

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WALWORTH COUNTY

Case XVII  
No. 16070 ME-843  
Decision No. 11686  
9394-A

Mr. Karl Monson, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the Intervenor.

Walworth County Deputy Sheriffs Association having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among jail matrons, cooks, maintenance men (garage and jail), office stenographers, clerks, and typists in the employ of the Walworth County Sheriffs Department; and Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having been permitted to intervene in the proceedings on the basis of its certification as the exclusive representative of the employees covered by said petition; 1/ and all parties having waived hearing in the matter and having stipulated that the matter should be decided by the Commission on the basis of the record made before the Commission on a similar petition in Walworth County, Case XII (10547) 10/71, and written statements of position filed by the parties; and the Municipal Employer and the Intervenor having filed statements of their positions in the matter; and the Petitioner having waived the filing of a statement of position; and the Commission having considered the evidence, arguments and positions of the parties and being satisfied that the unit claimed appropriate in such petition is inappropriate; and being satisfied that certain clarifications of bargaining units should be made; and that no question concerning representation exists;

- 1/ On February 3, 1970 the Commission certified Walworth County Public Employees, Local 1925B, WCCME, AFSCME, AFL-CIO as the exclusive collective bargaining representative of all Walworth County Courthouse employees, including Social Services Department clerical employees, but excluding elected officials, professional employees, Social Services employees represented by Local 1925, supervisors, court reporters, the Deputy Coroner and all other employees of Walworth County. Walworth County, Case VII, (9394) 2/70.

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NOW, THEREFORE, it is

ORDERED

1) That all employes of the Walworth County Sheriffs Department, not having the power of arrest, shall continue to be included in the collective bargaining unit consisting of all Walworth County Courthouse employes, including Social Services Department clerical employes, but excluding elected officials, professional employes, social services employes represented by Local 1925, supervisors, court reporters, the Deputy Coroner, and all other employes of Walworth County.

2) That all employes of the Walworth County Sheriffs Department having power of arrest constitutes a unit appropriate for the purposes of collective bargaining.

3) That the petition for election filed herein by Walworth County Deputy Sheriffs Association be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 14th  
day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slattery, Chairman

  
Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNITS  
AND DISMISSING PETITION FOR ELECTION

The Walworth County Deputy Sheriffs Association has been recognized by the Municipal Employer as the collective bargaining representative of approximately 50 Deputy Sheriffs in the employ of Walworth County. In June, 1971 the Association filed a petition requesting an election among all jail matrons, cooks, maintenance men (garage and jail), office stenographers, clerks and typists in the employ of the Walworth County Sheriffs Department. 2/ Hearing was held on said petition on August 30, 1971, during the course of which Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO was permitted to intervene on the basis of its previous certification as the representative of the employees covered by said petition. On October 1, 1971, the Commission directed elections to determine (1) Whether the majority of the employees in said voting group desired to constitute themselves a collective bargaining unit separate and apart from all other employees of the Municipal Employer and (2) Whether a majority of such employees desired to be represented by the Walworth County Deputy Sheriffs Association, or by the Wisconsin Council of County and Municipal Employees, or by neither of said organizations. In the Memorandum accompanying its Direction of Election the Commission found that the Sheriffs Department of the Municipal Employer constituted a separate division or department of County government and that, under the provisions of the Section 111.70, Wisconsin Statutes, then in effect, the employees in said department, covered in the petition, were entitled to determine for themselves whether they desired to establish a separate collective bargaining unit. On October 21, 1971 the Commission conducted an election wherein the employees failed to vote in favor of establishing a separate collective bargaining unit. Thereafter the petition for a representation election was dismissed.

The petition filed in the instant case on October 2, 1972 seeks an election among the employees identical to that involved in Walworth County, Case XII. The Petitioner alleges that the work of the employees involved differs from other Courthouse employees and that they work in a different area of the Courthouse. The Petitioner also alleges that their work is more closely allied with that of the Sheriff and Deputy Sheriffs and that they have not been members of the AFSCME Local representing the Courthouse employees since January, 1971. The County contends that the unit for which this petition has been filed is inappropriate under standards set forth by the Commission and that the petition should be dismissed because it involves the fragmentation of an existing unit in contravention of both statutes and Commission policy. The Intervenor has indicated that its position is one in the same with that of the County.

The Commission is satisfied that, on the basis of statutory changes occurring since its Direction of Election in Walworth County, Case XII, the bargaining unit there found appropriate is no longer appropriate. In Dane County (10492-A) 3/72 and Rock County (10895, 10352-A) 3/72 this Commission followed the statutory mandate set forth in Section 111.70 (4)(d)2(a) of the Municipal Employment Relations

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2/ Walworth County, Case XII, (10547) 10/70.

Act to avoid fragmentation of bargaining units. Subsequently, in collective bargaining units composed of law enforcement personnel and fire fighters. Since that time the Commission has consistently held that in determining law enforcement personnel units, the determinative factor involving whether employees are considered law enforcement personnel is whether said personnel have the power of arrest. 3/ The evidence taken in Walworth County, Case XII indicates that eight of the thirteen employees in the claimed appropriate bargaining unit are deputized and have the power of arrest. The remaining five employees are not so deputized.

The Commission is satisfied that a separate bargaining unit of deputized jail matrons, cooks, maintenance men, office stenographers, clerks and typists, apart from the Deputy Sheriffs, would be an undue fragmentation. Therefore the Commission has included said deputized supportive personnel in the Deputy Sheriffs' unit. On the other hand, the lack of power of arrest clearly distinguishes the remaining employees, and this distinction prohibits their inclusion in a bargaining unit with law enforcement personnel. Said employees are presently represented by AFSCME in a collective bargaining unit consisting of all Courthouse employees. The "separate departments" distinction applied by the Commission in Walworth County, Case XII is no longer in effect and, as to these employees, the Commission accepts the arguments of the County and of the Intervenor that they should remain in the Courthouse-wide unit.

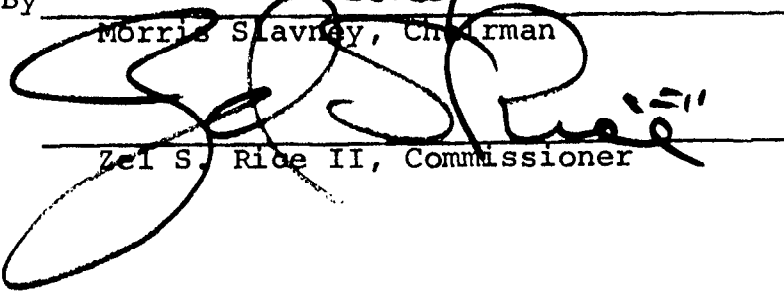
At the request of the Hearing Officer, the parties stated their positions as to whether there was a contract bar applicable in this case. The Commission has held that neither an existing collective bargaining agreement and the associated question of timeliness 4/ nor the original certification of the unit 5/ bars clarification and amendment proceedings. Since the Commission has found the petitioned-for bargaining unit to be inappropriate in this case and no question of representation exists, the instant proceeding falls within the stated rule.

Dated at Madison, Wisconsin, this 14th day of March, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

3/ Douglas County (10993) 5/72; Jefferson County (11082) 6/72; Iron County (11215) 8/72; City of West Bend (11680) 3/73.

4/ Joint School District No. 1, City of Wausau, et al, (10371-A) 4/72; City of Wauwatosa (11633) 2/73.

5/ LaCrosse County (9841) 8/70; City of Milwaukee (6960-F) 1/70.