STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of I.A.T.S.E. MILWAUKEE THEATRICAL STAGE EMPLOYEES UNION LOCAL 18, AFL-CIO Involving Certain Employes of MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT	Case XXVI No. 16570 ME-892 Decision No. 11755

Appearances:

Mr. Walter Domach, Business Representative, appearing on behalf of the Petitioner.

Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law, by Mr. James Urdan, appearing on behalf of the Municipal Employer.

Mr. Earl Gregory, District Council Staff Representative, appearing on behalf of the Intervenor, Local 587 affiliated with District Council 48, AFSCME, AFL-CIO

ORDER OF DISMISSAL

Petition having been filed with the Wisconsin Employment Relations Commission by I.A.T.S.E. Milwaukee Theatrical State Employees Union Local 18, AFL-CIO, requesting the Commission to conduct an election among all employes of Milwaukee Area Technical College District, Milwaukee, Wisconsin, who are employed in the television remote control production crew, but excluding supervisors and all other employes, for the purpose of determining what, if any, representation such employes desire for the purposes of collective bargaining; and a hearing on said petition having been conducted in Milwaukee, Wisconsin on April 4, 1973, Marshall L. Gratz, Hearing Officer, appearing on behalf of the Commission; and the Commission, having considered the evidence and arguments of counsel and being fully advised in the premises; and being satisfied that the petition has not been timely filed, and, further, that the unit claimed to be appropriate by the Petitioner does not constitute an appropriate collective bargaining unit within the meaning of the Municipal Employment Relations Act.

NOW, THEREFORE, it is

ORDERED

That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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

MILWAUKEE AREA TECHNICAL COLLEGE DISTRICT, XXVI, Decision No. 11755

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

The Municipal Employer operates vocational, technical and adult schools located on several campuses in the Milwaukee area. As of September, 1972, a majority of its employes had been, for many years, represented in two bargaining units, one consisting of certificated professional teaching personnel, and the other consisting of certain non-professional employes. 1/ In September, 1972, the Commission issued a Direction of Election 2/ with respect to the then unrepresented employes of the Municipal Employer pursuant to a petition filed by the Intervenor, wherein the Commission divided the then unrepresented employes into the following voting groups, which, for the purposes of the instant case, may be generally described as follows:

No. 1. Cafeteria workers and teacher aides except those included in the existing unit of para-professionals.

No. 2. Non-certificated technical employes (61 eligibles).

No. 3. Non-certificated professional employes (11 eligibles).

An election was directed in Voting Group No. 1 to determine whether such employes desired to accrete to a bargaining unit of non-professional employes then represented by the Intervenor. An election was directed in Voting Group No. 2 to determine whether a majority of such employes desired to be represented by Intervenor. An election was also directed in Voting Group No. 3 for the purpose of determining (1) whether a majority of such employes desired to be included in a single bargaining unit with the employes in Voting Group No. 2, and (2) whether a majority of such employes desired to be represented by Intervenor. Said elections were conducted on October 10, 1972 with the following results: Employes in Voting Group No. 1 voted to accrete to the existing unit of non-professionals; Employes in Voting Group No. 3 voted not to combine with Voting Group No. 2 to form a single bargaining unit; Employes in Voting Group No. 3, as a separate bargaining unit, voted against representation by the Intervenor; and employes in Voting Group No. 2 also rejected representation by the Intervenor.

The Instant Petition

The instant petition was filed by I.A.T.S.E. Milwaukee Theatrical Stage Employees Union Local 18, AFL-CIO, hereinafter referred to as Petitioner, seeking an election among employes in a unit consisting of all employes who are employed in the television remote control production crew, but excluding supervisors and all other employes. It is uncontroverted that said claimed unit consists of five of the employes whose positions had been included within Voting Group No. 2 for purposes of the October 10, 1972 elections.

1/ The latter unit was and is represented by Local 587, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the "Intervenor" for reasons explained hereinafter.

2/ District #9 Area Board of Vocational, Technical and Adult Education, Dec. No. 11267 (9/72).

Hearing was held with respect to the instant petition on April 4, 1973. At the outset of said hearing, Local 587, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO orally presented a motion for intervention. Neither the Petitioner nor the Municipal Employer objected to the proposed intervention, and based upon its involvement in the prior representation elections involving the employes claimed by the instant petition, said motion for intervention was granted.

Positions of the Parties

The Municipal Employer and the Intervenor both argue that the petition is untimely for the reason that a period of one year has not elapsed since the October 30, 1972 election was conducted involving among others the employes in the bargaining unit claimed appropriate herein. In addition, they argue that the claimed bargaining unit is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2a of the Municipal Employment Relations Act contending that the Commission should observe (1) the general principle that the technical employes of an employer should not be segmented into more than one bargaining unit; and (2) the Legislature's expressed intent to avoid fragmentation of bargaining units whenever possible (Sec. 111.70[4][d]2a).

The Petitioner argues that all of the five employes in the claimed bargaining unit have indicated a desire to constitute a separate unit and to be represented by the Petitioner; that the duties performed by said five employes are substantially different from those performed by other technical employes, who had been included in Voting Group No. 2 in the October 30, 1972 election; that, therefore, the instant five employes lack a community of interest with the remaining technical employes; that the September 9, 1972 Direction of Elections is not, and ought not be deemed a binding determination that Voting Group No. 2, or a combination of Voting Groups Nos. 2 and 3 are the only possible appropriate bargaining units and that if the Commission refused to authorize an election within the claimed unit, the five employes therein would remain without representation, even though they have clearly indicated their desire to be represented by Petitioner.

Discussion

Section 111.70(4)(d)5 of MERA provides, in pertinent part, as follows:

". . .

> The fact that an election has been held shall not prevent the holding of another election among the same group of employes, if it appears to the commission that sufficient reason for another election exists. . . ."

Applying that language to the instant case, the Commission must determine whether there exists sufficient reason for conducting another election at this time with respect to the five positions herein in question. A previous election in a voting group which included said five positions was conducted approximately five months ago. The passage of that short a period of time does not, without more, constitute "sufficient reason for another election." 3/

3/ In administering the Wisconsin Employment Peace Act, which contains language identical to the provision quoted above, the Commission has adopted the policy of ordinarily not conducting more than one election or referendum with respect to given employes in any one year. See, e.g., Adelman Laundry Co., Dec. No. 5799 (8/61). Under that policy the one year does not run from the date of the certification of results but rather from the date of the conduct of the election or referendum. Ibid.

It is apparently the Petitioner's position that the October 30, 1973 elections are immaterial to the timeliness of the instant petition since said elections involved a larger and therefore different voting group. With that proposition, we cannot agree. For if we deemed as "sufficient reason" a union's claim to represent a portion of a group which previously voted against representation only a short time before, municipal employers could be subjected to nearly continuous representational campaigns among unrepresented employes, a condition which could prove disruptive to the efficient functioning of such municipal employers.

We thus conclude that neither the passage of five months since the last election, nor the fact that the election sought by Petitioner would involve a substantially smaller voting group, nor the combination of such factors, constitutes sufficient reason for another election to be conducted at this time. Therefore, we conclude the petition to be untimely filed. Since, during the course of the hearing, an issue arose as to the appropriateness of the unit sought, we deem it advisable to discuss that issue, although we have found the petition to be untimely filed. The record indicates that the claimed unit comprises only a part of the technical employes attached to the Municipal Employer's television operation and further, a substantially smaller portion of all technical employes of the Municipal Employer. We are duty bound to apply the legislature's express intent set forth in MERA to avoid fragmentation of bargaining units whenever possible "by maintaining as few units as practicable in keeping with the size of the total municipal work force". We do not necessarily deem that all otherwise eligible "technical" employes constitute the only "technical" bargaining unit. However, it is apparent from the record that the Petitioner would have the Commission fragment the technical classifications employed in the remote control production crew, and which would exclude other technical employes involved in the Municipal Employer's television operation. The Commission concludes that the unit desired does not constitute an appropriate unit. It appears to the Commission that the unit sought is one that is based on the extent of the Petitioner's organization efforts. The fact that some employes may desire representation does not create an appropriate collective bargaining unit consisting of only those employes. Thus, had the petition been deemed to have been timely filed, the Commission would have dismissed the petition also on the basis that the unit sought was an inappropriate unit.

Dated at Madison, Wisconsin, this 13th day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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