

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

WISCONSIN COUNCIL OF COUNTY & :
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO :

Involving Certain Employees of :

GREEN COUNTY (HOSPITAL AND PLEASANT :
VIEW NURSING HOME) :

Case XXIII
No. 17008 ME-812
Decision No. 12151

Appearances:

Mr. Darold O. Lowe, Representative, appearing on behalf of the
Petitioner.

Mr. Joseph D. Viney, Corporation Council, and Mr. Forrest Fellows,
Administrator, appearing on behalf of the Municipal Employer.
Goldberg, Previant & Uelmen, by Mr. Alan M. Levy, Attorney, and
Mr. Leonard Schoonover, Secretary-Treasurer, appearing on
behalf of the Intervenor.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, requesting that an election to determine a bargaining representative be conducted pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Green County (Hospital and Pleasant View Nursing Home); and hearing on such petition having been conducted on September 7, 1973, at Monroe, Wisconsin, by Kay Hutchison, Hearing Officer, and during the course of said hearing General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having been permitted to intervene on the basis of their status as the present bargaining representative of said employees; and the Commission having reviewed the evidence and the positions of the parties, and being satisfied that a question has arisen concerning representation for certain employees of Green County (Hospital and Pleasant View Nursing Home);

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all Green County employees employed at the Green County Hospital and Pleasant View Nursing Home, excluding supervisory, confidential, craft and professional employees, who were employed by the Municipal Employer on September 7, 1973, unless such employees quit their employment or are terminated for cause prior to the date of the election, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, or by General Drivers, Dairy

Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by neither of said organizations, for the purpose of collective bargaining with the Municipal Employer on questions of wages, hours and conditions of employment.

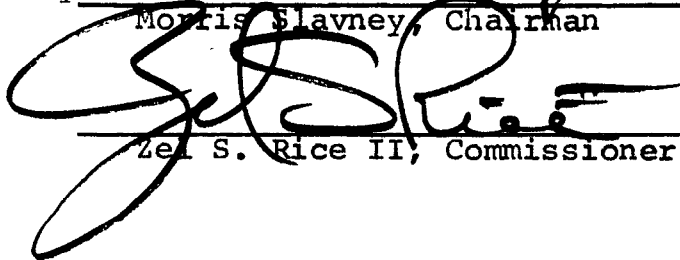
Given under our hands and seal at the City of Madison, Wisconsin, this 24th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed on July 11, 1973, by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, requesting the Commission to conduct an election among all employees employed by Green County (Hospital and Pleasant View Nursing Home), hereinafter referred to as the Municipal Employer, excluding supervisory, professional, confidential, craft and all other employees, to determine whether said employees desire to be represented by the Petitioner for the purposes of collective bargaining.

During the course of the hearing held on September 7, 1973, General Drivers, Dairy Employees and Helpers Local 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, referred to herein as Teamsters, intervened in the proceeding on its claim that it presently represents said employees in a certified collective bargaining unit.

Timeliness

Teamsters contends that the petition is untimely filed. Presently, and on the date of the filing of the petition, a collective bargaining agreement has been in effect between the Municipal Employer and the Teamsters which provides in part as follows:

"This agreement shall go into effect January 1, 1973 and continue until December 31, 1973, and shall be considered automatically renewed from year to year thereafter, unless at least sixty (60) days prior to the end of the effective period, either party shall serve written notice upon the other that it desires to re-negotiate, revise or modify this Agreement. In the event such notice is served, the parties shall operate temporarily under the terms and provisions of this contract until a new contract is entered into, at which time, the new contract shall be retroactive as of the last date of termination of this Agreement. Both parties shall have the right to notify the other that they desire to negotiate the next year's contract commencing September 1."

The Municipal Employer, by letter dated June 29, 1973, notified Teamsters of its desire to commence negotiations for a 1974 collective bargaining agreement. A negotiation session was held between the Municipal Employer and Intervenor on August 20, 1973.

Teamsters argues that September 1 is the effective reopening date of contract. However, the Municipal Employer and Teamsters aver that negotiations have always commenced prior to the September 1 date in an effort to reach an accord prior to the Municipal Employer's adoption of a budget in November. Teamsters reasons that pursuant to the rule established by the Commission in Wauwatosa Board of Education, (8300-A), the petition in the instant proceeding would only be timely filed sixty days prior to September 1, and concludes, that the petition, filed less than sixty days prior to September 1, specifically on July 11, 1973, is untimely filed.

It is the Petitioner's position that the existing agreement specifies two optional dates for reopening the contract, either September 1 or November 1 (sixty days prior to the end of the effective contract period). The Petitioner asserts that the appropriate time for filing the petition herein, is within the sixty day period prior to either of the reopening dates. In that July 11, 1973, falls within the sixty day period preceding the September 1 date, the Petitioner alleges that its petition is timely filed.

The issue to be determined is not whether September 1 or November 1 is the actual reopening date, but rather, whether the timeliness of the petition is based upon filing at least sixty days prior to the mutually acknowledged September 1 date or upon filing within the sixty days preceding September 1.

The Commission has held in Wauwatosa Board of Education and subsequent decisions 1/ that, where there presently exists a valid collective bargaining agreement, which contains provisions for reopening same for the purposes of negotiating terms and conditions of a new agreement, the Commission will only process petitions seeking an election among the employees covered by said agreement if said petitions are filed within (emphasis added) a sixty day period preceding the date established for the reopening of the agreement.

We conclude that the language of the present agreement indicates either September 1 or November 1 as appropriate dates for commencing negotiations. Further, it has been the past practice to actually start negotiations even prior to September 1. It is the continuing policy of this Commission to consider those petitions timely filed, when they are filed within the sixty day period preceding the date contractually specified for the commencement of negotiations. The July 11, 1973 date of filing of the instant petition, falls within the sixty day period preceding the September 1 commencement of negotiations and within the sixty day period preceding the actual date of commencement of negotiations on August 20, 1973. 2/ Therefore, this Commission is satisfied that the Petitioner's instant petition is timely filed, and thereby, that no contract bar is present.

There is no dispute herein with respect to the appropriate collective bargaining unit. The parties stipulated that if the Commission directs an election, the appropriate collective bargaining unit should continue to consist of all Green County employees employed at Green County (Hospital and Pleasant View Nursing Home), excluding supervisory, confidential, craft and professional employees. However, an issue arose during the course of the hearing with regard to the appropriate inclusion or exclusion of twelve positions presently covered by the existing collective bargaining agreement. The Municipal Employer, contrary to the Petitioner and Teamsters, avers that the positions presently held by Bertha Holmes, Ethel Mansheim, Ethel Williams, Mavis Corbett, Peggy Seifert, Arvin Johnson, Russell Sandley, Cindy Powers, Mary Flint, Virginia Mahn, Shirley Hartwick and Linda Sonneburg are either supervisory, confidential or professional and should, thereby, be excluded from the collective bargaining unit.

1/ Rock Co. (9865) 8/70.

2/ The fact that the Municipal Employer on June 29 prematurely stated its intention to commence negotiations on a new agreement does not vitiate the reopening dates in the collective bargaining agreement for the purpose of determining whether the petition herein has been timely filed.

In order to expedite the proceedings, the parties agreed that the ballots of said positions would be challenged if an election were directed in the instant proceeding. In the event that the challenged ballots are of determinative value in the outcome of the election, the Commission will rule upon these positions.

Furthermore, should the election directed herein certify one of said labor organizations as the exclusive collective bargaining representative of the employees, the Municipal Employer will not be precluded from requesting this Commission to clarify the existing collective bargaining unit with regard to the inclusion or exclusion of the twelve challenged positions.

Dated at Madison, Wisconsin, this 24th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas Slavney
Morris Slavney, Chairman

Les S. Rice II
Les S. Rice II, Commissioner