

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XV
No. 13069 FF-261
Decision No. 9216

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, for the Petitioner.
Mr. Willis J. Zick, Corporation Counsel, for the Municipal Employer.

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, having petitioned the Wisconsin Employment Relations Commission to initiate fact finding pursuant to Section 111.70(4) of the Wisconsin Statutes on behalf of certain law enforcement personnel of Waukesha County, Wisconsin, employed in the Sheriff's Department; and the full Commission having conducted a hearing on such petition at Waukesha, Wisconsin, on September 5, 1969; and the Commission having reviewed the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Initiating Fact Finding.

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, hereinafter referred to as the Petitioner, is a labor organization and has its office at Madison, Wisconsin.

2. That Waukesha County, hereinafter referred to as the Municipal Employer, has its offices at the Courthouse, Waukesha, Wisconsin; and that the Municipal Employer maintains and operates a Sheriff's Department where it employs certain law enforcement personnel.

3. That, prior to June 11, 1969, a majority of non-supervisory law enforcement personnel in the employ of the Sheriff's Department of the Municipal Employer affixed their signatures to a petition designating the Petitioner as their collective bargaining representative and therein requested the Municipal Employer to bargain with the Petitioner for changes and improvements in the wages, hours and working conditions of such personnel.

4. That on June 11, 1969, Glen Van Keuren, an agent of the Petitioner, by letter, advised the Municipal Employer that the Petitioner had been designated by the non-supervisory law enforcement personnel of the Sheriff's Department of the Municipal Employer as their bargaining representative, and further requested that the Municipal Employer meet with the Petitioner for the purposes of collective bargaining.

5. That on June 20, 1969, the Municipal Employer, by letter from its Corporation Counsel, advised the Petitioner that the Municipal Employer preferred that an election be conducted among said non-supervisory law personnel to determine whether the Petitioner, in fact, represented a majority of said personnel; and that at all times material thereafter the Municipal Employer refused, and continues to refuse, to accept the petition executed by a majority of the non-supervisory personnel designating the Petitioner as their bargaining representative and has failed and refused to meet with the Petitioner for the purposes of collective bargaining for said personnel.

6. That the Municipal Employer has not established any fact finding procedures pursuant to Section 111.70(4)(m) of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, is the duly designated representative of all law enforcement personnel who have the power to make arrests, including Matrons, in the employ

of the Sheriff's Department of Waukesha County, excluding the Sheriff, Captains, Lieutenants and the Administrative Assistant, for the purposes of collective bargaining with the Municipal Employer, Waukesha County, within the meaning of Section 111.70(4)(j), Wisconsin Statutes.

2. That, the Municipal Employer, Waukesha County, by failing and refusing to recognize and meet with the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, as the duly designated collective bargaining representative of all law enforcement personnel, who have the power to make arrests, including Matrons in the employ of the Sheriff's Department of Waukesha County, excluding the Sheriff, Captains, Lieutenants and the Administrative Assistant, has failed, and refused, to meet and negotiate in good faith with said Petitioner at reasonable times in a bona fide effort to arrive at a settlement with respect to wages, hours and working conditions of the personnel involved herein within the meaning of Section 111.70(4)(e), Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding, as required in Section 111.70(4)(e) of the Wisconsin Statutes has been met with respect to the failure and refusal of the Municipal Employer, Waukesha County, to meet and negotiate in good faith with the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, as the collective bargaining representative of all law enforcement personnel who have the power to make arrests, including Matrons, but excluding the Sheriff, Captains, Lieutenants and the Administrative Assistant, at reasonable times and in a bona fide effort to arrive at a settlement with respect to wages, hours and working conditions affecting said law enforcement personnel.

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a solution to the instant matter.

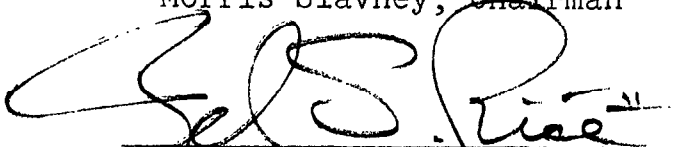
2. IT IS FURTHER ORDERED that unless the Municipal Employer, Waukesha County, notifies the Wisconsin Employment Relations Commission and the Petitioner, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local No. 695, within 72 hours of the receipt of a copy of this Order that it will recognize said Petitioner as the exclusive collective bargaining representative of all law enforcement personnel having the power to make arrests including Matrons, but excluding the Sheriff, Captains, Lieutenants and the Administrative Assistant, and that it will meet and negotiate with said Petitioner in good faith at reasonable times in a bona fide effort to arrive at a settlement with respect to the wages, hours and conditions of employment of said personnel, the Commission shall issue a supplemental Order appointing the fact finder to proceed forthwith in the matter pursuant to Section 111.70(4)(g) of the Wisconsin Statutes.

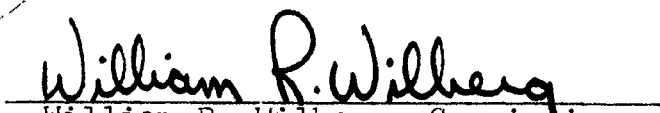
Given under our hands and seal at the
City of Madison, Wisconsin, this 10th
day of September, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

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The Petitioner, on the other hand, argues that the petition executed by a majority of the personnel in the bargaining unit, designating it as their representative, is sufficient to establish its representative status.

The issue herein is whether the Municipal Employer is entitled to an election among law enforcement personnel to determine their bargaining representative. The pertinent statutory provisions are as follows:

"111.70 Municipal employment. (1) DEFINITIONS.

. . .

(b) 'Municipal employee' means any employee of a municipal employer except city and village policemen, sheriff's deputies, and county traffic officers.

. . .

(3) PROHIBITED PRACTICES. (a) Municipal employers, their officers and agents are prohibited from:

. . .

3. Prohibiting a duly authorized representative of an organization certified pursuant to sub. (4)(d) or (j) from appearing before any governmental unit or body but nothing herein shall prevent the enactment of reasonable rules adopted by the employer necessary to maintain continuity of public service or the adoption of a negotiated agreement on the subject.

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

. . .

(d) Collective bargaining units. Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employees of the employer, either the union or the municipality may petition the board to conduct an election among said employees to determine whether they desire to be represented by a labor organization.

. . .

(e) Fact finding. Fact finding may be initiated in the following circumstances: 1. If after a reasonable period of negotiation the parties are deadlocked, either party or the parties jointly may initiate fact finding; 2. Where an employer or union fails or refuses to meet and negotiate in good faith at reasonable times in a bona fide effort to arrive at a settlement.

(f) Same. Upon receipt of a petition to initiate fact findings, the board shall make an investigation and determine whether or not the condition set forth in par. (e) 1 or 2 has been met and shall certify the results of said investigation. If the certification requires that fact finding be initiated, the board shall appoint from a list established by the board a qualified disinterested person or 3-member panel when jointly requested by the parties, to function as a fact finder.

(g) Same. The fact finder may establish dates and place of hearings which shall be where feasible in the jurisdiction of the municipality involved, and shall conduct said hearings pursuant to rules established by the board. Upon request, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearings, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the municipal employer and the union.

(h) Parties.

. . . .

2. Fact finding cases. Only labor unions which have been certified as representative of the employees in the collective bargaining unit or which the employer has recognized as the representative of said employees shall be proper parties in initiating fact finding proceedings. Cost of fact finding proceedings shall be divided equally between said labor organization and the employer.

. . . .

(j) Personnel relations in law enforcement. In any case in which a majority of the members of a police or sheriff or county traffic officer department shall petition the governing body for changes or improvements in the wages, hours or working conditions and designates a representative which may be one of the petitioners or otherwise, the procedures in pars. (e) to (g) shall apply. Such representative may be required by the board to post a cash bond in an amount determined by the board to guarantee payment of one-half of the costs of fact finding."

It is to be noted that the personnel in the appropriate unit involved herein are sheriff's deputies and therefore they are not "employees" within the meaning of Section 111.70(1)(b). Section 111.70(4)(d) pertains to procedures to resolve questions of representation for "employees", including the conduct of elections. Since law enforcement personnel are not "employees" within the meaning of the

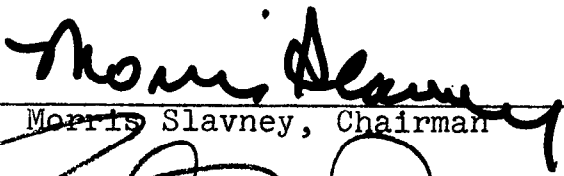
statute such election procedures are not available for them. Section 111.70(4)(j) does however grant certain rights to law enforcement personnel with respect to fact finding, and in that regard sets forth that their bargaining agent need only be designated in a petition presented to the Municipal Employer, by a majority of the personnel involved. The latter Section of the statute clearly sets forth that only subsections (4) (e), (f) and (g), pertaining to fact finding, apply to law enforcement personnel. Such limitation excludes the applicability of subsections (4) (d) and (4)(h)2. The reference in subsection (3)(a)3 to "a duly authorized representative of an organization certified pursuant to subsection (4)(d) or (j)" does not imply that the certification of the bargaining representative can result only after an election. Should a municipal employer in a proceeding to initiate fact finding involving law enforcement personnel question the authenticity of the signatures appearing on the petition presented to the municipal employer designating the majority representative, or should there arise a question concerning the appropriate unit or the eligibles therein, the Commission, in resolving said issues or any other issue, would determine such issues and thus "certify" the results of its investigation, as required in subsection (4)(f).

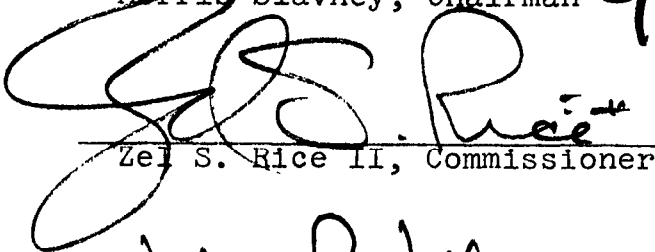
We have today certified that the Petitioner is the duly designated representative of a majority of the non-supervisory law enforcement personnel of the Sheriff's Department of the Municipal Employer and that the failure and refusal of the latter to meet and negotiate with the Petitioner in such capacity constitutes a basis for fact finding.

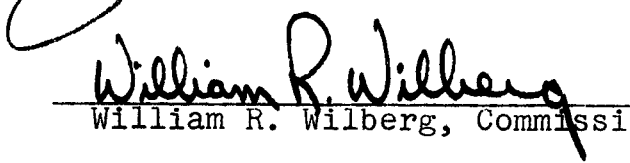
Dated at Madison, Wisconsin, this 10th day of September, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner