

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MADISON BUILDING AND CONSTRUCTION
TRADES COUNCIL AND ITS APPROPRIATE
AFFILIATED LOCALS

For Determination of Bargaining
Representatives for Employees of

MADISON GENERAL HOSPITAL

Case V

No. 17600 E-2827

Decision No. 12529

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John A. Lawton, and
Mr. Harold Rohr, Business Representative, for the Petitioner.
Axley, Brynelson, Herrick & Gehl, Attorneys at Law, by Mr. James C.
Herrick; Mr. Leonard Genung, Associate Administrator; and
Mr. Jim White, Acting Personnel Director, for the Employer.
Mr. Ralph Conrad, Business Manager, for Electrical Workers Local
Union 159.
Mr. Jack J. Matrose, Business Representative, for Plumbers Local
Union No. 167.
Mr. James Billings, Business Representative, for Service Employees
International Union, AFL-CIO, Local 150.
Mr. James Ward, Business Representative, for Steamfitters Local
Union No. 394.

ORDER OF DISMISSAL

Madison Building and Construction Trades Council and its Appropriate Affiliated Locals having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to direct an election among all craft employees, craft apprentices and craft helpers in the employ of Madison General Hospital, Madison, Wisconsin; and hearing in the matter having been held at Madison, Wisconsin, on February 15, 1974, in the offices of the Commission, Chairman Morris Slavney being present; and during the hearing Service Employees International Union, AFL-CIO, Local 150 having been permitted to intervene in the matter on its claim that it presently represents the employees involved in the petition; and the Commission having reviewed the evidence and arguments of Counsel, and being satisfied that no question of representation presently exists among the employees covered by the petition, since they are presently included in a collective bargaining unit along with other employees of said Employer, which unit is presently represented by Service Employees International Union, AFL-CIO, Local 150, and that there presently exists a collective bargaining agreement between said employees and Service Employees International Union, AFL-CIO, Local 150, which agreement, by its terms, remains in full force and effect until at least February 13, 1975; and, therefore, the Commission being satisfied that said collective bargaining agreement constitutes a bar to a present determination of bargaining representatives involving employees covered by said petition, and that, therefore, no question of representation presently exists among the employees covered by the petition;

NOW, THEREFORE, it is

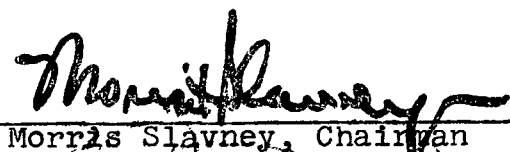
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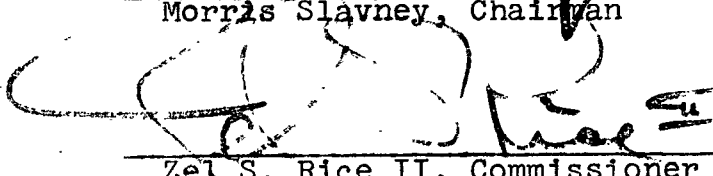
That the petition filed herein be, and the same hereby is, dismissed.

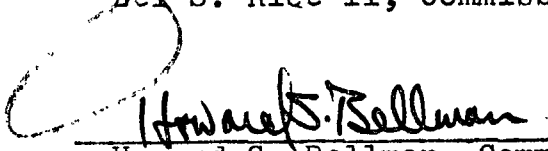
Given under our hands and seal at the
City of Madison, Wisconsin, this 6th
day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

Madison Building and Construction Trades Council and its Appropriate Affiliated Locals, hereinafter referred to as the Petitioner, filed a petition with the Commission on February 15, 1974, requesting the Commission to conduct an election among "all employees performing work as building trades craftsmen including apprentices and trainees in line of direct progression in their respective crafts," who were in the employ of Madison General Hospital, hereinafter referred to as the Employer. During the course of the hearing, Service Employees International Union, AFL-CIO, Local 150, was permitted to intervene in the proceeding on the basis of its claim that it presently represents the employees covered by the petition, and further that there presently exists a collective bargaining agreement between said Intervenor and the Employer covering the following employees in the employ of the Employer:

"regular full-time and regular part-time employees of the Hospital, including kitchen, dining room, linen room, maintenance, housekeeping, boiler room and engineering employees, and nursing assistants; excluding supervisors, office and professional employees, operating room technicians, surgical assistants, student nurses, and other student employees."

The collective bargaining agreement provides that it became effective on February 14, 1972, and shall remain in effect for a period of three years. The agreement further provides that it "shall automatically renew itself from year to year thereafter unless written notice to terminate or amend is given by either party to the other at least 60 days prior to its expiration date or the expiration date of any annual renewal."

The employees covered by the petition are craft employees employed in the Maintenance Department of the Employer and includes the classifications of painter and painter helper, electrician and electrician helper, steamfitter and steamfitter helper, plumber and carpenter. The Petitioner would also include electrician apprentices, plant mechanic apprentices, refrigeration specialist apprentices and piping industrial apprentices in the unit it claims to be appropriate. One electrician, one steamfitter, two plumbers and one carpenter are card-carrying members of their respective craft locals. Four painters, one carpenter, the five apprentices and the two helpers do not carry membership cards in any craft locals.

The collective bargaining relationship between the Intervenor^{1/} and the Employer commenced following an election conducted by the Commission on December 14, 1970, in a unit consisting of all regular full-time and regular part-time employees of the Hospital including kitchen, dining room, linen room, maintenance, housekeeping, boiler room, engineering employees, nurses aides and orderlies, excluding supervisors, office and professional employees and student nurses and other student employees. The description of the bargaining unit has

^{1/} Formerly known as Building Service Employees International Union Local 146.

changed through the years as a result of various changes in the Employer's operation. However, the unit basically covers the same or equivalent positions in existence at the time of the original Certification, except for the elimination of certain services, such as the laundry and elevator operators.

The Maintenance Department employees were involved in the original election and were included in the "overall" unit of the employees of the Employer.

The Employer and the Intervenor contend that the existing collective bargaining agreement between the Employer and the Intervenor constitutes a bar to a present election. The Petitioner contends that the craft employees employed in the Maintenance Department, during the new building program of the Employer, have been working along side of, and with, craft employees employed by outside contractors at a much lower rate of pay than those craft employees employed by said outside contractors. To be more specific, the wage rate paid to the craft employees, apprentices and helpers in the employ of the Employer are not equal to the prevailing craft rates being paid to the craft employees, apprentices and helpers in the employ of the contractors performing construction work at the Employer's premises. The Petitioner contends that such situation constitutes a sufficient change in circumstances to warrant the conduct of an election among the craft employees, apprentices and helpers employed in the Maintenance Department of the Employer.

It is the general policy of the Commission not to direct an election where there presently exists a collective bargaining agreement unless said petition is timely filed. In the instant matter the petition was filed more than one year prior to the expiration date of the agreement and approximately 11 months prior to the date on which the present agreement may be reopened by either party for negotiations on a new agreement. Normally, were this petition to be filed within 60 days prior to the date on which the agreement could be reopened the Commission would have determined the petition to be timely filed and would have directed an election among the craft employees and their apprentices and helpers to determine whether they desired to establish themselves as a separate collective bargaining unit, and what, if any, representation said employees desired for the purposes of collective bargaining pursuant to Sections 111.02(6) and 111.05 of the Wisconsin Employment Peace Act.

With respect to the Petitioner's argument that there presently exists a change in circumstances which would warrant the Commission from departing from its "contract bar" policy, such changed conditions being based on the fact that the Employer's craft employees, apprentices and helpers have been working side by side with craft employees of outside contractors on construction work, the Commission does not deem that such a practice constitutes such a changed circumstance so as to warrant the conduct of an election among the employees petitioned for during the existence of a valid collective bargaining agreement. In only two cases has the Commission found a changed circumstance to exist which warranted a deviation from its contract bar policy. In one case the Commission found that the collective bargaining agreement was no bar to an election when at the time the "agreement was executed only one-third of the expected complement was employed, and at the time the petition for a new election was filed there was a substantial increase in the number of employees." ^{2/} In the other case, the union, which was

^{2/} Kiekhafer Aero Marine Corp. (1070) 8/46

a party to the existing agreement, disclaimed representation and the employer did not contend that the agreement constituted a bar, and, therefore, the Commission directed a new election. 3/ The "change in circumstance" alleged herein is not the type of change which the Commission deems warrants a present election herein.

While the Commission understands the motivation of the Petitioner in seeking to represent the craft employes, their apprentices and helpers, especially when such employes are working along side craft employes who are receiving the prevailing rate, the Commission cannot ignore the existing valid collective bargaining agreement which covers the wages, hours and working conditions of the craft employes, their apprentices and helpers, as well as other employes of the Employer, and, therefore, we are dismissing the petition as being untimely filed.

Dated at Madison, Wisconsin, this 6th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner