodial and maintenance unit or the separate cafeteria department unit if the employes choose to constitute themselves a separate unit. In support of its position the Municipal Employer argues that the Commission has consistently held that employes who are regularly employed on a part-time basis have an interest in wages, hours and conditions of employment and consequently are eligible to participate in an election involving full-time employes.[3/] Therefore, it is argued that these employes have a sufficient interest in the wages, hours and working conditions of the bargaining unit

---

3/ Portage Stop-N-Shop, Dec. No. 6803, 7/64 and City of South Milwaukee, Dec. No. 7202, 7/65.

employes to be included in the bargaining unit with the full-time cafeteria employes, and the Commission should accordingly conduct an election to determine the wishes of all cafeteria employes with respect to inclusion or exclusion from the overall custodial and maintenance unit and the selection of a bargaining representative.

The Union contends that since the collective bargaining agreement between the parties provides that any party seeking any unilateral changes in the practices and policies set forth in the collective bargaining agreement would request such changes "by June 1 of the year preceding the year in which the changes are to go into effect," and since the Municipal Employer did not make any request to change the status of any of the employes working in the cafeteria with respect to their inclusion in the bargaining unit, the Commission should not permit the Municipal Employer to violate its contractual promise to request such changes as set forth above.[4/] In addition, the Union argues that there is nothing in the Statute which requires that the employes in the cafeteria department, even if they are found to constitute a separate department, must be given an opportunity to determine whether they wish to constitute themselves a separate bargaining unit, nor does the inclusion of those employes in the overall unit without their having been given a unit determination vote make the overall unit inappropriate.

Alleged Disparity of Treatment of Non-Union Employes

In support of its contention that the Union, in representing its employes, distinguished between members and non-members of the Union, the only evidence was statements contained in newsletters distributed by the Union during April and May 1967, and produced by the School Board with respect to such contention. In the first letter the Union publicized the fact that it was, in accordance with the grievance and arbitration provisions of the collective bargaining agreement existing between the parties, submitting a grievance relating to the reclassification of a Mechanics Helper, the matter was characterized in the newsletter as follows:

> This case involves an employe (who happens to be non-union) who was given a raise above and beyond what the Union negotiated. A typical Union-busting technique, we expect to teach the School Board, through arbitration, that they must communicate and negotiate with the Union on all matters relating to wages, hours, and conditions

4/ The Union put forth the same argument with respect to the School Board's desire to exclude the Electrician's Helper from the unit.

of employment. Sooner or later, the Board is going to learn that it is much easier to work with us than against us."5/

The May newsletter contained the following reference to the arbitration case:

"On Friday, May 5 Local 1561 and the school board presented the cases to arbitrator Thomas P. Whalen. The case involves an additional pay increase unilaterally given by the school board to a non-union employe in the maintenance department."5/

The School Board argues that the above statements indicate that the Union distinguishes between members and non-members, or at least infers disparity of treatment, and thus, the School Board argues, that the employes who voted in the original election now believe that the Union will not provide equal representation to all employes, and therefore the employes should now be given an opportunity to express their desires with regard to representation.

The Union contends that the statements contained in the letters do not establish or infer any disparity of representation of members vis-a-vis non-members.

School Board's Good-Faith Doubts as to Union's Representative Status

The School Board asserts that it has a good faith doubt of the Union's majority status since it queried its supervisory staff as to whether they were, from day to day conversations with the employes, able to form an opinion as to whether a majority of the employes presently desire representation by the Union. It further asserts that as a result of these inquiries, in the opinion of the supervisory staff, specifically the school principals, there was a question as to whether a majority of the employes in the bargaining unit presently desire that the Union continue to represent them.

The record indicates that early in the summer of 1967, the School Board directed the Assistant to the School Superintendent to secure information relative to whether or not a majority of the employes in the bargaining unit desired to continue their representation by the Union. The Assistant to the Superintendent thereafter contacted the school principals to determine whether in their opinion a majority of the employes presently desire representation by the incumbent Union, and as a result of such inquiries, at a special meeting of the School

5/ Emphasis added.

Board held in July, the Assistant to the Superintendent reported to the School Board that the school principals were of the opinion that there was a reasonable doubt as to whether or not a majority of the employes in the bargaining unit still desired to be represented by the Union.

The School Board further argues that Section 111.70(4)(d), Wisconsin Statutes, does not require a municipal employer to demonstrate that it has reasonable cause to believe that the certified union does not represent a majority of the employes in the bargaining unit in that Section 111.70(4)(d) provides that "whenever a question arises between a municipal employer and a labor union as to the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization..." It further contends the Commission has clearly established a rule which does not require the petitioning union to demonstrate a showing of interest in a petition for a second election, and accordingly, there is no reason to require a municipal employer to demonstrate by objective evidence that there is a lack of interest by the employes in the union certified to represent them.

The School Board argues that since it could not conduct a private poll or interrogate employes concerning their union membership or sympathies, and since documentary evidence such as union dues or check-off authorizations were not available, in order to determine the sympathies and attitude of the employes with respect to union representation, it queried its supervisory staff as to whether, in their opinion, there was a question of representation. The School Board claims that although the evidence is "tenuous", under the circumstances it is the best evidence available. For all of the above reasons the Municipal Employer argues that a question concerning representation does exist in this instance and the Commission should direct an election.

The School Board further argues that it has a reasonable cause to believe that the Union does not presently represent a majority of the employes in the appropriate collective bargaining unit because of the improper inclusion of the craft employes, namely plumbers, painter and electrician's helper, in the original unit, and, also because of the exclusion of the regular part-time cafeteria employes from the original unit, and further, on the basis that the cafeteria employes, being a separate department, constitute a unit separate and apart from the custodial and maintenance employes, and therefore, since there is

a question which has arisen concerning the appropriate unit, there also exists a question of representation.

With respect to this issue, the Union argues that Section 111.70 (4)(d) does not either specifically grant or deny the Commission the discretion to dismiss employer petitions, and further argues that there is nothing in this section of the statute which contemplates the creation of a device which would "enable public employers 'to disrupt collective bargaining' and upset 'stable relations'". The Union asserts that there is no reason for granting municipal employers the right to file election petitions where they have no good faith doubt of the union's majority status. The Union asserts that the facts demonstrate that the School Board's purpose in filing this petition was to postpone as long as possible its obligation to bargain in good faith with the Union. The Union argues that the evidence pertaining to the School Board's refusal to bargain subsequent to the election hearing is relevant to the Union's motion to dismiss the petition, and therefore, the Commission's denial of the Union's motion to reopen the hearing to allow evidence with respect to the Municipal Employer's refusal to bargain and dilatory tactics should be reconsidered and the motion granted.

DISCUSSION

The Municipal Employer-Employe Labor Relations Law, in Section 111.70(4)(d), contains the following language with respect to representation elections among municipal employes:

> "(d) Collective bargaining units. Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02(6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit."

The material portion of Section 111.02(6) of the Wisconsin Employment Peace Act provides as follows:

> "(6) The term 'collective bargaining unit' shall mean all of the employes of one employer (employed within the state), except that where a majority of such employes

engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in section 111.05(2) to constitute such group a separate bargaining unit they shall be so considered..."

The material portions of Section 111.05 of the Wisconsin Employment Peace Act provide as follows:

> "(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02(6), it shall be determined by secret ballot, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employes in any craft, division, department or plant as to the determination of the collective bargaining unit."
>
> * * * * *
>
> "(4) Questions concerning the determination of collective bargaining units or representation of employes may be raised by petition of any employe or his employer (or the representative of either of them)....The fact that one election has been held shall not prevent the holding of another election among the same group of employes, provided that it appears to the board that sufficient reason therefor exists."

Under the pertinent statutory provisions a question of representation must exist as a condition precedent to the processing of a petition for an election among employes. The Commission has not required any showing of interest to be demonstrated by any petitioner with respect to the processing of election petitions filed pursuant to the Wisconsin Employment Peace Act or the Municipal Employer-Employe Labor Relations Act. The Commission has considered the filing of the petition, whether it be to certify or decertify a representative, as a good-faith claim that the employes desire to be represented or not to be represented. This policy has been applied in initial and subsequent elections[6/] on the basis of our experience that the overwhelming number of petitions have been filed in good faith with the expectation of obtaining the results prompting the petition.

Under both statutes, the fact that the Commission processes the petition does not necessarily result in the conduct of an election. Even assuming no issue with respect to the appropriate unit, there are other factors considered by the Commission as to whether a question of representation presently exists. In private employment, the Commission has considered the presence or absence of a current collective

---

6/ Kenosha Board of Education, Dec. No. 8301, 5/67.

bargaining agreement, the presence or absence or current and active negotiations and the length thereof, whether the current bargaining agent is certified or recognized, the period of time since the current bargaining agent was certified, and the employment relations history involved. Such considerations have led to the adoption of contract bar principles, as well as a policy with respect to the timely filing of petitions. In processing election petitions under Sec. 111.70, in addition to the above noted factors, the Commission has also considered the budgetary deadlines involved, as well as other pertinent statutes and ordinances affecting the collective bargaining relationship and the implementation of conditions of employment reached at the bargaining table.

