

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case LXXXII  
No. 12916 ME-459  
Decision No. 9172

District Council 48, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted, pursuant to Section 111.70, Wisconsin Statutes, among all employees employed in the Operations Division of the Bureau of Municipal Equipment, Department of Public Works, City of Milwaukee, Wisconsin, excluding all supervisory, confidential and craft employees, to determine what, if any, representation said employees desire for the purposes of collective bargaining; and hearing on such petition having been conducted at Milwaukee, Wisconsin, on July 18, 1969, Chairman Morris Slavney and Commissioner William R. Wilberg being present, and during the course of the hearing the Commission having permitted Municipal Truck Drivers Local Union 242 to intervene in the matter on its claim that it is the certified collective bargaining representative for the employees involved herein; and the Commission, having reviewed the evidence and arguments of Counsel, and being fully advised in the premises, and being satisfied that said petition has been untimely filed;

ORDERED

Given under our hands and seal at the  
City of Madison, Wisconsin, this 31st  
day of July, 1969.

By

Morris Slavney Chairman

~~Zel S. Rice, Jr. Commissioner~~

William R. Wilberg, Commissioner

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
DISTRICT COUNCIL 48, AFSCME, AFL-CIO  
Involving Employees of  
CITY OF MILWAUKEE, BUREAU OF MUNICIPAL  
EQUIPMENT, OPERATIONS DIVISION,  
DEPARTMENT OF PUBLIC WORKS  
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Case LXXXII  
No. 12916 ME-459  
Decision No. 9172

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

This proceeding was initiated by District Council 48, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, by a filing of a petition, on May 23, 1969, requesting that an election be conducted among all employees employed in the Operations Division of the Bureau of Municipal Equipment, Department of Public Works, City of Milwaukee, excluding all supervisory, confidential and craft employees, to determine whether said employees desire to be represented for the purposes of collective bargaining by AFSCME.

BACKGROUND

On January 18, 1963, the Commission directed elections among various units and voting groups of employees employed in the City of Milwaukee. Material to the instant proceeding was the direction of an election among "all regular employees having the classifications of special equipment operator and truck driver employed in the Equipment Operations of the Bureau of Municipal Equipment in the Department of Public Works, excluding all other employees, confidential employees, supervisors and executives to determine whether a majority of such employees desire to be represented by Teamsters Union Local 200 or District Council 48, AFSCME, AFL-CIO, or by neither of such organizations." In its Direction the Commission indicated that if a majority of the employees selected Teamsters Local 200 said voting group would be deemed to constitute a separate appropriate bargaining unit. However, that if a majority rejected Teamsters Local 200 said voting group would be considered as part of the overall Department of Public Works unit. In the election in such voting group a majority of the employees voting elected to be represented by AFSCME, and as a result the employees in the Equipment Operations

Division became part of a unit consisting of employees in the Department of Public Works, which in an election conducted at the same time resulted in the issuance, on May 6, 1963, of the certification of AFSCME as the collective bargaining representative for all the employees in such unit.<sup>1/</sup>

Subsequently, and pursuant to an election petition filed by Teamsters Local 242 on April 24, 1968, the Commission, on July 23, 1968, directed an election among all employees of the Operations Division of the Bureau of Municipal Equipment of the City of Milwaukee, excluding craft employees, supervisors, confidential employees and all other employees to determine: (1) whether a majority of such employees eligible to vote desired to constitute themselves as a separate collective bargaining unit and (2) whether a majority of such employees voting desired to be represented for the purposes of conferences and negotiations by Teamsters Local 242 or by AFSCME or by neither of said organizations.<sup>2/</sup> The voting group involved was substantially identical to the voting group involved in the previous matter noted above. Said elections were conducted on August 8 and 9, 1968, and therein the employees in the voting group cast sufficient ballots to indicate that the required number of employees favored a separate unit and further that a majority of employees voting selected Teamsters Local 242 as the bargaining representative.

On August 14, 1968, AFSCME filed a Petition for Review on the Commission's Direction with the Dane County Circuit Court wherein it sought a reversal of the Commission's Direction and a dismissal of the petition filed by Teamsters Local 242.

The certification of the results of such balloting was issued by the Commission on September 13, 1968.<sup>3/</sup>

Following the issuance of the certification Teamsters Local 242 commenced bargaining with the City of Milwaukee with respect to the wages, hours and working conditions of the employees of the unit involved. After a number of meetings, which resulted in no agreement, Teamsters Local 242, on December 31, 1968, filed with the Commission a petition for fact finding, alleging that it and the City were deadlocked after a reasonable period of negotiations. Following the

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<sup>1/</sup> Decision No. 6215.

<sup>2/</sup> Decision No. 8622.

<sup>3/</sup> AFSCME did not seek to restrain the Commission from issuing the certification of the results of the balloting nor to restrain bargaining between Teamsters Local 242 and the City.

filing of said petition for fact finding, the Commission, on January 16, 20, 28 and February 4, 1969, conducted an informal investigation with respect to the matter, wherein further negotiations were held between the parties with the assistance of one of the Commissioners; however, no agreement was consummated. Thereafter the Commission ordered the matter to fact finding and appointed Thomas P. Whelan, Milwaukee, as the fact finder.<sup>4/</sup>

The fact finder conducted his fact finding hearing on March 24 and 25, 1969. Final briefs were submitted to the fact finder on June 19, 1969. On July 5, 1969, the fact finder advised Teamsters Local 242 and the City that he was commencing his deliberations of the record and briefs. On May 23, 1969, AFSCME filed the instant petition with the Commission requesting another representation election among the employees in the unit involved in the fact finding proceeding. Following the receipt of the petition the Commission commenced its administrative determination of the showing of interest presented by AFSCME in support of its petition. Said administrative showing of interest was completed by the Commission on June 17, 1969. On June 20, 1969, the Commission set hearing on AFSCME's petition for July 18, 1969. Hearing was held on the latter date and Teamsters Local 242 was permitted to intervene on its claim that it was presently the certified collective bargaining representative of the employees involved.

