

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF WATERTOWN

Case VII
No. 17067 ME-967
Decision No. 12179

Mayor Carl Kolata, appearing on behalf of the City of Watertown.

Petition having been filed with the Wisconsin Employment Relations Commission by Darold Lowe, District Representative of the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, requesting that an election be conducted among certain employees of the City of Watertown, Wisconsin, for the purpose of determining what, if any, representation such employees desire for the purpose of collective bargaining pursuant to Section 111.70 of the Wisconsin Statutes; and a hearing on such petition having been conducted at Watertown, Wisconsin, on September 10, 1973, Sherwood Malamud, Hearing Officer, being present; and during the course of said hearing Local 695, General Drivers, Dairy Employees and Helpers Union, having been permitted to intervene in the matter on its claim that it presently represents said employees; and the Commission having considered the evidence and arguments of counsel and being satisfied that a question concerning representation has arisen;

NOW, THEREFORE, it is

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction, among all employees of the City of Watertown employed in the Street Department, Parks Department, and Sanitation Department, excluding supervisors and confidential employees, who were employed by the Municipal Employer on September 10, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of

such employes desire to be represented for the purposes of collective bargaining by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or Local 695, General Drivers, Dairy Employees and Helpers, or by no organization.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Zel S. Rice, Jr.
Zel S. Rice, Jr., Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Union which is presently certified to represent the employees of this unit, namely Local 695, General Drivers, Dairy Employees and Helpers Union, hereinafter referred to as Local 695, objected to the conduct of a present election alleging that the petition was not timely filed. The collective bargaining agreement presently in effect between Local 695 and the Municipal Employer contains the following provision:

"ARTICLE XV. - DURATION OF AGREEMENT

Section 1. This Agreement shall be in full force and effect on and after January 1, 1973, and is to continue in full force and effect until December 31, 1973, and thereafter from year to year unless written notice of the intention to reopen the Agreement or any section thereof is given by either party at least one hundred twenty days (120) prior to December 31, 1973, and actual proposal by either party at least ninety (90) days prior to December 31, 1973 and the same date on any succeeding year. Such notice may at the option of the party giving it provide for reopening one or more or all of the Articles of the Agreement.

Section 2. It is agreed by the parties to this Agreement that on or about August 1, 1973, or any year thereafter, provided written notice is given, negotiations shall commence for the succeeding Agreement to become effective as of the following January 1st.

. . ."

The filing clerk, who made up the Commission's file, erroneously noted the date of filing of the petition as August 3, 1973. The "date received stamp" indicates that the petition was filed on July 30, 1973, and therefore it is clear that the petition was, in fact, filed on the latter date.

Local 695 contends that Section 2 of Article XV is determinative to establish the time for filing date for a petition for a new election, specifically August 1, 1973. Local 695 argues that the stated policy of the Commission, as reflected in previous decisions, is to prevent the interruption of the bargaining process by the filing of petitions after bargaining has commenced. The record indicates that on July 17, 1973 Local 695 directed a letter to the Mayor of the Municipal Employer requesting a meeting for the purpose of negotiating a new collective bargaining agreement, and further, that on July 19, 1973, in reply to such letter, the Mayor indicated that the Municipal Employer's Finance Committee would be in the process of suggesting a date for the commencement of the negotiations. Local 695 contends that such correspondence constitutes evidence that negotiations were in progress and therefore the petition was untimely filed.

Section 1 provides that notice of an intention to reopen may be filed by either party "at least 120 days prior to December 1, 1973. . ." By actual count, 120 days prior to December 1, 1973 would be September 2, 1973. However, Section 2 provides that on or about August 1, 1973

"negotiations shall commence for the succeeding agreement. . ." While Section 1 appears to fix the reopening date as September 2, 1973, Section 2 provides that negotiations should commence on August 1, 1973. This appears to be in conflict with Section 2, since the latter Section provides that negotiations should commence on or about August 1, 1973; provided written notice is given.

As the Commission stated in City of Milwaukee 1/ "where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of the employment of employees in an appropriate collective bargaining unit, a petition requesting an election among said employees must be filed within the sixty day period prior to the date reflected in said agreement, resolution or ordinance for commencement of negotiations for changes in wages, hours and working conditions. . ."


The petition was filed on July 30, a date prior to August 1, and therefore we deem the petition to be timely filed within the policy set forth by the Commission in the case cited. The Commission has consistently applied this policy and last expressed it in Waukesha Vocational District. 2/

Pursuant to the instructions contained in the Notice of Hearing, the Employer's representative, Mayor Kolata, brought with him a list of employees in the petitioned unit. Local 695 maintained that the list of employees should not be shown to the petitioner, AFSCME, until the question of timeliness is resolved. The Hearing Officer overruled this objection, and he made the list available to all parties for their review. The Commission requests that a list of employees be brought to the hearing to provide the parties with an opportunity to state their objections to names included or excluded from the employer's list of eligibles. This procedure minimizes the number of post-election objections filed. 3/ The Employer is hereby directed to forward to the Commission, within 14 days following receipt hereof, a list of the employees employed in the bargaining unit, by classification, without any reference to their membership in any labor organization, and at the same time submit copies thereof to both Local 695 and AFSCME.

Dated at Madison, Wisconsin, this 27th day of September, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

1/ City of Milwaukee (8622) 7/68

2/ Waukesha Vocational District (11076) 6/72

3/ St. Vincent's Hospital of Green Bay, Wisconsin (10347) 6/71;
St. Lukes Hospital (7007) 1/65