STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES & HELPERS, LOCAL 695, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA Involving Certain Employes of UNIVERSITY OF WISCONSIN-MADISON	Case XXXII through XXXVII No. 15176 through 15181 SE-34 through SE-39 Decision No. 10727-B through No. 10732-B

ORDER DENYING PETITION FOR DECLARATORY RULING

The above named Petitioner having on December 28, 1971, filed six separate petitions with the Wisconsin Employment Relations Commission requesting that elections be conducted in six alleged appropriate bargaining units of employes in the employ of the University of Wisconsin-Madison; and on the same date said Petitioner having submitted authorization cards, as a showing of interest in support of said petitions; and on December 29, 1971, the Commission, by letter, having requested said State Employer to furnish the Commission with lists of employes employed in the various alleged appropriate units in order that the Commission could administratively determine whether the showing of interest was sufficient to warrant further proceedings on said petitions; and prior to any further action by the Commission, the Petitioner, by its Counsel, having, on January 13, 1972, filed a petition for declaratory ruling with respect to the validity of the Commission's policy as to requiring a 30 percent showing of interest in the processing of election petitions where there exists a certified or recognized collective bargaining representative of the employes involved in said petitions; and the Commission, being satisfied that the State Employer and the present collective bargaining representative of the employes involved, Local 171, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, be given an opportunity to file a written statement with respect to the petition for declaratory ruling, on January 18, 1972 issued an Order granting the State Employer and AFSCME an opportunity to file a written statement of their position with respect to the petition for declaratory ruling; that on January 24, 1972, the State Employer filed a brief statement with regard to its position with regard to the declaratory ruling, and on January 31, 1972, AFSCME filed its position with regard thereto; and prior to any further action by the Commission, the Petitioner, on February 4, 1972, filed an amendment to its petition for declaratory ruling wherein it contended that if the Commission should issue a decisional principle in the instant proceeding with respect to the affect of an existing collective bargaining agreement as to determining whether the petitions were timely filed, such principle must be promulgated during the course of this proceeding pursuant to Section 227.06 of the Wisconsin Statutes, and, further, that a "contract bar" rule is

beyond the Commission's rule-making power and the affect of possible existing collective bargaining agreements must be determined on a case-to-case basis rather than on a general "contract bar" policy, and, further, that should the Commission promulgate a "contract bar" rule in the instant proceeding such rule should require that petitions for elections may be filed "not more than 90 or less than 60 days prior to the expiration of the existing contract, or not more than 90 or less than 60 days prior to the date of the commencement of renegotiation of the successor agreement as specified in the existing agreement", and further that "the Commission ought to also adopt the rule that an automatically extended contract, not reopened, (although renegotiation was provided for in the successor agreement) does not bar;"; and the Commission having considered the petition for declaratory ruling and the amendment thereto, and being satisfied that they be dismissed;

NOW, THEREFORE, it is

ORDERED

That the petition for declaratory ruling and the amendment to the petition for declaratory ruling filed by the Petitioner in the above entitled matters be, and the same hereby are, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

_____
Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of DRIVERS, SALESMEN, WAREHOUSEMEN, MILK PROCESSORS, CANNERY, DAIRY EMPLOYEES & HELPERS, LOCAL 695, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA Involving Certain Employes of UNIVERSITY OF WISCONSIN-MADISON	Case XXXII through XXXVII No. 15176 through 15181 SE-34 through SE-39 Decision No. 10727-B through No. 10732-B

MEMORANDUM ACCOMPANYING
ORDER DENYING PETITION FOR DECLARATORY RULING

Background:

On December 28, 1971, Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees & Helpers, Local 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as the Petitioner, filed six separate petitions with the Commission requesting elections among various employes employed by the University of Wisconsin-Madison. On the date that the petitions were filed the Petitioner also submitted a number of cards executed by employes of the State Employer authorizing the Petitioner to represent them for the purposes of collective bargaining. The petitions were docketed and made into cases as follows:

Case Number	Unit Alleged to be Appropriate
XXXII	All building maintenance employees (building maintenance helpers, window washers, etc.) in the classified service of University of Wisconsin (excluding University of Wisconsin-Milwaukee) excluding all other employees of the employer
XXXIII	All motor vehicle operator employees in the classified service of the University of Wisconsin (excluding University of Wisconsin-Milwaukee) excluding all other employees of the employer
XXXIV	All laborers (laborers, gardners, building and grounds repairmen, farm laborers, farm equipment operators, herdsmen, etc.) in the classified service of the University of Wisconsin (excluding University of Wisconsin-Milwaukee) and excluding all other employees of the employer

XXXV	All maintenance mechanics (mechanics, mechanicians, welders, instrument makers, maintenance men, etc.) in the classified service of the University of Wisconsin (excluding University of Wisconsin-Milwaukee) excluding building trades craft employees, and all other employees of the employer
XXXVI	All employees in the classified service of the University of Wisconsin (excluding University of Wisconsin Milwaukee) physical plant divisions, excluding office clerical, professional, confidential, limited term employees, management employees, supervisory employees and Building Trades Craft employees
XXXVII	All persons in the classified service of the University of Wisconsin (excluding the University of Wisconsin Milwaukee) excluding office clerical professional, confidential, limited term employees, management employees, supervisory employees, and Building Trades Craft employees

A covering letter accompanying said petitions was sent by Counsel for the Petitioner indicating the Petitioner's views with respect to the units and its position with respect to the necessity of a "showing of interest" by the Petitioner. The pertinent portions of said letter are as follows:

> "Enclosed are six representation petitions. These petitions represent alternative views of appropriate units for bargaining.
>
> The petitioner's first preference is for four separate occupational, job function units cutting across the University of Wisconsin system, but excluding the University of Wisconsin-Milwaukee, where at present, the workers do not desire to exercise their right to self-determination. The units are described in petitions I(A) through I(D).
>
> Should the Commission find that each of these work content units are not an appropriate unit among a range of appropriate units, then petitioner requests a unit in a management defined Division cutting across the University system, but again, excluding University of Wisconsin-Milwaukee where the workers do not presently desire an election. This unit includes most (but not all) workers in the classifications set forth in I(A) through I(D), plus additional classifications. The Divisional unit is described in Petition II.
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> Should the Commission find the Divisional unit not to be an appropriate unit within the range of appropriate units, then petitioner requests a multi-faction, multi-division unit, again excluding University of Wisconsin-Milwaukee, as well as certain statutory and traditional functional exclusions.

It is the petitioner's position that there is no legislative requirement of a 'showing of interest' as a condition of permitting workers to vote, within the language, structure or purpose of 111.80 and 111.83. (Such rule has been proposed in pending legislation, of course, in 111.83(5) of Assembly Bill 475.) No such substantive rule has been promulgated by the Commission pursuant to Section 111.92, 227.01(3)(5), 227.02, or 227.023.

Be that as it may, in units I(A) through I(D) and II, at least 30% of the workers have chosen the Teamsters as their bargaining representative by signing authorization cards. In the most inclusive unit, III, 600 workers have signed authorization cards. Surely, this is 'sufficient reason' [within the meaning of 111.83(5)] to give effect to the value of worker self-determination in light of the fact that Local 171 AFSCME (AFL-CIO) never has received the affirmative electoral support of a majority of the workers in the present unit, III, and at present a majority of workers in all requested units are not members of Local 171 AFSCME (AFL-CIO).

Accordingly, Teamsters 695 requests a hearing on the appropriateness of the requested unit and/or the sufficient reasons for conducting an election."

On December 29, 1971, the Commission directed a letter to the State Employer, with copies of the six petitions enclosed, which letter contained, in part, the following:

"In the letter accompanying the filing of the petitions the Petitioner stated as follows with respect to the units involved:

'The petitioner's first preference is for four separate occupational, job function units cutting across the University of Wisconsin system, but excluding the University of Wisconsin-Milwaukee, where at present, the workers do not desire to exercise their right to self-determination. The units are described in petitions I(A) through I(D).

Should the Commission find that each of these work content units are not an appropriate unit among a range of appropriate units, then petitioner requests a unit in a management defined Division cutting across the University system, but again, excluding University of Wisconsin-Milwaukee where the workers do not presently desire an election. This unit includes most (but not all) workers in the classifications set forth in I(A) through I(D), plus additional classifications. The Divisional unit is described in Petition II.

Should the Commission find the Divisional unit not to be an appropriate unit within the range of appropriate units, then petitioner requests a multi-faction, multi-division unit, again excluding University of Wisconsin-

Milwaukee, as well as certain statutory and traditional functional exclusions.'

The Petitioner has submitted a showing of interest executed by a number of employes supporting the petitions. It is the policy of the Commission not to process election petitions where there presently exists a representative unless the petition is supported by a showing of interest executed by at least 30 percent of the employes in the unit involved.

In order to complete our administrative showing of interest, will you kindly furnish us with a list of employes, in alphabetical order, employed in the various bargaining units involved, within fourteen (14) days from the receipt of this letter. Upon receipt of the list of employes the Commission will administratively determine whether the showing of interest is sufficient, and if so, it will schedule hearing on the petitions. Because of the number of units involved you may need additional time to furnish us with the separate lists necessary to complete the administrative showing of interest. If you desire such time, do not hesitate to make a request therefor."

Copies of said letter were sent to the Petitioner, its Counsel, AFSCME and the latter's parent organization.

On January 13, 1972, prior to the receipt of the employe list from the State Employer, the Petitioner filed a petition for declaratory ruling, wherein the Petitioner alleged:

"1. On or about December 29, 1971, the Commission announced a 'rule' within the meaning of Sec. 227.01(3) and (4) Stats. that it would not process election petitions filed pursuant to Sec. 111.83 Stats unless 30% of the workers in the requested unit indicated in writing and/or by documentary evidence that they wanted to be represented by the petitioning union in those circumstances where the workers are represented by a Labor Union other than the petitioning union at the time the petition is filed. . .

2. On or about December 28, 1971, Teamsters filed a representation petition seeking an election in the following unit:

'All persons in the classified service of the University of Wisconsin (excluding the University of Wisconsin-Milwaukee) excluding office clerical, professional, confidential, limited term employees, management employees, supervisory employees, and Building Trades Craft employees.'
See Exhibit B.

3. The workers in this unit are presently represented by Local 171, AFSCME (AFL-CIO) pursuant to Commission certification and labor agreement.

4. At present, 30% of the 3500 workers in the unit described in Exhibit B have not executed written documents choosing Teamsters as their bargaining representative. 1/

5. The '30% showing of interest' policy of the Commission is a 'rule' within the meaning of 227.01(3) and (4) because it is a principle of general application, running to the entire class of petitioning labor unions and employers. When applied to Teamsters Local 695, it has the effect of denying the union its reason for existence (at least with respect to these workers) the representation of workers with respect to their wages, hours and conditions of employment, a right affirmatively protected by Sec. 111.82, 111.83, and 111.84 Stats. Moreover, the 30% rule derives from the Commission's informed judgment as to what decisional principles best serve the values protected by the Act. Given the impact of the policy upon rights generally protected by the statutes, and given the source of the policy in the Commission's 'expertise', the policy pronouncement is a 'rule' within the meaning of Sec. 227.01(3) and (4). . .

6. Because the 30% policy as applies to petitions filed pursuant to 111.83 is a 'rule', it must be 'filed' with the Secretary of State and published, all pursuant to Sec. 227.01(4), Sec. 227.023, Sec. 227.024, Sec. 227.025, Sec. 227.026. Because the 30% 'showing of interest' rule as applied to 111.83 petitions was not filed or published prior to the filing of Teamsters petition on or about December 28, 1971, the rule cannot be applied to this petition, assuming arguendo it is a valid exercise of rule-making pursuant to Chapter 111.80 and Sec. 111.92 Stats.

7. In any event, Teamsters Local 695 has a statutory right to proceed to election despite the presence of Local 171, AFSCME (AFL-CIO) and a previous certification, because there is 'sufficient reason' for such election, within the meaning of 111.83(5) given the fact that (1) at least 600 workers in the unit of 3500 described in Exhibit B have executed written documents indicating they want Teamsters Local 695 as their bargaining representative, (2) Local 171 has never received the affirmative electoral support of a majority of workers in the unit, (3) at present, a majority of the 3500 workers in the unit are not members of Local 171.

Moreover, the promulgation of a per se 30% showing of interest by written documentation rule as the standard for determining 'sufficient reason' is beyond the

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1/ It should be noted that the determination by the Commission of whether the showing of interest is adequate is an administrative determination and that admission by the Petitioner that it does not have the 30 percent showing of interest is a voluntary admission on its part.

Commission's power, pursuant to 111.83(5). The Commission has been directed by the legislature to determine 'sufficient reason' by means of case-by-case adjudication.

8. Sec. 227.06 is the proper procedural device to raise the issues set forth in paragraphs 5-8. . ."

The Petitioner concludes its petition by requesting the Commission to issue a declaratory ruling to the effect that:

"1. That the 30% showing of interest by written documentation as applied to petitions filed pursuant to Sec. 111.83 is invalid as applied to the Teamsters petition of December 28, 1971, because the rule was not filed or published prior to December 28, 1971.

2. That promulgation of a per se 30% showing of interest rule is beyond the Commission's power pursuant to Sec. 111.83(5).

3. That 'sufficient reason' exists for holding the election because (1) at least 600 of the 3500 workers in the unit set forth in Exhibit B have executed written documents choosing Teamsters 695 as their bargaining representative, (2) a majority of workers in the unit have never affirmatively chosen Local 171 in an election conducted pursuant to 111.83, (3) a majority of the 3500 workers presently in the unit are not members of Local 171."

Upon receipt of the petition for declaratory ruling the Commission issued an Order permitting both the State Employer and AFSCME an opportunity to reply thereto. The State Employer indicated that it was of the opinion that the 30 percent showing of interest requirement has "fostered stable labor relations in the public sector, and we would urge the Commission to take whatever steps necessary to continue this policy." AFSCME, on January 13, 1972, by its Counsel, filed an answer to the petition, as well as a motion to dismiss same, wherein it (1) denied that on or about December 29, 1971, or at any other time, the Commission announced a "rule" within the meaning of Sec. 227.01(2)(3) and (4) of the Wisconsin Statutes as alleged in paragraph 1 of the petition for review and AFSCME affirmatively alleged that the 30 percent showing of interest policy was adopted by the Commission in a contested case, namely, in University of Wisconsin-Milwaukee, Decision No. 9910, (2) denied that the 30 percent showing of interest policy is a rule and denied that the law requires further publication or filing with respect to said policy and affirmatively alleged that said policy is applicable to the petitions involved, and (3) denied that the Petitioner has a statutory right to proceed to an election and further, affirmatively alleged that the present agreement existing between the State Employer and AFSCME precluded further Commission consideration of any or all of the petitions filed by the Petitioner, in that said collective bargaining agreement by its terms did not expire until February 28, 1973, could be reopened at this time or any other time and presently constitutes a bar to an election, and, therefore, no question of representation exists. AFSCME moved for a dismissal of the petition for declaratory

ruling as well as the dismissal of the petitions filed by the Petitioner.

On February 4, 1972, the Petitioner filed an amendment to its petition for a declaratory ruling contending the following:

> "1. No 'contract bar' rule has been articulated in any contested case under the SELRA prior to the filing of the Teamster petitions on December 28, 1971. Accordingly, if such decisional principle is to be adopted it must be promulgated during the course of this proceeding initiated by Teamsters Local 695, pursuant to Section 227.06 Stats.
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> 2. A 'contract bar' rule is beyond the Commission's rule-making power because the legislatively determined standard of 'sufficent reason' to proceed to election requires a case-by-case analysis of the circumstances surrounding the petition filed when another labor organization has been certified and is party to an unexpired labor agreement. Rather than a per se rule such as the 'contract bar', the Commission must consider each case in light of the basic value of the Act -- worker self-determination. In light of the allegations contained in paragraph 7 and the third paragraph of the relief portion of the original petition, [allegations not denied by the University or Local 171] there is 'sufficient reason' to conduct an election in the units described in petitions I(A) through I(D), petition II as well as petition III, as a matter of law, pursuant to Section 111.83(5) Stats.
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> 3. Assuming arguendo that the Commission does promulgate a 'contract bar' rule in this proceeding, the Commission ought to adopt the decisional law developed by the NLRB, and/or the WERC, pursuant to Chapter 111.70 Stats., requiring the petition to be filed not more than 90 or less than 60 days prior to expiration of the existing contract, or not more than 90 or less than 60 days prior to date of commencement of renegotiation of the successor agreement if specified in the existing agreement. The Commission ought to also adopt the rule that an automatically extended contract, not reopened (although renegotiation was provided for in the 'successor' agreement) does not bar. Accordingly, all petitions here [including I(A) through I(D) and II as well as III] were timely filed on December 29, 1971, given the expiration of the University-Local 171 agreement on February 29, 1972, which the parties can renegotiate upon 60 days notice calculated from February 29, 1972, or extend to February 28, 1973, if they so desire.
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> 4. Teamsters Local 695 reaffirms each and every allegation of the prior petition of January 12, 1972."

In its amendment the Petitioner concluded by requesting the Commission to issue an order which will permit elections in any or all of the units if the units are appropriate as determined by additional hearing.

Following the receipt of said petition the Commission again issued an Order permitting the State Employer and AFSCME to reply. The State Employer did not submit any reply to the amended petition. However, in a letter dated February 14, 1972, Counsel for AFSCME reiterated its position contained in its original answer to the affect that (1) the requirements of Chapter 227, Wis. Stats. (1969) are not applicable, (2) the showing of interest is to be determined at the time the petition(s) are filed, (3) no question of representation exists, and (4) applicable 'contract bar' rules preclude any further consideration of the petitions.

Discussion:

The Petitioner's allegation to the affect that on December 29, 1971, the Commission announced a "rule" that it would not process election petitions filed pursuant to Section 111.83 of the State Employment Labor Relations Act unless there was a 30 percent showing of interest of the employes in the proposed unit is erroneous. Apparently, the Petitioner has reference to the letter sent by the Commission to the State Employer requesting a list of the employes involved in the petitions to determine whether the showing of interest warranted further processing of the petitions. As a matter of fact, as alleged in the answer of AFSCME, the Commission adopted a showing of interest policy in election petitions involving state employes in a case involving the University of Wisconsin-Milwaukee (Decision No. 9910) issued on September 15, 1970, wherein the Commission stated as follows:

> "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 employes 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.
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> 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 employes 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 employes 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 employe or employes seeking to terminate the representative status of the incumbent labor organization, the petitioning employe or employes must administratively demonstrate to this agency at

the time of filing that at least 30 percent of the employes 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, employes 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."

Section 111.83(3) in material part states as follows:

"Whenever a question arises concerning the representation of state employes in a collective bargaining unit the commission shall determine the representative thereof by taking a secret ballot of the employes and certifying in writing the results thereof to the interested parties and to the state and its agents. . ."

The key words in that portion of the section cited above, as far as the instant matter is concerned, are "whenever a question arises concerning the representation of state employes . . ." There is no requirement in the statute that the Commission must conduct an election when a petition for an election is filed. It must determine whether a question of representation exists. One of the factors in making such a determination is whether a substantial number of employes, determined by the Commission to be at least 30 percent, desire to change their existing collective bargaining representative. The statute does not prohibit such a determination from being made administratively 2/ through a comparison of the authorization cards with the payroll list of the State Employer. The policy adopted by the Commission with respect to the 30 percent showing of interest is not deemed to be a rule within the meaning of Chapter 227 of the Wisconsin Statutes, but rather is one of the procedural steps in determining whether a question of representation has arisen.

2/ The Commission administratively determines the adequency of the showing of interest so as not to divulge the names of the employes who have executed the authorization cards.

The Petitioner admits that its showing of interest has been executed by less than 30 percent of the employes in the overall unit. Therefore, it appears to the Commission that a real question of representation has not arisen since the prospect of the Petitioner being successful in an election involving employes in the "overall" unit is too remote to warrant the further processing of the petition covering said employes.

Apparently, the Petitioner was unaware that the Commission has also previously adopted a policy with respect to "contract bar". Such policy was expressed also in the University of Wisconsin-Milwaukee case, wherein we stated as follows:

> "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."

In adopting the policy with reference to "showing of interest" and "contract bar" the Commission stated:

> "We must balance the interest of employes 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 employes 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.' The statute encourages stable relationships between the State and its employe organizations under collective bargaining agreements covering terms and conditions of employment.
>
> 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."

Therefore, we have issued an Order dismissing the petition and amended petition for declaratory ruling. The Commission will now proceed to determine whether there is a sufficient showing of interest with respect to the petitions filed for the smaller units, and in those cases where the showing of interest is sufficient,

the Commission will schedule a hearing thereon. Since the Petitioner has admitted that its showing of interest is insufficient in the case involving the "overall unit", the Commission will dismiss that petition on the basis that the showing of interest in support thereof is insufficient.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

_____
Jos. B. Kerkman, Commissioner