

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
WAUWATOSA BOARD OF EDUCATION	:	
To Initiate Fact Finding Between	:	Case XII
Said Petitioner and	:	No. 12133 FF-175
LOCAL 1561 affiliated with DISTRICT	:	Decision No. 8551
COUNCIL 48 OF THE AMERICAN FEDERATION	:	
OF STATE, COUNTY AND MUNICIPAL	:	
EMPLOYEES, AFL-CIO	:	
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ORDER DISMISSING FACT FINDING PETITION

The Wauwatosa Board of Education having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes, wherein it alleged that Local 1561, affiliated with District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, had failed and refused to meet and negotiate at reasonable times in a bona fide effort to arrive at a settlement with respect to wages to be paid to employees represented by said Labor Organization, specifically those employees employed in the collective bargaining unit consisting of all custodial and maintenance employees, including the stock clerk and all cooks, excluding the electrician, clerical employees and all other employees, supervisors, professional employees and executives; and Counsel for said Labor Organization having filed a motion to dismiss said petition, and Counsel for said Municipal Employer having, in writing, filed an argument in opposition to said motion; and the Commission having taken administrative notice of the fact that on September 26, 1967, said Municipal Employer filed a petition with the Commission requesting the Commission to conduct an election, pursuant to Section 111.70, Wisconsin Statutes, to determine whether its employees employed in the claimed appropriate collective bargaining unit, consisting of all custodial and maintenance employees, excluding carpenter, plumber, electrician, electrician helper, cafeteria employees, clerical employees, supervisors, professional and executive employees, desired to be represented

for the purposes of conferences and negotiations by said Labor Organization, and that in respect to that proceeding and after hearing conducted by it, the Commission, on February 28, 1968, having dismissed such petition for election for various reasons; and thereafter, and on March 22, 1968, the Commission having issued an order denying motion for rehearing in the matter, and on or about March 29, 1968, said Municipal Employer having filed with the Circuit Court of Dane County, Wisconsin, a petition for review of the Commission's order dismissing said election petition; and the Commission being fully advised in the premises, and being satisfied that since, on the face of its petition for fact finding, said Municipal Employer has placed certain limitations on the matters which it desires to bargain with said Labor Organization, as well as certain limitations on the latter's authority to represent the employees in the existing appropriate collective bargaining unit, there exists no duty upon said Labor Organization, within the meaning of Section 111.70(4)(e), Wisconsin Statutes, to meet and negotiate with the Municipal Employer on such limited basis;

NOW, THEREFORE, it is

ORDERED

That the petition for fact finding filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this *21st*
day of May, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Le S. Rice II

Le S. Rice II, Commissioner

William R. Wilberg

William R. Wilberg, Commissioner

STATE OF WISCONSIN

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LOCAL 1561 affiliated with DISTRICT
COUNCIL 48 OF THE AMERICAN FEDERATION
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Case XII
No. 12133 FF-175
Decision No. 8551

MEMORANDUM ACCOMPANYING ORDER DISMISSING FACT FINDING PETITION

On May 2, 1968, Wauwatosa Board of Education, hereinafter referred to as the Municipal Employer, filed a fact finding petition initiating the instant proceeding wherein it alleged that Local 1561, affiliated with District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as Local 1561, refused to meet and negotiate with the Municipal Employer with respect to all custodial and maintenance employees, including the stock clerk and all cooks, excluding the electrician, clerical employees and all other employees, supervisors, professional employees and executives. The Municipal Employer alleged the following facts in its petition:

"Petitioner, because of its Petition to Determine Representatives of certain of its employees (which constitute a bargaining unit different than that set forth in paragraph 3 above) has declined to negotiate for a collective bargaining agreement for the year 1968 for the collective bargaining unit set forth in paragraph 3 above, but has repeatedly offered to negotiate with Local 1561 and District Council 48 with respect to a salary increase for employees of the bargaining unit set forth in paragraph 3 above, to be effective as of January 1, 1968, without limitation or restriction on the right of such union to negotiate further on salary increases and other appropriate collective bargaining subjects if and when a final determination is made that such union represents the employees in the collective bargaining unit proposed by Petitioner herein or is properly the representative of the collective bargaining unit set forth in paragraph 3 above, but such union has repeatedly refused to bargain with respect to salary increase proposed by Petitioner herein."

"The Petitioner's Petition to determine Representatives was on February 28, 1968 dismissed by this Commission but on March 29, 1968 Petitioner herein petitioned the Dane County Circuit Court to review such administrative decision, and such matter is now pending. Until such Petition to Determine Representatives is finally determined, Petitioner herein is required to negotiate with the union set forth in paragraph 2 above relative to any salary increase for the employees in the bargaining unit set forth in paragraph 3 above, and cannot increase their salaries without negotiation with said union, but said union has repeatedly refused to negotiate with respect to Petitioner's proposed salary increase."

Prior to discussing the positions of the parties, it is helpful to discuss the background leading to the present dispute between the parties.

Following an election conducted by it, the Commission, on March 6, 1963, certified Local 1561 as the exclusive bargaining representative of the employees employed in the unit described in the fact finding petition. Local 1561, in its representative status, negotiated an agreement with the Municipal Employer covering the wages, hours and working conditions for said employees, effective on January 1, 1967, and which was to remain in effect from year to year thereafter unless either party requested changes therein. On May 6, 1967, following a proceeding for the clarification of bargaining unit, 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. On September 26, 1967, after Local 1561 had reopened the agreement, the Municipal Employer filed a petition with the Commission requesting that an election be conducted in a bargaining unit consisting of all custodial and maintenance employees, excluding carpenter, plumber, electrician, electrician helper, cafeterial employees, clerical employees, supervisors, professional and executive employees, to determine whether said employees desired to be represented by Local 1561. In its petition, and as a basis therefor, the Municipal Employer contended that in the previous election, certain craft and supervisory employees, as well as cafeteria employees, were inappropriately included in the certified unit, and further that Local 1561, as the bargaining representative, had indicated a practice and intent to distinguish between its members and non-members who were in the employ of the Municipal Employer. After hearing and consideration of the record and arguments of the parties,

the Commission dismissed the petition^{1/} filed by the Municipal Employer for the following reasons:

1. That the inclusion of craft employees in the unit did not raise a question of representation in said unit;
2. That it had not established a good faith doubt that any of the employees desired to change their representative;
3. That it did not establish that any of the cafeteria employees desired to constitute a separate unit or that any regular part-time employees desired to be included therein; and
4. That the petition was not timely filed.

Subsequently both the Municipal Employer and Local 1561 filed motions requesting the Commission to rehear the matter. On March 22, 1968, after considering said motions, and without hearing, the Commission denied the motions for rehearing. On or about March 29, 1968, the Municipal Employer filed a petition for review of the Commission's decision in the Dane County Circuit Court wherein the Municipal Employer requested that said court vacate the order of dismissal filed by the Commission and that the matter be remanded to the Commission. The petition for review is presently pending before said court.

POSITION OF THE PARTIES

Local 1561 opposes the fact finding petition and requests the Commission to dismiss same on the following grounds:

- "1. Petitioner, in paragraph 6 of its Petition, admits that it 'has declined to negotiate for a collective bargaining agreement for the year 1968....'

This refusal violates its statutory duty to negotiate with Local 1561. (Whether violation of this duty is a prohibited practice is, of course, irrelevant here.)

2. As a result of Petitioner's said refusal, Petitioner is not entitled to fact finding on only one mandatory subject while refusing to bargain on all other mandatory subjects.
3. Contrary to Petitioner, there is no question of representation pending.
4. The mere filing of a petition by an employer does not create a question involving representation and does not relieve the employer of its duty to bargain collectively over all mandatory subjects of bargaining.

^{1/} Decision No. 8300-A

5. The dismissal of Petitioner's Petition on February 28, 1968, by itself, refutes the Board's assertion that there is a question of representation pending. As long as this dismissal is not overturned, no question of representation exists.
6. This Petition for fact finding appears to be another in a long series of the Board's actions designed to use this Commission and the courts as an auxiliary in its effort to undermine Local 1561, to avoid its duty to bargain collectively with Local 1561, and to deprive its employees of their rights under Section 111.70 Wis. Stats.
7. Since the facts of which this Commission may take administrative notice or which appear on the face of the Board's Petition show conclusively, as a matter of fact and of law, that Petitioner's assertion is completely false, the Petition should be dismissed forthwith."

In response to Local 1561's motion for dismissal the Municipal Employer contends, in effect, that since there is a question concerning the appropriate bargaining unit, the Municipal Employer is justified in declining to bargain with said Local 1561 with respect to a collective bargaining agreement for the year 1968, and since that question is open because of the court action, it would be inappropriate for the Municipal Employer to negotiate with respect to the presently certified unit since, by doing so, it would permit the possibility of a labor organization not representing a majority of the employees to act as their exclusive bargaining representative, contrary to the concepts and policies of Section 111.70. The Municipal Employer further contends that the dismissal of the election petition by the Commission is not determinative of the question of representation since the matter is presently pending for review in the Circuit Court. The Municipal Employer further contends that since Local 1561 was certified to represent the present bargaining unit for 1963, however inappropriate the unit might be, Local 1561 is still its certified representative. Nevertheless, it contends that since the appropriateness of the unit is in question, which in turn raises a question of representation, and since it is possible that during the year 1968 a different unit might be established, which in turn would require a determination of representatives, Local 1561 cannot insist upon negotiations for the contract year 1968. The Municipal Employer then goes on to say that Local 1561, however, does continue to represent the employees in the present unit by virtue of its certification which embraces a duty and responsibility to bargain insofar as it is able to do so, and that the Municipal Employer's proposal to Local 1561 with respect to

bargaining on salaries only until the matter of representation is resolved was designed to be "within the limits of permissible bargaining under the exigencies of the situation here, and was designed not to encroach upon an area where bargaining would not be permissible." Further, the Municipal Employer argues that its proposal was not offered to cover all of 1968 but to be effective from January 1, 1968, until such time as the question of bargaining unit and representation was finally determined.

DISCUSSION

We fail to understand the logic of the Municipal Employer's position, especially with respect to the argument that Local 1561 cannot insist upon negotiation for the contract year 1968 on wages, hours and working conditions of the employees in the certified unit and at the same time taking the position that Local 1561 has a duty and responsibility to bargain for employees in the present bargaining unit "insofar as it is able to do so." We interpret the last quoted phrase to refer to those matters which the Municipal Employer wishes to be the subject matter of bargaining.

Assuming arguendo that we agree with the Municipal Employer that a question of representation is pending because of the appeal pending in Circuit Court with respect to the dismissal of its election petition, the Municipal Employer completely ignores the rights of the employees when it contends it will recognize and bargain with Local 1561 even on a limited basis. If a question of representation still exists, the exclusive representative status of Local 1561 is questionable, and the Municipal Employer would subject itself to a prohibited practice complaint in recognizing a labor organization during the pendency of a question concerning representation, thus interfering with the rights of the employees by affording recognition, even limited in nature, to said organization at such time. If a question of representation presently exists among the employees involved, Local 1561 has no authority to negotiate any wages, terms or conditions of employment for the year 1968, the period not covered in the collective bargaining agreement previously executed by the parties.

We conclude that a question of representation does not exist. The filing of a petition for court review of the Commission's determination does not in itself re-establish the alleged question of representation originally initiated by the filing of the election petition by the Municipal Employer. As a result, Local 1561 is the duly certified

representative of the employees of the Municipal Employer employed in the appropriate collective bargaining unit and, as such, has the authority to represent such employees in conferences and negotiations with the Municipal Employer on wages, hours and conditions of employment. However, the Municipal Employer cannot limit the matters to be negotiated to wages for an indefinite period, and refusal of the representative to meet and negotiate with the Municipal Employer, under the circumstances herein, does not constitute a refusal by said labor organization to meet and negotiate in good faith as contemplated in the fact finding provisions contained in the statute. If Local 1561 were to meet and negotiate with the Municipal Employer on those matters limited by the Municipal Employer, said Labor Organization would fail in its duty, as the collective bargaining representative, to the employees in the unit.

We, therefore, conclude that the conditions for fact finding have not been met, and we are, therefore, dismissing the petition filed by the Municipal Employer herein.

Dated at Madison, Wisconsin, this *21st* day of May, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slayney
Morris Slayney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner