

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case LXXXVII  
No. 13164 ME-486  
Decision No. 9477

William R. Wilberg, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE, BUREAU OF MUNICIPAL  
EQUIPMENT, OPERATIONS DIVISION,  
DEPARTMENT OF PUBLIC WORKS

Case LXXXVII  
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This proceeding was initiated by District Council 48, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, by the filing of a petition on August 27, 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 the collective bargaining representative of said employees. Prior to September 13, 1968, the bargaining unit involved herein had been represented by AFSCME for a number of years. On April 24, 1968, Teamsters Local 242 petitioned for an election among the employees of this bargaining unit<sup>1/</sup> to determine whether or not the majority of the employees voting desired to be represented by Teamsters Local 242 or by AFSCME or by neither of said organizations. The Commission ordered an election, and a majority of the employees selected Teamsters Local 242 as the bargaining representative and a certification of the results of such balloting was issued by the Commission on September 13, 1968.

Following the issuance of the certification, Teamsters Local 242 commenced bargaining with the City of Milwaukee and when no agreement was reached the Union filed a petition for fact finding alleging that it and the City were deadlocked after a reasonable period of negotiations. An informal investigation was conducted by the Commission and when no agreement was reached the Commission ordered the matter to fact finding and appointed Thomas P. Whelan, Milwaukee, Wisconsin, as the fact finder.<sup>2/</sup> The fact finder conducted his fact

1/ Decision No. 8622

2/ Decision No. 8911

finding hearing on March 24 and 25, 1969, and briefs were submitted to the fact finder on June 19, 1969. On May 23, 1969, AFSCME filed a petition with the Commission requesting another representation election among the employees in the unit involved in the fact finding proceeding and this petition was dismissed by the Commission because it was not timely filed.<sup>3/</sup> The basis of the Commission's decision was that there had been no showing that the proceeding before the fact finder had been dilatory and that the fact finder should have a reasonable period of time to issue his recommendations and the parties to the fact finding proceeding should have reasonable time to determine whether they will agree upon the implementation of the fact finder's recommendations. The recommendations of the fact finder were issued on August 12, 1969.

Subsequently, Teamsters Local 242 and the City of Milwaukee engaged in further negotiations with respect to the recommendations of the fact finder, and a Memorandum of Understanding reflecting the terms of the agreement between the City and representatives of Teamsters Local 242 was executed by the parties on August 19, 1969. On August 22, 1969, the terms of the Memorandum of Understanding were rejected by the membership of Teamsters Local 242. Subsequent to that rejection further discussions were had between the representatives of Teamsters Local 242 and the City of Milwaukee. Certain aspects of the Memorandum of Understanding were clarified and on September 9, 1969, at a meeting of the membership of Teamsters Local 242, these particular issues were satisfactorily explained to the membership and the agreement was ratified. The agreement was approved by the Milwaukee Common Council on September 9, 1969, and by the Mayor on the next day. The agreement was formally signed by the representatives of both parties on September 16, 1969.

The petition, with which we are herein concerned, was initially filed by AFSCME on August 27, 1969. AFSCME was then advised by the Commission that a Memorandum of Understanding reflecting the terms of the agreement between the City of Milwaukee and Teamsters Local 242 was signed on August 19, 1969, and approved by the Common Council on September 9 and by the Mayor on September 10, 1969. Accordingly, AFSCME agreed to withdraw its petition. However, AFSCME then learned that the fact finder's recommendations had been rejected by the membership of Teamsters Local 242 on August 22 and it therefore refiled its petition on October 3, 1969.

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<sup>3/</sup> Decision No. 9172

AFSCME takes the position that there was an inordinate amount of time elapsing between the commencement of negotiations by the City of Milwaukee and Teamsters Local 242 and the final signing of the agreement and that failure to direct an election at this time would be to deny the employees in the bargaining unit the right to an expression of their wishes as to whom they would want to represent them in negotiating a labor agreement for 1971. Teamsters Local 242 argues that it and the City were bargaining in good faith and attempting to negotiate an agreement and that three weeks to a month was not an unusual or prolonged period of time. The City of Milwaukee did not take any position in the matter.

In the earlier case involving these same parties,<sup>4/</sup> the Commission stated that the parties to a fact finding proceeding should have a reasonable time to determine whether they could agree on the implementation of the fact finder's recommendations.

The recommendations of the fact finder consisted of 64 type-written pages. The total period of one month to digest a 64 page fact finder's report and to bargain out an agreement based on these recommendations is not unreasonable. The fact that the membership rejected it on August 22 did not terminate the negotiations and did not mean that the parties were delaying the matter. It does not appear to be unusual that the membership might reject certain aspects of the agreement nor that they would accept them after receiving further clarification. The period between the date of the rejection on August 22 and the date of approval on September 9 was no more than a normal amount of time that might be required for the City to clarify all of the provisions to the satisfaction of the Union membership.

The recommendations of the fact finder are not binding on either of the parties and they serve only as a basis for reaching agreement. Neither party is required to accept each and every one of the recommendations of the fact finder, and in that event, it is contemplated that the parties will continue to bargain and perhaps depart from some of the recommendations in order to reach an agreement satisfactory to both. The Commission has indicated in City of Appleton<sup>5/</sup> that it may refuse to process an election petition filed after the issuance of a fact finder's recommendations.

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<sup>4/</sup> Decision No. 9172

<sup>5/</sup> Decision No. 7423

However, there must be a reasonable time for the parties to consider the implementation of the fact finder's recommendations. Here the period involved for such consideration was not an unreasonable period of time. We conclude that the petition herein is not timely filed and we have therefore dismissed same.

Dated at Madison, Wisconsin, this 26th day of January, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

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

William R. Wilberg  
William R. Wilberg, Commissioner