

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
: DRIVERS, SALESMEN, WAREHOUSEMEN, MILK :  
PROCESSORS, CANNERY, DAIRY EMPLOYEES :  
AND HELPERS LOCAL UNION NO. 695 :  
: For a Declaratory Ruling Under Sub- :  
Chapter V of Chapter lll of the :  
Wisconsin Statutes :  
: Involving Security and Public Safety :  
Employees Employed in the :  
: STATE OF WISCONSIN :  
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Case XXXII  
No. 16393 DR(S)-3  
Decision No. 11519-B

DECLARATORY RULING

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local Union No. 695 having filed a motion requesting the Wisconsin Employment Relations Commission to issue a Declaratory Ruling concerning the appropriate time to file a petition for an election involving Security and Public Safety employees in the employ of the State of Wisconsin, and hearing in the matter having been waived by the parties; and the Commission having considered relevant previous Commission proceedings, the briefs and arguments of the parties, as well as briefs filed by other interested parties, and being fully advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local Union No. 695, hereinafter referred to as the Petitioner, is a labor organization representing employees for the purposes of collective bargaining, and has its offices at Madison, Wisconsin.
2. That the State of Wisconsin, hereinafter referred to as the Employer, has its principal offices at Madison, Wisconsin.
3. That certain security and public safety employees in various departmental units are presently covered by various collective bargaining agreements negotiated prior to July 1, 1972, by AFSCME and the Employer, and that said agreements will expire on June 30, 1973, pursuant to Section 111.92 of SELRA.
4. That on August 25, 1972, the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, pursuant to Section 111.81(c) of the State Employment Labor Relations Act, hereinafter referred to as SELRA, certified the American Federation of State, County and Municipal Employees, Council 24 and its affiliated locals, hereinafter referred to as AFSCME, as the exclusive collective bargaining representative for all otherwise eligible security and public safety employees in the employ of the Employer for the purposes of collective bargaining on questions of wages, hours and conditions of employment.

5. That AFSCME and the Employer have met on various dates from November, 1972 to the present for the purpose of negotiating a collective bargaining agreement covering said security and public safety employees to take effect on or after July 1, 1973, pursuant to Section 111.92 and Section 111.96 of SELRA.

6. That on January 8, 1973, the Petitioner filed motion with the Commission requesting a Declaratory Ruling to determine the appropriate time for the Petitioner to file a petition for an election involving said security and public safety employees in the employ of the Employer.

Based upon the above and foregoing Findings of Fact, the Commission issues the following

#### DECLARATORY RULING

1. That the Wisconsin Employment Relations Commission will deem any petition for an election filed by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local Union No. 695, hereinafter referred to as the Petitioner, or any other labor organization, to determine the bargaining representative for all otherwise eligible security and public safety employees in the employ of the State of Wisconsin, which is filed on any date between April 1 and April 30, 1973, as not timely filed, and thereupon will dismiss said petition.

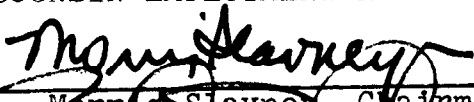
2. That the Wisconsin Employment Relations Commission will deem any petition for an election filed by the Petitioner, or any other labor organization, to determine the bargaining representative for all otherwise eligible security and public safety employees in the employ of the State of Wisconsin, which is filed on any date prior to August 25, 1973, as not timely filed, and thereupon will dismiss said petition.

3. That the Wisconsin Employment Relations Commission will deem any petition for an election filed on or after August 25, 1973, by the Petitioner, or any other labor organization, as timely filed, unless on or before August 24, 1973, American Federation of State, County and Municipal Employees, Council 24 and its affiliated locals, hereinafter referred to as AFSCME, and the Department of Administration of the State of Wisconsin reach a tentative agreement on wages, hours and working conditions covering the otherwise eligible security and public safety employees in the employ of the State of Wisconsin, and further, unless such tentative agreement is approved by the membership of AFSCME on or before August 24, 1973, and should thereafter a full and complete collective bargaining agreement become effective between AFSCME and the State of Wisconsin, following the procedures set forth in Section 111.92 of the State Employment Labor Relations Act, then the appropriate time for filing a petition requesting an election in the security and public safety unit will be that period of time set forth in Section 111.83(5) of the State Employment Labor Relations Act.

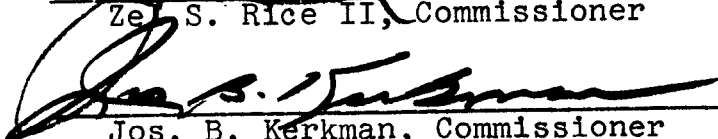
Given under our hands and seal at the  
City of Madison, Wisconsin, this 5th  
day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Ze S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Local Union No. 695, hereinafter referred to as the Petitioner, filed a petition with the Commission requesting that the Commission issue a Declaratory Ruling concerning the appropriate time for the Petitioner to file a petition for an election among employees included in the State-wide unit of security and public safety employees under the provisions of the State Employment Labor Relations Act, hereinafter referred to as SELRA. Upon receipt of said petition the Commission issued an Order granting interested parties an opportunity to file briefs, as well as reply briefs in the matter. The Order also set hearing in the matter for February 19, 1973. Following the issuance of said Order the parties waived hearing in the matter. The facts material to the disposition of the matter are those facts uncontroverted in the briefs and those facts reflected in previous Commission proceedings pertinent to the issues herein, and in that regard, the Commission takes judicial notice of such proceedings.

The facts necessary for the disposition of the matter are set forth in the Findings of Fact and need not to be reiterated in this memorandum.

POSITION OF THE PARTIES:

In its petition, the Petitioner alleges that "there is a collective bargaining agreement in effect covering the 'security and public safety' unit"; that, pursuant to Section 111.96 of SELRA, existing collective bargaining agreements shall expire on June 30, 1973; and that, therefore, in accordance with Section 111.83(5) of SELRA, the Petitioner may file a petition for an election in the unit of security and public safety employees during the period from April 1 to April 30, 1973.<sup>1/</sup>

AFSCME argues that the provisions for filing election petitions as specified in Section 111.83(5) of SELRA are applicable only during the life of an agreement negotiated under the amended statute which took effect April 30, 1972, thus contending that the appropriate time for filing an election petition is in a period between sixty to ninety days prior to the expiration of an agreement in force under the subchapter. Such an agreement is presently being negotiated pursuant to the subchapter's expanded provisions regarding collective bargaining over wages, hours and conditions of employment to take effect on or after July 1, 1973.

AFSCME asserts that SELRA recognizes two types of agreements, namely those "agreements in effect on April 30, 1972" or "negotiated under the provision of the prior law . . . signed and ratified prior to July 1, 1972" as referred to in Section 111.96(2) of SELRA, and "an agreement between a labor organization and an employer . . . in force under the subchapter" as referred to in Section 111.83(5) of SELRA. The latter form of agreement is presently being negotiated. Upon the execution of an agreement, the date of said agreement's expiration will determine the sixty to ninety day period for the filing of an election petition supported by a 30% showing of interest.

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<sup>1/</sup> The Petitioner requests, should the Commission deem otherwise, that the Commission set forth the period it concludes would be appropriate for the filing of a petition in the unit involved.

The Employer takes the position that if the present departmental agreements, which expire on June 30, 1973, are regarded as an "agreement under Section 111.83(5) for the purpose of establishing the sixty to ninety day filing period, an election petition would have to be supported by a 30% showing of interest in each departmental unit with an agreement. Such a procedure would be inappropriate, the Employer alleges, in that not all security and public safety employees such petition would seek to represent are presently covered by a collective bargaining agreement. Furthermore, not all classifications in departmental units, including security and public safety employees covered by extended agreements, are included in the security and public unit established by Section 111.81(3)(a)1. Conceivably, an election petition filed for the security and public safety unit could be supported by a departmental showing of interest which included employees not properly within the one security and public safety unit established by the statute.

The Employer and AFSCME individually assert that the Commission's policy of not disturbing the certification of a collective bargaining representative for one year precludes the filing of an election petition for the security and public safety unit until or after August 25, 1973.<sup>2</sup> According to the Employer and AFSCME, the August 25, 1972, certification of AFSCME as the exclusive collective bargaining representative for the security and public safety unit obtained pursuant to Section 111.81(3)(c) is in no way distinguished in its benefits under the subchapter from a certification obtained pursuant to the conduct of an election.

The Employer further states that where a labor organization under Section 111.81(3)(c) already represents a majority of the employees in a appropriate unit, it would be a useless formality and expense to conduct an election. Therefore, a certification based upon Section 111.81(3)(c) should not be regarded as affording less benefit than one based upon an election. Section 111.81(3)(c)(4) asserts the Employer provides that any labor organization may file an election petition subsequent to the effective date of SELRA, but only prior to the certification of an exclusive collective bargaining representative for a statutorily defined unit.

The Employer and AFSCME conclude that the Commission's one-year certification bar precludes the filing of an election petition for the security and public safety unit prior to August 25, 1973. Furthermore, that in the event that the Employer and AFSCME reach an agreement under the subchapter on or before August 25, 1973, the appropriate time for filing an election petition will be between sixty and ninety days prior to the expiration date specified in said agreement.

The Petitioner contends that the application of the Commission's one-year certification "bar rule" to a certification obtained without the conduct of an election would be inappropriate in that said policy would conflict with the legislative direction of Section 111.81(3)(c)4. The Petitioner alleges that Section 111.81(3)(c)4 provides that, notwithstanding certification obtained without an election pursuant to Section 111.81(3)(c)1, any labor organization may petition for recognition in accordance with Section 111.83, wherein an election petition supported by a 30% showing of interest may be filed sixty to ninety days prior to the expiration of an agreement. Therefore, the Petitioner concludes

period of one year. Furthermore, the Petitioner asserts that whereas all existing agreements expire on June 30, 1973, Section 111.83(5) provides that the appropriate time for filing an election petition is sixty to ninety days prior to an expiration date. In the instant proceeding the Petitioner argues that the appropriate filing period is between April 1 and April 30, 1973.

PERTINENT STATUTORY PROVISIONS:

The provisions of SELRA, as amended, pertinent to the issues involved herein are as follows:

"Section 111.81(3) . . .

(c) 1. Where a single labor organization has been certified prior to April 30, 1972 as the bargaining representative for employees assigned to a particular statutory bargaining unit, and the certification represents a majority of eligible employees assigned to the statutory bargaining unit, such organization shall be recognized as the exclusive representative for all employees assigned to the particular statutory unit without an election proceeding under s. 111.83."

. . .

"111.92 Agreements. (1) Tentative agreements reached between the department of administration, acting for the executive branch, and any certified labor organization shall, after official ratification by the union, be submitted to the joint committee on employment relations, which shall hold a public hearing before determining its approval or disapproval. If the committee approves the tentative agreement, it shall introduce in companion bills, to be put on the calendar, that portion of the tentative agreement which requires legislative action for implementation, such as salary and wage adjustments, changes in fringe benefits, and any proposed amendments, deletions or additions to existing law. Such bills shall not be subject to ss. 13.10 (1), 13.50 (6) (a) and (b) and 16.47 (2). The committee may, however, submit suitable portions of the tentative agreement to appropriate legislative committees for advisory recommendations on the proposed terms. The committee shall accompany the introduction of such proposed legislation with a message that informs the legislature of the committee's concurrence with the matters under consideration and which recommends the passage of such legislation without change. If the joint committee on employment relations does not approve the tentative agreement, it shall be returned to the parties for renegotiation. If the legislature does not adopt without change that portion of the tentative agreement introduced by the joint committee on employment relations, the tentative agreement shall be returned to the parties for negotiation.

(2) No portion of any tentative agreement shall become effective separately.

(3) Agreements shall coincide with the fiscal year or biennium.

(4) It is the declared intention under this subchapter that the negotiation of collective bargaining agreements and their approval by the parties should coincide with the overall fiscal planning and processes of the state."

. . .

"111.96 Effective date: transitional provisions. (1) EFFECTIVE DATE. This subchapter shall take effect upon passage and publication (published April 29, 1972), subject to the following procedure.

(a) Collective bargaining under this subchapter shall not commence prior to July 1, 1972.

(b) The provisions of any agreement negotiated under this subchapter shall not become effective prior to July 1, 1973.

(2) EXISTING AGREEMENTS, EXPIRATION AND EXTENSION.

(a) The provisions of all collective bargaining agreements in effect on April 30, 1972 shall be extended without change to June 30, 1973, at which time all agreements shall expire.

(b) Any additional collective bargaining agreements negotiated under the provision of the prior law must be signed and ratified prior to July 1, 1972, and such agreements shall expire on or before June 30, 1973."

#### DISCUSSION:

The Commission rejects the Petitioner's contention that Section 111.96 permits it to timely file a petition for an election in the unit involved herein during the period from April 1, 1973, to April 30, 1973, for the obvious reason that no collective bargaining agreement exists between the Employer and AFSCME as contemplated in Section 111.96. The extension of the various agreements between the Employer and AFSCME, which agreements cover employees, including those engaged in "security and public safety" classifications, in departmental units, established by the Commission prior to the April 29, 1972 amendments to SELRA, are not agreements as set forth in Section 111.96(1)(b), "negotiated under this subchapter. . . ." Said subsection permits such agreements to become effective only after July 1, 1973.

Further, were the Commission to adopt the Petitioner's rationale in this regard, it would not have entertained the proceeding which lead to the certification of AFSCME as the exclusive collective bargaining representative of the employees in the unit involved, on August 25, 1972, for the reason that the Commission would have considered the existing collective bargaining agreements as a bar to such a certification. No provision in SELRA, as amended, contemplates such a conclusion. On the contrary Section 111.96(1)(a) permits "Collective bargaining under this subchapter" to commence after July 1, 1972. To carry out the spirit and letter of SELRA, as amended, the Commission did not apply the usual "contract bar" rule in entertaining and processing petitions and/or issuing certifications involving employees in the statutorily created appropriate collective bargaining units. Furthermore collective bargaining agreements in existence prior to April 30, 1972, involved employees in units no longer appropriate under SELRA, as amended.

The Commission deems it appropriate to apply its one-year certification bar "rule" as applied in administering the Wisconsin Employment Peace Act, with some modification, necessitated by the procedure for negotiating agreements in state employment, as set forth in Section 111.92. Under WEPA, where an election has been held, wherein a bargaining representative has been selected and the results certified, such certification shall remain in effect for at least one year before a new election is directed.<sup>3/</sup> Such a policy, in effect, permits the certified union and the employer one year to negotiate a collective bargaining agreement.

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<sup>3/</sup> Kress Packing Co. (5581) 8/60.

It should be noted that Section 111.92 provides for the reaching of tentative agreements between the Department of Administration and any certified labor organization, but that prior to the submission of such tentative agreement to the Joint Committee on Employment Relations, such tentative agreement must be officially ratified by the membership of the labor organization. The remaining portion of Section 111.92 establishes procedures for the involvement of the Joint Committee on Employment Relations and the Legislature in the bargaining process and in the consummation of a final and binding agreement.


Because the petition filed herein involves the first certification of representatives issued by the Commission under SELRA, as amended, there has been no experience established as to the effectability of the collective bargaining process and procedure under SELRA, as amended. Therefore, it is the considered opinion of the Commission that, while the Commission will not require AFSCME and the Employer to reach a total binding agreement during the "certification year", in order for the certification to constitute a bar, the Department of Administration and AFSCME must reach a tentative agreement on all matters to be included in the collective bargaining agreement prior to the end of the "certification year", and further, that the membership of AFSCME must ratify such tentative agreement also prior to the end of the "certification year". If no such tentative agreement is reached and so approved within such year period, the Petitioner, or any other organization seeking to represent the employees in the unit involved herein, may, at any time thereafter, file a petition for an election, and such petition will be deemed timely filed by the Commission.

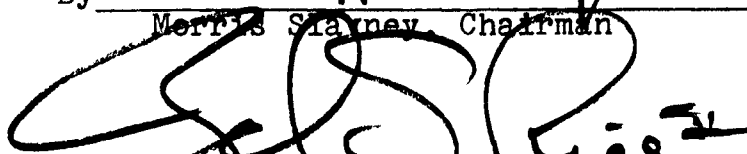
To require AFSCME and the Employer to consummate a full agreement within the "certification year" would ignore the realities of the effect of the procedures set forth in Section 111.92 of SELRA, as amended, primarily those which involve the participation of the Joint Committee on Employment Relations, the participation of the appropriate legislative committees, the introduction of proposed legislation relating to those portions of the tentative agreement which are within the province of the Legislature, as well as the action of the Legislature thereon.

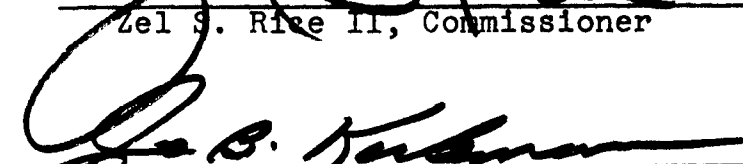
Should a full collective bargaining agreement be reached between the Employer and AFSCME, the appropriate period for filing a petition for an election is set forth in Section 111.83(5) of SELRA, as amended.

Dated at Madison, Wisconsin, this 5th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slayney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner