

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL 317

Involving Certain Employees of

MILWAUKEE COUNTY  
-----

Case XXX  
No. 12445 ME-413  
Decision No. 8855

ORDER OF DISMISSAL

International Union of Operating Engineers Local 317 having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct elections among certain power plant employees in the employ of Milwaukee County to determine (1) whether said employees desired to establish themselves as a bargaining unit separate and apart from other employees of Milwaukee County and (2) what, if any, representation said employees desired for the purposes of conferences and negotiations with Milwaukee County; and hearing on said petition having been held on November 20, 1968, at Milwaukee, Wisconsin, Byron Yaffe, Hearing Officer, being present; and during the course of the hearing Milwaukee County District Council 48, AFSCME, AFL-CIO (and its appropriate affiliated locals) having been permitted to intervene in the proceeding on the basis that it is the certified bargaining representative of the employees in the proposed bargaining unit; and the Commission having considered the evidence, arguments and briefs of Counsel, and being satisfied that no question of representation presently exists among the employees involved;

NOW, THEREFORE, it is

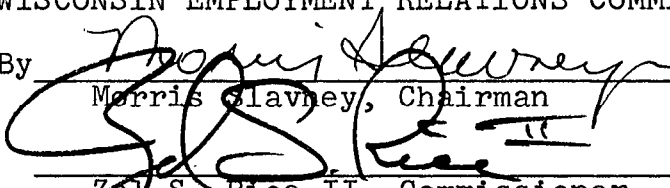
ORDERED

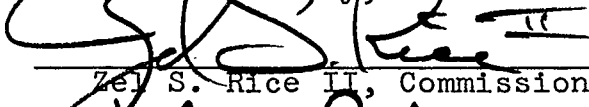
That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 27<sup>th</sup>  
day of January, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

No. 8855

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY

• • • • •

Case XXX  
No. 12445 ME-413  
Decision No. 8855

In initial elections conducted by it in 1965 among various employees of Milwaukee County, the Commission, pursuant to a direction issued by it,<sup>1/</sup> upon petition filed by International Union of Operating Engineers, Local 311, AFL-CIO, afforded employees classified within the "Plant Operation Group" the opportunity to determine whether said employees desired to establish a bargaining unit separate and apart from other employees employed by the Municipal Employer, and whether they desired to be represented by International Union of Operating Engineers, Local 311, AFL-CIO, or by Milwaukee District Council 48 (and its appropriate locals) AFSCME, or by neither of said organizations. In said balloting the employees in the "Plant Operation Group" rejected a separate unit, and as a result, said employees were included in an overall unit consisting of "all regular full time and regular part time employees of the County of Milwaukee, excluding fire fighting classifications, and other craft employees, registered nurses, and other professional employees, confidential employees, supervisors, department heads and exempt positions."

The employees in said unit selected District Council 48 as their bargaining representative. Following that certification, representatives of District Council 48 and the Municipal Employer engaged in conferences and negotiations, and at all times material herein were parties to a collective bargaining agreement, executed on February 3, 1967, covering wages, hours and working conditions of the employees in said overall unit for the years 1967 and 1968. Said agreement contained the following timetable for negotiations for a succeeding agreement, effective January 1, 1969, as follows:

1/ Dec. No. 7135, 5/65

"Step 1 - Submission of Union proposals to County by March 1, 1968.

Step 2 - Submission of County answers by April 15, 1968.

Step 3 - Negotiations to begin May 15, 1968.

Step 4 - Conclusion of negotiations September 1, 1968."

After negotiations toward a new collective bargaining agreement between District Council 48 and the Municipal Employer had been underway for an extended period of time in accordance with the aforesaid negotiation schedule, International Union of Operating Engineers, Local 317, hereinafter referred to as Operating Engineers, on October 7, 1968, filed a petition with the Commission requesting an election among employees employed in the Central Power Plant of the Municipal Employer who were classified as "Engineers, Firemen, Power Plant Maintenance Men, etc." At the outset of the hearing, Operating Engineers amended its petition to conform the desired unit to those classifications of employees which the Commission had included in the "Plant Operation Group" involved in the previous unit determination election. In the alternative, Operating Engineers suggested an alternate unit comprised of a portion of the classifications in the "Plant Operation Group," which would consist of certain employees employed only at the Central Power Plant.

District Council 48, which was permitted to intervene in the instant proceeding on the basis of its present representative status, urges the Commission to dismiss the petition, contending that it was not timely filed, and further, that the Operating Engineers had not adduced sufficient evidence to indicate that the employees in the desired unit are not presently adequately represented.

#### Timeliness of the Petition

We shall first consider the issue as to whether the petition was timely filed. As noted above, the petition was filed on October 7, 1968, a number of months subsequent to the commencement of negotiations between District Council 48 and the Municipal Employer, but prior to the consummation of an agreement resulting from said negotiations, and only some five weeks prior to the Municipal Employer's budgetary deadline date, November 15, 1968.

District Council 48 contends that the petition has not been timely filed in accordance with the policy expressed by the Commission in its decision in the City of Milwaukee<sup>2/</sup> and that, pursuant to said policy, the petition, in order to have been timely filed, should have been filed within the 60-day period immediately preceding May 15, 1968.

Operating Engineers contends that the policy expressed in the City of Milwaukee is not applicable herein since the existing collective bargaining agreement between the Municipal Employer and District Council 48 clearly exceeds the one-year statutory limitation for collective bargaining agreements between municipal employers and representatives of its employees as set forth in Section 111.70(4)(i), since it is a two-year agreement. Operating Engineers contends that, therefore, the existing agreement is illegal and cannot constitute a bar to a present determination of representatives. District Council 48 proffered no argument with respect to the legality of the agreement.

The Commission was first confronted with the issue as to the timeliness of the filing of election petitions in municipal employment in the City of Green Bay.<sup>3/</sup> Therein the Commission stated:

"In determining whether petitions for elections in municipal employment are 'timely' filed, the Board will examine existing ordinances affecting the period in which to initiate conferences and negotiations with respect to wages, hours and conditions of employment, the budgetary deadline, the collective bargaining history, if any, and other factors which affect the stability of the relationship between the employees, their bargaining agent, and the employer. In the event the Board conducts an election during the term of an ordinance or collective bargaining agreement, and therein the employees select a representative other than the one previously recognized in the ordinance or agreement, the newly selected representative normally will be obligated to enforce and administer the substantive provisions therein inuring to the benefit of the employees. Any provisions running to the benefit of the former bargaining agent normally will be considered extinguished and unenforceable."

The above policy was somewhat more specified in Wauwatosa Board of Education<sup>4/</sup> as follows:

"Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employees in the appropriate collective bargaining unit, the petition must be filed within 60 days prior to the date reflected in the agreement for the commencement of negotiations for changes therein."

---

<sup>2/</sup> Dec. No. 8622, 7/68

<sup>3/</sup> Dec. No. 6558, 11/63

<sup>4/</sup> Dec. No. 8300-A, 2/68 (Aff. Dane County Circuit Court 8/68)

In the City of Milwaukee, cited by District Council 48 in claiming that the petition herein was not timely filed, the Commission, when confronted with an extraordinary period for reopening of the agreement, stated as follows with respect to the timely filing of election petitions:

"Where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of employment of employes in an appropriate collective bargaining unit, a petition requesting an election among said employes must be filed within the 60-day period prior to the date reflected in said agreement, resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employes in the unit covered thereby unless the period of negotiations as set forth therein extends beyond six months prior to the budgetary deadline date of the municipal employer involved. In the latter event, petitions for elections will be entertained by the Commission if they are filed in good faith within sixty days prior to such six-month period."

Section 111.70(4)(1) provides as follows:

"(4) POWERS OF THE BOARD. The board shall be governed by the following provisions relating to bargaining in municipal employment:

...

(1) Agreements. Upon the completion of negotiations with a labor organization representing a majority of the employes in a collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreements shall be binding on the parties only if express language to that effect is contained therein."

Generally, in administering the labor relations statute in private employment in this state, the Wisconsin Employment Peace Act, the Commission has held that collective bargaining agreements containing illegal provisions do not constitute bars to a present determination of representatives,<sup>5/</sup> and that collective bargaining agreements for an excessive period of time (five years) did not bar a present determination of bargaining representatives.<sup>6/</sup> However, it has held that a two-year agreement bars a present bargaining election.<sup>7/</sup> In administering Section 111.70, we see no reason for departing from the policies established by the Commission in administering the Wisconsin Employment Peace Act.

---

5/ Crib Diaper Service, Inc. (4935-A) 11/58; Avenue Convalescent Home (5380) 12/59

6/ Crib Diaper Service, Supra

7/ National League Baseball Club of Milwaukee, Inc. (4057) 9/55

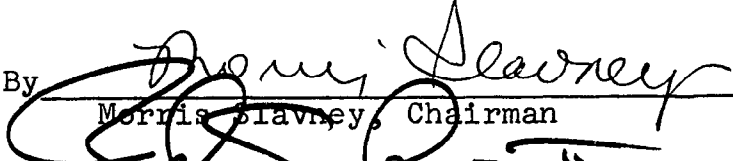
We do not construe Section 111.70(4)(i) as prohibiting a municipal employer and a representative of its employees in an appropriate bargaining unit from entering into a collective bargaining agreement exceeding one year in duration. We interpret the language "Such an agreement may include a term for which it shall remain in effect not to exceed one year," as permissive rather than restrictive. It would appear to us that had the Legislature intended to limit the duration of collective bargaining agreements in municipal employment to one-year periods, it could have very easily so stated in prohibitive terms.

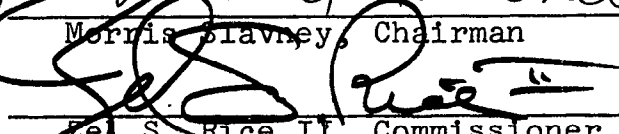
Even assuming that the collective bargaining agreement would be illegal within the meaning of Section 111.70(4)(i), we would deem the instant petition untimely filed in accordance with the policy established by the Commission in the City of Green Bay<sup>8/</sup> wherein the Commission indicated that in determining whether petitions for elections in municipal employment were timely filed, the Commission would examine, among others, factors which affect the stability of the relationship between the employees, the bargaining agent and the employer. Here the petition of the Operating Engineers was filed after extensive bargaining by the Municipal Employer and District Council 48 with respect to wages, hours and conditions of employment for the employees involved, among others, for a succeeding agreement. To proceed to an election at such late date would completely ignore the collective bargaining efforts of the representatives of the Municipal Employer and District Council 48 and would have a deterrent effect upon the stability of the collective bargaining relationship, and would be contrary to the purposes of the Statute.

Dated at Madison, Wisconsin, this 27<sup>th</sup> day of January, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner