

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
ROCK COUNTY EMPLOYEES, LOCAL 1077B, : Case XIV
AFSCME, AFL-CIO : No. 13910 ME-571
Involving Certain Employees of : Decision No. 9865
ROCK COUNTY :

Appearances:

Mr. George E. Lewis, Business Representative, for the Petitioner.
Mr. Henry Hempe, Corporation Counsel, for the Respondent.
Mr. Walter Pakes, President, Rock County Maintenance Association,
for the Association.

DIRECTION OF ELECTION

Rock County Employees, Local 1077B, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Wisconsin Statutes among certain employees of Rock County; and a hearing on said petition having been conducted at the Rock County Courthouse, Janesville, Wisconsin, on August 5, 1970, before George R. Fleischli, Hearing Officer, and the Commission having considered the petition, evidence and arguments of Counsel and being satisfied a question has arisen concerning representation for certain employees of said Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days

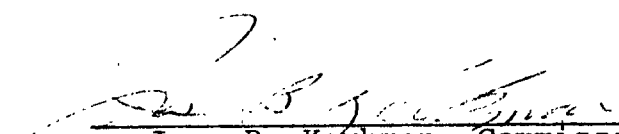
from the date of this Direction among all employes of the Rock County Building Maintenance Department except the superintendent, who were employed on August 5, 1970, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented for the purposes of collective bargaining by Rock County Employees, Local 1077B, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ROCK COUNTY EMPLOYEES, LOCAL 1077B,
AFSCME, AFL-CIO

Involving Certain Employees of

ROCK COUNTY

:
:
:
:
:
:
:
:
:
:
:

Case XIV
No. 13910 ME-571
Decision No. 9865

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petitioner on June 18, 1970 filed its petition with the Commission requesting a representation election among all employees of the Rock County Building Maintenance Department except the superintendent. Said petition did not indicate that any other employee organization claimed to represent or had any interest in the employees involved in the petition. On June 18, 1970 notice of hearing on the petition was issued, setting the matter for hearing on June 30, 1970. Copies of the notice were sent to the Petitioner and to the Municipal Employer. The hearing was postponed following receipt of information from the Municipal Employer that it had previously recognized another organization as the exclusive bargaining representative of the employees covered in the petition. On July 7, 1970 the Hearing Officer, by letter, requested the Petitioner in accordance with the policy of the Commission to furnish a showing of interest as a result of the contention by the Municipal Employer that another employee organization, the Rock County Maintenance Association, claimed to represent the employees covered in the petition. At the same time, as part of the showing of interest determination, the Hearing Officer requested the Municipal Employer to furnish him with a list of employees in the unit described in the petition. Thereafter and prior to July 15, 1970 the Petitioner submitted sufficient evidence to satisfy the showing of interest requirement and on that date the Hearing Officer issued a second notice of hearing, setting the hearing for August 5, 1970. Copies of the notice were sent to the Petitioner,

the Municipal Employer and the Rock County Maintenance Association.

At the hearing the Municipal Employer stated that the Rock County Maintenance Association currently enjoyed voluntary recognition and had entered into a collective bargaining agreement with Rock County on March 12, 1970. The Municipal Employer extended voluntary recognition to the Rock County Maintenance Association subsequent to an election which was conducted by this Commission on June 24, 1969. 1/ In that election the names of two organizations, the Petitioner herein and another organization entitled Rock County Employees Association, appeared on the ballot. Neither of those organizations was certified as a result of that election since the majority of the ballots cast were against representation by either organization. The Rock County Maintenance Association which is currently recognized by the Employer for purposes of collective bargaining is presumptively a new organization having no relationship to the Rock County Employees Association.

The Employer objects to the conduct of an election among employees of the petitioned-for unit on the grounds that there is a currently recognized labor organization representing the employees of that unit and an existing contract with that organization. The Petitioner argues that the contract should not constitute a bar to an election and contends that the petition has been timely filed within the rules of the Commission. The Rock County Maintenance Association takes the position that the contract should not constitute a bar to an election and agrees with the Petitioner that the petition has been timely filed.

The pertinent provisions of the contract are Sections C and D of Article XV which read as follows:

"Section C. This Agreement shall be in effect on January 1, 1970, and shall remain in full force and effect through December 31, 1970, subject to the provisions of Section D. immediately following."

1/ Rock County (Building Maintenance Department) (9066) 6/69.

"Section D. Unless either party desires to alter, amend or otherwise change this Agreement upon written notice to the other party to be received no later than August 1, 1970, or the first day of August in any year thereafter, this Agreement shall be automatically renewed from year to year. In the event one of the parties desires to alter, amend, or otherwise change this Agreement and proper notice is given, but agreement between the parties to the proposed alteration, amendment, or other change is not reached prior to the expiration date listed in Section C of this Article, this Agreement shall remain in full force and effect until the parties shall agree on the terms and conditions of any proposed alteration, amendment, or other change. It is expressly understood between the parties that time is of the essence in the submission and receipt, if any, of the aforementioned notice."

The language of Section D appears to modify Section C and create an agreement of indefinite duration. This Commission has consistently held that perpetual agreements or agreements of unreasonable duration will not be allowed to constitute a bar to an election on petition of another labor organization which has demonstrated an adequate showing of interest.^{2/} Or if Section C is construed as creating a contract of one year's duration subject to automatic renewal for periods of one year under the terms of Section D, it does not constitute a bar to an election on the petition herein. The petition in this case was received by the Commission on June 18, 1970. By the terms of Section D, requests for changes in the existing agreement must be made no later than August 1, 1970. If this provision is construed to be a contract reopener on a one year agreement, the petition is timely filed since it was filed within the 60 day period prior to the date provided for contract reopening.^{3/}

The Rock County Maintenance Association not only indicated that it did not object to the conduct of an election among the employees it currently represents, but also indicated that it did not desire to have its name appear on the ballot in that it expressed no interest in representing these employees beyond the election, if one is held.

^{2/} Capital Garage (2175) 9/49; Artistic Cleaners & Launderers, et al (4918-A) 11/58; Madison Telco Credit Union (7935) 3/67.

^{3/} Wauwatosa Board of Education (44762-A) 7/58.

The County indicated that in its opinion the Rock County Maintenance Association ought to appear on the ballot in order to give any employees who desire, an opportunity to vote for continued representation by that organization. The Petitioner objects to the inclusion of the Association's name on the ballot on the grounds that the Association claims no interest in representing the employees.

Where a labor organization claims no interest in representing the employees in a given unit, no question of representation exists insofar as that labor organization is concerned. To hold otherwise would mean that the Commission could compel a labor organization to represent employees against its wishes. In a case where a labor organization indicated a desire to represent a group of employees but did not actually claim to represent any of those employees, the Commission held that the organization did not have sufficient interest in the bargaining unit to appear on the ballot.^{4/} Clearly a labor organization which indicates no desire to represent a group of employees has no interest in the bargaining unit and it would be improper to include its name on the ballot. The existing contract does not constitute a bar to an election among employees of the petitioned-for unit and there is no question of representation as regards the Rock County Maintenance Association. For the above and foregoing reasons we have this day directed an election among the employees of the Rock County Maintenance Department to determine whether or not such employees desire to be represented for purposes of collective bargaining by the Rock County Employees, Local 1077B, AFSCME, AFL-CIO.

Dated at Madison, Wisconsin, this 21st day of August, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

^{4/} St. Anthony's Hospital (4762-A) 7/58.