During the course of the hearing both AFSCME and Teamsters Local 242 adduced evidence to establish that both organizations were processing grievances on behalf of the employees employed in the Operations Division of the Bureau of Municipal Equipment, arising with respect to the interpretation and application of certain ordinances relating to employment and employment conditions.

#### POSITIONS OF THE PARTIES

Teamsters Local 242 urges the Commission to dismiss the petition, contending that it is not timely filed because it and the City are presently engaged in fact finding, resulting from an impasse reached in their negotiations following the certification of the latter labor organization on September 13, 1968.

AFSCME contends that its petition is timely filed and cites in support thereof the fact that budget hearings are being presently conducted by the City and such hearings will be concluded on

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<sup>4/</sup> Decision No. 8911.

November 12, 1969, and in light thereof, the Commission should apply "the rule established by it with respect to the timely filing of petitions in Wauwatosa Board of Education."<sup>5/</sup>

The City indicates that it has no position with respect to the matter.

#### DISCUSSION

The Commission has previously expressed itself in various decisions with respect to the timely filing of petitions for elections where there exists either a recognized or certified collective bargaining representative. Some of these decisions involve situations where there existed an ordinance or collective bargaining agreement covering the employees involved, and situations where there existed no ordinance or agreement but where the parties had engaged in fact finding or were engaged in bargaining.

In the first decision issued by the Commission with respect to the determination as to whether petitions for elections are timely filed, the Commission stated that it 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.<sup>6/</sup>

In cases where a previous certification of representatives existed, the Commission rejected the proposal that a previous certification bars a subsequent election within two years of issuance of original certification and will consider, in directing a second election various factors such as (1) the presence or absence of a current agreement; (2) the presence or absence of current and active negotiations for an agreement and how long such negotiations have been in progress; (3) the budgetary deadlines imposed upon the parties; (4) the special deadlines imposed by statute, such as is the case with respect to teacher's personal contracts; (5) whether the current bargaining agent was certified or recognized; (6) the period of time since the current bargaining agent was certified or recognized; and (7) the employment relations history involved.<sup>7/</sup>

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<sup>5/</sup> Decision No. 8300-A.

<sup>6/</sup> City of Green Bay (6558) 11/63.

<sup>7/</sup> Milwaukee Board of School Directors (8030) 5/67; Kenosha School Board (8031) 5/67; Whitewater Unified School District (8034) 5/67.

Where there is presently in existence a collective bargaining agreement, the Commission has stated its policy as follows with respect to petitions for elections:

"Where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of employment of employees in an appropriate collective bargaining unit, a petition requesting an election among said employees 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 employees 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."<sup>8/</sup>

The instant proceeding is the first instance in which a petition for an election has been filed during the pendency of a fact finding proceeding involving the certified collective bargaining representative and the municipal employer. In a case decided in January 1966 a petition for an election was filed after the issuance of a fact finder's recommendations.<sup>9/</sup> In that proceeding the petition for the election was filed almost one year after the issuance of the fact finder's recommendations, and the representatives of the employer and the labor organization did not agree on the recommendations of the fact finder after a period of collective bargaining. In that case the Commission found that the petition for the new election was timely filed since a reasonable time had elapsed for the parties to consider the implementation of the fact finder's recommendations.

The gist of AFSCME's position is that it has filed its petition some six months prior to the date upon which the City must adopt its budget. If this argument were material, the petition would have to have been filed within a 60-day period prior to the commencement of the 6-month period before the budget adoption date. However, the argument is not material because there is no collective bargaining agreement in existence and, therefore, the rule adopted by the Commission in City of Milwaukee (8622) is not applicable.

The factor that is material to the determination of whether the petition has been timely filed concerns itself with the pending fact finding between Teamsters Local 242 and the City. The Commission

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<sup>8/</sup> City of Milwaukee (8622) 7/68.

<sup>9/</sup> City of Appleton (7423).

issued its fact finding order after being satisfied that Teamsters Local 242 and the City were at an impasse after a reasonable period of negotiations. There has been no showing that the proceeding before the fact finder has been dilatory. The fact finder should have a reasonable period of time to issue his recommendations, and the parties to the fact finding proceeding should have a reasonable time to determine whether they will agree on the implementation of the fact finder's recommendations. If the Commission were to process the instant election petition and direct an election prior to granting Teamsters Local 242 and the City an opportunity to enter into a collective bargaining agreement after good faith bargaining and the fact finding proceeding, such action by the Commission would have the effect of mutilating, if not destroying, fact finding procedures as a means of resolving impasses in collective bargaining in municipal employment. We, therefore, conclude that the petition is not timely filed and we have, therefore, dismissed same.

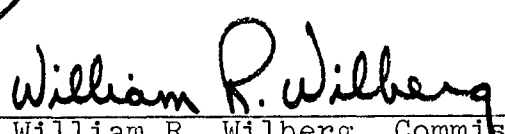
Dated at Madison, Wisconsin, this 31st day of July, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner