

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
GERALD F. KELLY, POLICE OFFICER : Case XV
: No. 13699
Involving Certain Employes of : SE-26
: Decision No. 9910
UNIVERSITY OF WISCONSIN-MILWAUKEE :
Milwaukee, Wisconsin :
- - - - -

Appearances:

Mr. Gerald F. Kelly, Police Officer, and Mr. James Briesemeister,
Detective, appearing on behalf of the Petitioner.
Mr. Gene Vernon, Attorney, appearing on behalf of the State
Employer.
Mr. Thomas King, Director of Negotiations for Council 24, appearing
on behalf of the Intervenor.

ORDER OF DISMISSAL

Gerald F. Kelly, Police Officer, having petitioned the Wisconsin Employment Relations Commission on behalf of the Professional Policemen's Protective Association, University of Wisconsin-Milwaukee, to conduct an election pursuant to Section 111.83, the State Employment Labor Relations Act, among certain employes of the University of Wisconsin-Milwaukee; and a hearing on such petition having been conducted on June 8, 1970, at Milwaukee, Wisconsin, before Robert B. Moberly, Examiner; and during said hearing the Wisconsin State Employees Association, Council 24, AFSCME, AFL-CIO, and its Local 82 having been permitted to intervene in the proceeding on the basis that it is the present certified collective bargaining representative of the employes set forth in the petition; and the Commission, having considered the evidence and arguments of the parties, and being satisfied that there presently exists no question of representation among the employes involved herein;

NOW, THEREFORE, it is

ORDERED


That the petition for election be, and the same hereby is,
dismissed.

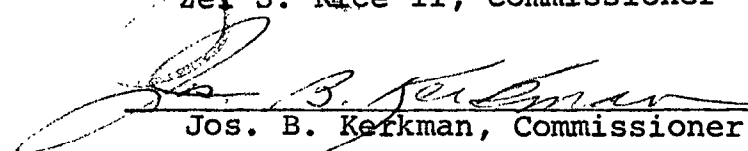
Given under our hands and seal at the
City of Madison, Wisconsin, this 15th
day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

This proceeding was initiated by an election petition filed on April 14, 1970, by Gerald F. Kelly, a police officer, apparently on behalf of the Professional Policemen's Protective Association, University of Wisconsin-Milwaukee. The Petitioner in the petition described the claimed appropriate bargaining unit as follows:

"The existing department on campus at UWM consists of eleven officers. Eight of these officers have shown an interest in formulating this association by electing officers and paying dues and fees, for the purpose of having a bargaining unit with a professional status (excluding all persons without police powers)."

The petition also stated that a question of representation had arisen concerning the employees in the claimed unit in that "to be members in the existing unit, there would be a conflict of interest and we are being denied Professional Police Status and the protection afforded a member as an affiliate of a Police Protective Association."

The petition further stated that "We feel that the existing bargaining unit, 1/ Local 82, AFSCME, does not and can not provide the necessary protection for our particular operation as Professional Police Officers."

The petition was accompanied by a showing of interest, in which it was demonstrated that at least 30 percent of the employees in the claimed

1/ The word "unit" is in error. The correct term is "agent".

unit desired the Professional Policemen's Protective Association - University of Wisconsin-Milwaukee, to represent them.

At the hearing, the Wisconsin State Employees Association, Council 24, AFSCME, AFL-CIO, and its appropriate affiliated Local 82, were permitted to intervene on the basis that it is the present certified collective bargaining representative for the employees set forth in the petition, as well as others in the employ of the Employer. The Intervenor was certified by the Wisconsin Employment Relations Commission on February 9, 1968, 2/ following an election conducted by the Commission, as the exclusive collective bargaining representative of "all employees of University of Wisconsin-Milwaukee, including stock clerks and storekeepers, but excluding clerical employees, library assistants, supervisors, managerial and confidential employees, administrative assistants, professional and limited term employees, and all craftsmen, consisting of sheet metal workers, carpenters, electricians, painters, plumbers and steamfitters." Employees classified as police officers are included in said unit.

At the time of the hearing on the instant petition, there was, and still is in effect a collective bargaining agreement between the Employer and the Intervenor covering employees in the aforementioned over-all bargaining unit. The agreement became effective March 16, 1970, and continues at least through March 15, 1972. It was executed on April 14, 1970, on which date the instant petition was filed with the Commission. However, there was no evidence that the Employer knew that the petition had been filed at the time it executed the agreement.

The parties were permitted to file briefs, the last of which was filed on July 22, 1970.

Position of Petitioner

The Petitioner points to subsection (j) of Section 111.70, Wisconsin Statutes, entitled "Personnel relations in law enforcement", and argues

2/ Dec. No. 8296-C

that it was the intention of the legislature that persons with law enforcement authority be dealt with as separate and distinct units for the purposes of collective bargaining with governmental agencies. It cites several cases by the Commission and the courts which, it argues, demonstrates that law enforcement officers were to be dealt with as separate bargaining units. It also contends that police officers are professional employes, and as professionals should be entitled to separate recognition from the State Employer.

Position of the Intervenor

The Intervenor first argues that the election petition was not filed timely. It argues that the Commission should adopt timeliness requirements in state employment as it did in municipal employment in the case of Wauwatosa Board of Education, Dec. No. 8300-A, 2/68. It points out that the petition here was filed almost one month after the parties' second collective bargaining agreement became effective. It contends in light of the bargaining history of the Employer and the Intervenor, that it would be totally disruptive of their relationship to direct an election at this time.

Secondly, the Intervenor argues that the bargaining unit petitioned for is not appropriate. It contends that the overwhelming evidence demonstrated that the employees in the unit desired share a community of interest with the employees in the existing bargaining unit. It notes that the Commission determined the existing bargaining unit to be the appropriate bargaining unit after extensive hearings, and contends that nothing has occurred to justify a change in that decision.

Position of the State Employer

The State Employer argues that the petition does not set forth an appropriate bargaining unit, upon a consideration of the community of interest, past bargaining history and prior Commission decisions. It further argues that the employees involved in the petition are not professional employes as that term is defined in the State Employment Labor

Relations Act.

DISCUSSION

Under Section 111.83(5), a question of representation must exist before the Commission will process a petition for an election among State employees. To date, the Commission has not established any policy requiring that a petitioner demonstrate a showing of interest or that it file its election petition within a certain time period as conditions precedent to processing election petitions filed pursuant to Section 111.80, et seq., the State Employment Labor Relations Act (hereinafter referred to as SELRA). A policy in that regard has been established in the municipal sector under Section 111.70, Wis. Stat., for the purposes of preventing disruption and encouraging stability in existing collective bargaining relationships. Wauwatosa Board of Education, 3/ as modified by City of Milwaukee. 4/ The Intervenor contends that similar rules should be adopted under the SELRA for the same salutary purposes.

In considering this contention, we must balance the interest of employees to select or change their bargaining representative with the interest of preserving stability in existing collective bargaining relationships. It is clear from its creation of representation procedures that the legislature intended employees covered by SELRA to be permitted to freely select their collective bargaining representative. However, it is equally clear that the legislature intended that collective bargaining relationships, once established, be stabilized for reasonable periods of time. One of the main purposes of the SELRA is to provide "orderly and constructive employment relationships." 5/ The statute encourages stable relationships between the State and its employee organizations under collective bargaining agreements covering terms and conditions of employment.

3/ Dec. No. 8300-A

4/ Dec. No. 8622

5/ Sec. 111.80(2), Wis. Stat.

To this end, we believe it desirable to adopt a policy regarding the proper timing of election petitions in order to prevent unnecessary disruption of employment relations, and to provide the parties who are negotiating or who have negotiated a collective bargaining agreement a modicum of certainty with respect to the administration and viability of the agreement.

Although the Commission has not heretofore adopted a showing of interest requirement under SELRA, the instant petition was accompanied by a showing of interest which demonstrated that at least 30 percent of the employees in the requested bargaining unit desired the Professional Policemen's Protective Association to represent them. Such a showing of interest is required in the municipal sector where, as here, there is an existing collective bargaining relationship. Wauwatosa Board of Education, supra. Our experience with this policy has been favorable. We believe it appropriate at this time to set forth a similar requirement under the SELRA.

Accordingly, where there is an existing collective bargaining relationship resulting from a good-faith voluntary recognition of the labor organization, or where the labor organization has been certified in an election conducted by this agency, an organization filing a petition for an election among the employees in a unit claimed to be appropriate, must at the time of filing administratively demonstrate to the Commission that at least 30 percent of the employees in the claimed appropriate collective bargaining unit desire the petitioning organization to represent them for the purposes of collective bargaining. Where the petition is filed by an employee or employees seeking to terminate the representative status of the incumbent labor organization, the petitioning employee or employees must administratively demonstrate to this agency at the time of filing that at least 30 percent of the employees in the requested bargaining unit desire to terminate the representative status of the union. An employer petitioning for an election in an existing unit

must demonstrate to this agency at the hearing, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its certification or the date of voluntary recognition. This objective evidence must not have been obtained by the employer through prohibited means.

There are several convincing policy reasons for the rule adopting the above showing of interest requirements. It will avoid the processing of election petitions where there is little likelihood of success by the petitioner, and thus the Commission would avoid an unwarranted expenditure of governmental funds, as well as dissipating and wasting of unnecessary time and effort by the Commission, employers, employees and their representatives. Requiring a preliminary showing of interest in a representation proceeding will screen out frivolous petitions and enable the Commission to conduct elections only where it serves a useful purpose under the statute.

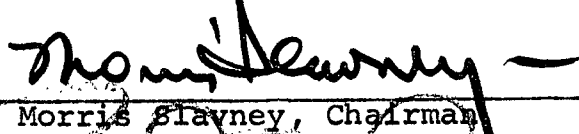
With respect to the timely filing of election petitions where a certified or recognized bargaining representative is a party to a collective bargaining agreement between such representative and the State Employer, the Commission will only entertain petitions if they are filed within a 60-day period immediately preceding the reopening date set forth in the existing agreement. The above stated policy is not necessarily being applied in this proceeding since the petition herein was filed on the date on which the parties executed a new collective bargaining agreement and since there was no evidence adduced to establish that the execution of this agreement was in any way improper or executed for the purpose of preventing the processing of the petition, said agreement constitutes a bar and as a result no question of representation exists.


During the course of the hearing an issue arose as to whether police officers in the employ of a State Employer could constitute themselves a unit separate and apart from other employes of the said Employer. Since we have found that there is no question of representation in existence at this time we do not deem it necessary to make any unit determination in the matter.

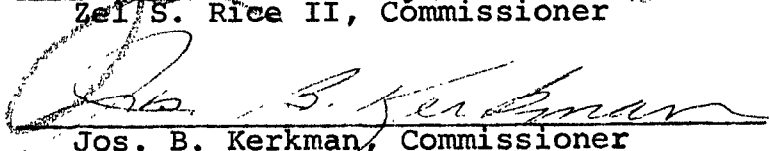
Dated at Madison, Wisconsin, this 15th day of September, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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Morris Slaveney, Chairman


Zel S. Rice II, Commissioner


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