

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Cases XIII thru XXVI  
Nos. 14800 thru 14813  
ME-673 thru ME-686  
Decision No. 10492

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr. and Mr. James Marketti, Business Representative, Teamsters Local 695, for the Petitioner.

Mr. Edward E. Garvoille, Personnel Director and Mr. Samuel Morris, Corporation Counsel, for the Municipal Employer.

Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson and Mr. George E. Lewis, WCCME Representative, for Dane County Council of Unions, AFSCME, AFL-CIO, Intervenor.

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695 having on May 26, 1971, filed petitions with the Wisconsin Employment Relations Commission requesting that the Commission conduct elections among employees in the employ of Dane County, employed in various separate departments, alleged to constitute separate units, to determine the collective bargaining representative of such employees; and hearing on such petitions having been conducted by the Commission on August 20, 1971, before Howard S. Bellman, Hearing Officer; and at the outset of the hearing, Dane County Joint Council of Unions, AFSCME, AFL-CIO, having been permitted to intervene in the matter on its claim that it presently represents the employees involved and is a party to a collective bargaining agreement with Dane County covering the employees involved; and further, prior to taking of any evidence with regard to matters affecting the appropriateness of the units involved, and the positions to be included or excluded from said alleged units, the Intervenor having moved that the petitions be dismissed, contending that they were prematurely filed, since they were filed on a date more than sixty days prior to the reopening date in the collective bargaining agreement existing between the Intervenor and Dane County; and the hearing having been adjourned pending the consideration of such motion by the Commission; and the Commission having reviewed the motion, the record and positions of the parties with respect to said motion, and being fully advised in the premises makes and issues the following

ORDER

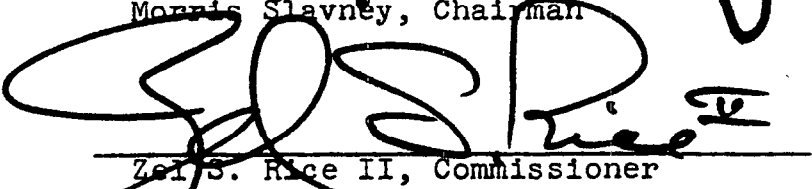
IT IS ORDERED that the motion of the Intervenor, Dane County Joint Council of Unions, AFSCME, AFL-CIO, to dismiss the petitions involved in the instant matter be, and the same hereby is, denied, and that the hearing be resumed on September 13 and 14, 1971, at 10:00 a.m. at the Commission's Madison Office, 30 West Mifflin Street, Room 906, Madison, Wisconsin.

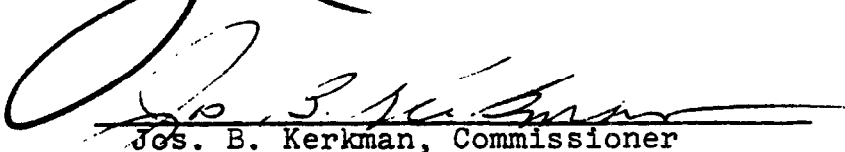
Given under our hands and seal at the  
City of Madison, Wisconsin, this 2nd  
day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

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DANE COUNTY

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"Teamsters Local Union No. 695 has filed 14 petitions requesting elections among various employes of Dane County. In one petition the petitioner would include all clerical employes of the County in a single unit. The unit described in that petition is inappropriate under Section 111.70, Wisconsin Statutes.

In the remaining 13 petitions, however, the petitioner requests units by departments. Copies of the latter petitions are enclosed.

In order for the Commission to administratively complete the appropriateness of the showing of interest by the petitioner, it is necessary that the County furnish us with the names of the employees included in the claimed appropriate units covered by the various petitions. Will you please furnish such information as soon as possible. If the Commission is satisfied that the showing of interest is sufficient, we shall set hearing on said petitions."

Over a month later, on July 9, 1971, the Personnel Officer responded to the above request by submitting a list of the employees in the units involved. After completing its administrative determination, by reviewing the authorization cards and the payroll lists, and being satisfied that the "showing of interest" was sufficient to support the various petitions which were filed, the Commission on July 20, 1971, set hearing on the matters for August 2, 1971, to be held in its offices at Madison. On July 26, 1971, the Commission received a letter from AFSCME's Counsel requesting a rescheduling of hearing for a later date because of his unavailability on the date set for hearing. Pursuant to that request the Commission issued a notice of postponement, setting the matter for August 19, 1971. Prior to the latter date Counsel for the Teamsters advised that he was not available until August 20, 1971. A hearing was conducted on the latter date.

At the outset of the hearing AFSCME moved to dismiss the petitions contending that they were prematurely filed in that they were filed more than sixty days prior to the date established in the collective bargaining agreement for the reopening of same. The Commission in City of Milwaukee 2/ set forth the following policy governing the timeliness of filing representation petitions.

"Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employees in an appropriate collective bargaining unit, the petition must be filed within the sixty (60) day period prior to the date provided in said agreement for its reopening."

AFSCME argues that such rule constitutes a rule of limitations and therefore extinguishes the right of the Teamsters to proceed herein. However, the Commission has processed an election petition, although it was filed prior to the sixty-day period, on the basis that had the petition been dismissed the petitioning organization could have immediately timely filed a new petition, thus resulting in a repetitious proceeding. 3/ While the petition herein was filed more than sixty days prior to the reopening date of the agreement, the Commission commenced to process the petition within the sixty-day period, by its letter dated June 7, 1971, which together with copies of the petitions were sent to the Municipal Employer and to AFSCME. Neither of said parties raised any question with respect to the

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2/ (8622) 7/68.

3/ Black Earth School District No. 1 (8854) 1/69.

"timeliness" of the filing of the petitions until the date of the hearing. 4/ Had they done so upon receipt of the original notice of hearing, we are satisfied that had we dismissed the petitions the Teamsters would have immediately refiled the petitions and they would have been timely filed at any time prior to the sixty-day period.

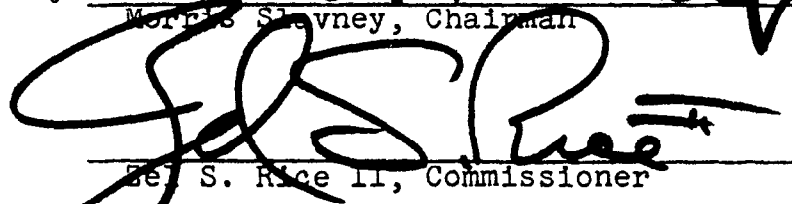
Under the circumstances involved herein the Commission concludes that the matter falls within the policy established in Black Earth School District No. 1, and we, therefore, have denied the motion to dismiss the petitions and have ordered said hearings be reconvened on September 13, 1971.

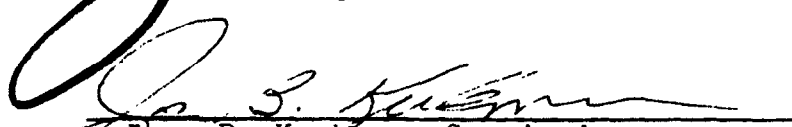
Dated at Madison, Wisconsin, this 2nd day of September, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Earl S. Rice II, Commissioner

  
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4/ The extended period of time taken by the Municipal Employer in furnishing the employe list to the Commission delayed the administrative determination that the Teamsters' "showing of interest" was sufficient to warrant the processing of the petitions, and thus delayed the setting of the original hearing date.