The establishment of a policy which would now require labor organizations seeking representation to present a showing of interest or to require that an employer establish a good faith doubt that the employes desire to continue their representation by an incumbent union, requires a consideration of the rights of employes to select or change their bargaining representative, with the interest of preserving stability in existing collective bargaining relationships. We have considered the above-discussed factors in order to balance and achieve these objectives when confronted with issues involving the timely filing of petitions for elections.[7/]

Although the Commission has not in the past processed a substantial number of petitions which have not been filed in good faith, the results of recent elections seeking a change in the present representative status indicate that an increasing number of petitions have been filed where there was little likelihood of success by the petitioner. The processing of such election petitions has resulted in no change in the bargaining relationship and has had an adverse impact upon such existing relationship, in that such processing has interrupted and delayed negotiations, thus affecting the stability of the collective bargaining relationship. Such unwarranted delays create problems especially in municipal employment with respect to the effect of budgetary deadlines and other special deadlines which may be imposed by statute, and in both the private and public employment where such delays create additional issues for bargaining, such

7/ City of Green Bay, Dec. No. 6558, 11/63; Waukesha County, Dec. No. 7435-A, 5/66; Kenosha Board of Education, Dec. No. 8301, 5/67.

as effective dates of agreements, as well as their retroactive application.

The Commission concludes that there is now sufficient reason requiring parties requesting elections seeking a change in representation or the rejection of the present representative to furnish the Commission with objective data raising the question concerning representation before it will conduct such an election, which if otherwise held, might delay and frustrate the relationship between the recognized or certified labor organization and the employer. Inasmuch as election procedures with respect to representation and bargaining units are identical in the Wisconsin Employment Peace Act and in the Municipal Employer-Employe Labor Relations Law, the policies which we are herein adopting shall apply to election proceedings processed by this agency under both statutes.

Accordingly, where there is an existing collective bargaining relationship resulting from a good faith voluntary recognition of the labor organization, or where the labor organization has been certified in an election conducted by this agency, an organization filing a petition for an election among the employes involved at the time of filing must administratively demonstrate that at least 30 per cent of the employes in the claimed appropriate collective bargaining unit desire the petitioning organization to represent them for the purposes of collective bargaining. Where the petition is filed by an employe or employes seeking to terminate the representative status of the incumbent labor organization, the petitioning employe or employes must administratively demonstrate to this agency at the time of filing that at least 30 percent of the employes in the requested bargaining unit desire to terminate the representative status of the union. An employer petitioning for an election in an existing unit must demonstrate to this agency at the hearing, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its certification or the date of voluntary recognition. This objective evidence must not have been obtained by the employer through prohibited means.

Under both the private and municipal labor laws, all the employes of the employer generally constitute an appropriate unit. The Municipal law contains a specific statutory exception, and that is that craft employes can only be included in a unit consisting of the same craft.[8/] The Commission has applied the same provision to professional

8/ Sec. 111.70(4)(d), Wis. Stats.

employes.[9] In the private employment act, employes engaged in a separate craft, division, department or plant may determine for themselves whether they desire to constitute a separate unit.[10] Under the municipal law, this option is also given to employes employed in a separate division, department or plant.[11] In the past, where a request for such a separate unit has been made, and where it has been established that the unit desired constitutes a separate craft, division, department or plant, the Commission has conducted a unit determination election without any requirement of a showing of interest. We are now changing our policy with respect to unit determination elections. Where a properly recognized or certified bargaining unit exists, and where a petition is filed by a labor organization seeking a severance from the existing unit on the claim that the unit sought constitutes a separate craft[12], division, department or plant, the petitioner must administratively demonstrate to this agency at the time of filing that at least 30 percent of the employes in the proposed smaller unit desire to be represented by the petitioning organization in the smaller unit. Where the employes file a petition seeking merely to sever themselves from the existing unit without any representation, such petitioners must administratively demonstrate to the Commission at the time of filing that at least 30 percent of the employes in the claimed separate craft,[13] division, department or plant desire to constitute themselves a unit separate and apart from the employes in the existing unit. When such a petition is filed by an employer, the employer must demonstrate at the hearing by objective considerations that it has reasonable cause to believe that the employes in the claimed separate craft, department, division or plant desire to constitute themselves a separate collective bargaining unit. Of course, if the showing of interest is appropriate, the Commission must be satisfied that the unit sought constitutes a separate craft,[14] division, department or plant. The fact that the Commission directs an election which would permit employes to sever themselves from the existing unit does not in itself raise a question of representation among the remaining employes in the original unit. If a representation election is desired among the employes in the remaining unit, there must be a separate showing of interest for those employes or, in case the petition is

---

9/ Winnebago County Hospital (6043), 7/62.

10/ Sec. 111.02(6), Wis. Stats.

11/ Sec. 111.70(4)(d), Wis. Stats.

12/ No unit vote is necessary for craft employes in municipal employment.

13/ Ibid.

14/ Ibid.

filed by the employer, an establishment of a good faith doubt as to whether the employes in the remaining unit desire to continue their representation by the incumbent union.

In the instant proceeding the School Board asserts it has a good faith doubt that a majority of employes desire to continue their representation by the Union. One of the elements relied upon by the School Board in attempting to establish a good faith doubt as to the Union's representative status concerns the fact that the stipulated bargaining unit, which was subsequently certified by the Commission, includes certain craft employes, contrary to Section 111.70(4)(d), Wis. Stats.

The Commission agrees with the School Board that the certified unit should not include craft employes since the statute specifically prescribes that "the board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit."15/ However, the Commission is not of the opinion that the removal of the craft employes from the certified unit creates a question concerning representation. Instead, it is the Commission's opinion that the matter should be treated as a request for a clarification of the certified collective bargaining unit, rather than as a question concerning representation. Here the craft employes inappropriately included in the unit consisted of two painters, a plumber and the electrician's helper. In the original election, of 88 employes eligible to vote, 84 cast ballots, 51 of whom voted in favor of the Union as their representative while 33 opposed such representation. Assuming that said four "craft employes" had not voted in favor of the Union, the Union's majority would have remained substantial without their vote. Under such circumstances the exclusion of such craft employes from the unit does not raise a question of representation in the existing unit.

The School Board contends that its good faith doubt is further substantiated by the fact that the cafeteria employes, being in a separate division, are entitled to a separate unit vote, and further, that regular part-time cafeteria employes were not included in the original unit. The School Board presented no evidence to support a finding that any of the cafeteria employes, full or part-time, desired

15/ The Commission concludes that the electrician's helper has sufficient craft skills and training to constitute a craft helper regularly performing craft work, and therefore subject to the craft exclusion as set forth in 11.70(4)(d).

to constitute a unit separate and apart from any other employes, or that any regular part-time employes were interested in any representation.

The School Board asserts that the newsletters issued by the Union could be construed as discrimination against non-Union employes and that, therefore, the employes should have another opportunity to express their wishes with respect to representation by the Union. However, there was no evidence adduced which supports the School Board's contention that the employes themselves may have changed their attitude toward the Union or that the newsletters affected the desire of any employes to continue representation by the Union.

With respect to the School Board's reliance on the report made to it by the Assistant to the Superintendent concerning the attitude of the employes toward the Union, the Commission concludes that the evidence with regard thereto is insufficient to establish any reasonable cause to believe that the Union has lost its majority status or that any employes have changed their attitude in that regard. At the most, such evidence is compounded hearsay, and we are satisfied that it does not establish a good faith doubt with respect to the majority status of the Union. Therefore, we are dismissing the petition for the reasons stated herein.

Although an issue was not raised with respect to the timing of the filing of the petition herein, we feel obliged to comment thereon. An election hearing is not an adversary proceeding, but is in the form of an investigation conducted by the Commission for the purpose of determining, among other things, whether it will conduct a representation election among the employes involved.

The term of the agreement involved in this proceeding was to continue until at least December 31, 1967, and from year to year thereafter unless either party requested changes by June 1 of the year preceding the year in which changes are to go into effect. The agreement further provided that bargaining on such requested changes was to commence in September. Here the Union had made a timely request for changes for the 1968 agreement. The School Board did not file its petition until September 26, 1967, approximately four weeks after bargaining was to commence on the requested changes. Had not the Union nor the School Board reopened the agreement by June, the agreement would have continued in full force and effect for another year, and this agency would not have entertained any petition for an election during the remainder of 1967.

It appears to us that the timing of the filing of the petition, and the basis on which it was filed, indicates an attempt by the School Board to frustrate the rights of its employes and the collective bargaining process. If the School Board had had any good faith reasonable basis for questioning the Union's majority status, it should have raised such question prior to June 1, the date on which the agreement can be reopened. The entertainment of election petitions by the Commission after either one or both of the parties are formally preparing themselves for, or are in collective bargaining, after an agreement has been reopened, and especially during the period established for bargaining, would not effectuate the policies set forth in Section 111.70, since the device of filing petitions at such times would impede meaningful conferences and negotiations in public employment as contemplated in the Statute.

In a decision involving Whitewater Unified School District,[16/] a labor organization filed a petition requesting the Commission to conduct an election among employes presently represented by another organization. The incumbent organization and the School Board were parties to an existing collective bargaining agreement, which contained no specific reopening date. The Commission dismissed the election petition as being untimely filed, since it was filed some nine months prior to the date on which negotiations would commence for a possible succeeding agreement. In its decision the Commission indicated that the immediate conduct of a second election would affect the stability of the existing collective bargaining relationship, and the Commission concluded that it would entertain a new petition filed any time within the 30-day period prior to the date on which negotiations would commence for a new agreement.

Where there exists a valid collective bargaining agreement which contains provisions for reopening same for the purpose of negotiating terms and conditions of a new agreement, the Commission will only process petitions seeking an election among the employes covered by said agreement if said petitions are filed within a sixty (60) day period preceding the date established for the reopening of the agreement.

In municipal employment, in the absence of a collective bargaining agreement, where the conditions of employment are reflected in a

16/ Decision No. 8034, 5/67.

resolution or ordinance which was adopted after collective bargaining and where said resolution or ordinance establishes a date for the commencement of negotiations to seek changes in wages, hours and working conditions, the Commission will process petitions seeking an election only if said petitions are filed within the sixty (60) day period preceding the date established for the commencement of such negotiations.

The reason for the adoption of such time limitations is to promote stability in the collective bargaining relationship, and in municipal employment to insure the parties a reasonable period of time to engage in bargaining and to negotiate an agreement prior to the established budgetary deadlines, or if no representative is selected, to avoid useless bargaining.

In this particular proceeding, because of the accumulation of the reasons set forth for the change in Commission policy, we are dismissing the petition filed by the School Board, for the reasons (1) that the inclusion of craft employes in the certified bargaining unit does not raise a question of representation in said unit;[17/] (2) that it has not established a good faith doubt that any of the employes desire to change their bargaining representative; (3) that it has not established that any of the cafeteria employes desire to constitute a separate unit, or that any regular part-time employes desire to be in any unit; and (4) that the petition was not timely filed.

In summary, the policies adopted by the Commission are as follows:

Showing of Interest

Where there presently exists a recognized or certified bargaining representative:

(1) Any election petition filed by a rival labor organization or employes must be accompanied by applications for membership or some form of authorization to seek such election,[18/] signed and

---

17/ The Commission will issue an Amended Certification of Representatives wherein it will amend the existing unit to exclude craft classifications which were included in the original unit.

18/ Such showing of interest shall not be deemed to be part of the petition, but will be reviewed administratively by the Commission. Prior to the issuance of the notice of hearing, the employers involved will be requested to furnish the Commission with a list of employes in the proposed unit, as of the date of the filing of the petition, for the Commission's use in administratively determining whether there is sufficient showing of interest. The validity of the showing of interest shall not be subject to litigation in the representation hearing, as the details of such showing of interest will not be revealed.

currently dated, by at least 30 percent of the employes in the existing unit, or in the unit desired by the petitioner.

(2) Where the petition is filed by the employer, the employer at the hearing must demonstrate, by objective considerations, reasonable cause to believe that the incumbent organization has lost its majority status either in the existing unit or in a different claimed appropriate unit.

Time For Filing Petitions

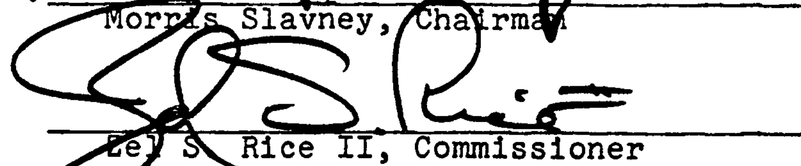
Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employes in an appropriate collective bargaining unit, the petition must be filed within the sixty (60) day period prior to the date provided in said agreement for its reopening. Where the conditions of employment are reflected in an ordinance or resolution, the petition must be filed within the sixty (60) day period prior to the date reflected in the resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employes in the unit covered by said resolution or ordinance.

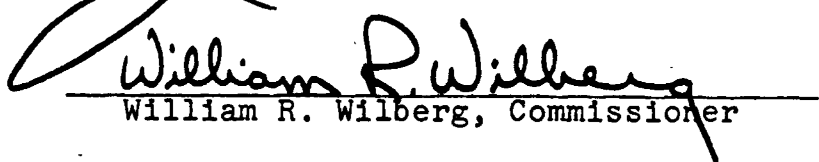
The Commission will continue its present policy of not requiring any showing of interest or time limitations on filing of petitions where there exists no certified or voluntarily recognized collective bargaining representative.

Dated at Madison, Wisconsin this 28 th day of February, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

10-47-AB7569