

6. That the wages, hours and conditions of employment of the Machinists group were fixed by a series of contracts negotiated between the Municipal Employer and the Milwaukee District Council #48, through and including the year 1974.

7. That on the 8th day of August, 1972, the Machinists Group petitioned the Wisconsin Employment Relations Commission for an election to sever the employes in the Machinists Group from the over-all unit on the grounds that such employes should be recognized as a craft unit.

8. That on August 15, 1972, the Commission issued a notice setting a hearing on the petition for August 30, 1972; that prior to such hearing, on the 24th day of August, 1972, the Municipal Employer filed its written objection to the petition of the Machinists Group on the grounds that the Machinists Group, at the time, was represented by Milwaukee District Council #48 as part of the over-all bargaining unit, and that District Council #48 had submitted its demands in regard to wages, hours and conditions of employment for the year 1973; and that negotiations between Milwaukee County and District Council #48 on those demands began on August 15, 1972 and were in progress at the time of the hearing.

9. That the hearing originally scheduled for August 30, 1972 was adjourned by Order of the Commission dated August 21, 1972 to September 1, 1972; that the hearing scheduled for September 1, 1972 was by Order of the Commission dated August 28, 1972, adjourned to September 20, 1972; and that the hearing scheduled for September 20, 1972 was adjourned by Order of the Commission dated September 13, 1972, to October 6, 1972.

10. That on October 6, 1972, hearing was held at which Gregory Martin, Secretary, appeared on behalf of the Machinists Group; Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson Jr., appeared on behalf of the Intervenor, Milwaukee District Council #48; and Mr. Patrick J. Foster, Assistant Corporation Counsel, appeared on behalf of the Municipal Employer; and that the Commission by decision issued on March 14, 1973 found that the Machinists in question were craft employes whose function and common characteristics distinguished them from others so as to give such group separate problems as to working conditions for which they might desire a separate bargaining agent, and concluded that the Machinists were entitled to an election to determine whether or not a majority of the Machinists wished to sever themselves as a unit from the over-all bargaining unit and seek separate representation.

11. That subsequent to the hearing but prior to the issuance of the Direction of Election and Memorandum Accompanying that Direction, issued by the Wisconsin Employment Relations Commission on March 14, 1973, the Municipal Employer and District Council #48 concluded their negotiations with respect to wages, hours and conditions of employment in the over-all unit for the years 1973 and 1974 and applied the provisions of that agreement to members of the Machinists Group in both such years and is presently continuing to do so.

12. That on July 23, 1973, the Municipal Employer, by Patrick J. Foster, Assistant Corporation Counsel, and the Machinists Group by Mr. Gregory T. Martin, Secretary, and Goldberg, Previant & Uelmen, Attorneys at Law by Mr. Robert Gratz entered into a stipulation modifying the designation of the bargaining unit and recognizing that the Machinists Group, as established as a result of the election in Case L, No. 15909, ME-826, be designated as and represented by District #10, International Association of Machinists & Aerospace Workers, AFL-CIO.

13. That on August 3, 1973, the Wisconsin Employment Relations Commission issued its order incorporating therein the provisions of the stipulation.

14. That on October 26, 1973, representatives of District #10 I.A.M.A.W., AFL-CIO, presented certain demands relating to wages, hours and conditions of employment of the Machinists Group of the Municipal Employer and requested that negotiations thereon be entered into without delay.

15. That on December 11, 1973, the Municipal Employer directed a communication to Goldberg, Previant & Uelmen, Attorneys at Law, to the attention of Robert E. Gratz, regarding the demands of District #10 (Milwaukee County Machinists Group), indicating their view of the facts, that the contract had been finalized between the Municipal Employer and Milwaukee District Council #48 for the years 1973 - 1974, which, at the time it was negotiated, covered members of the Machinists Group and the Municipal Employer was under no obligation to bargain with the Machinists Group, other than in anticipation of the expiration of such contract on December 31, 1974.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That Milwaukee County, by its refusal to negotiate with District #10, International Association of Machinists & Aerospace Workers, AFL-CIO, over the wages, hours and conditions of employment for the year 1974, has refused to bargain collectively with the representative of a majority of its employes in an appropriate collective bargaining unit consisting of Machinists and has committed and is committing a prohibited practice within the meaning of Section 111.70(3)(a)(4), Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the Respondent, Milwaukee County, its officers and agents, shall immediately:

1. Take the following affirmative action which will effectuate the policies of the Municipal Employment Relations Act:
 - a. Upon request, bargain collectively with District #10 International Association of Machinists & Aerospace Workers, AFL-CIO, as the exclusive representative of Machinists employed by Milwaukee County, with respect to wages, hours and conditions of employment for the year 1974.
 - b. Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days from the date of this Order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 7/7th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Examiner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

District #10, International Association of Machinists and Aerospace Workers, AFL-CIO, filed the instant complaint on March 12, 1974. The matter was initially set for hearing on April 18, 1974, but rescheduled and heard on May 1, 1974.

At the May 1, 1974 hearing, the parties stipulated to all of the material facts in the instant proceeding, these being incorporated in the Examiner's Findings of Fact.

In its complaint, District #10, alleges that the Respondent County of Milwaukee refused to bargain with Complainant with respect to wages, hours, and other conditions of employment, and that by such refusal the Municipal Employer has committed a prohibited practice within the meaning of Section 111.70(3)(a)4, which states inter alia:

"(3) PROHIBITED PRACTICES AND THEIR PREVENTION.

(a) It is a prohibited practice for a municipal employer individually or in concert with others:

. . .

(4) To refuse to bargain collectively with a representative of a majority of its employees in an appropriate collective bargaining unit.

. . ."

It is undisputed that on August 8, 1972, the Milwaukee County Machinists Group petitioned the Commission for an election to sever employees in the Machinists Group from the over-all bargaining unit represented by Milwaukee District Council #48, on the grounds that they comprised a craft unit.

Subsequently, on October 6, 1972, the Commission conducted a hearing on the petition and on March 14, 1974, issued a Direction of Election. The Commission concluded that the Machinists, as craft employees, were entitled to an election to determine whether or not a majority of said employees wished to be represented by Milwaukee County Machinists Group or by District Council #48. Following the election, the Commission on June 8, 1973, issued a Certification of Representatives certifying that Milwaukee County Machinists Group had been selected by a majority of eligible employees who voted as the exclusive bargaining representatives for such employees. On August 3, 1973, pursuant to a stipulation filed with the Commission by the parties, the Commission amended its Certification of Representatives to reflect the exclusive bargaining representative as District #10, International Association of Machinists and Aerospace Workers, AFL-CIO.

Thereafter, on October 26, 1973, representatives of District #10 presented their demands relating to wages, hours, conditions of employment to the Respondent County of Milwaukee and requested immediate bargaining. The Respondent declined and District #10 argues that this action constitutes a refusal to bargain in violation of Section 111.70(3)(a)4.

The Respondent contends that it was under no obligation to bargain with District #10, other than in anticipation of the expiration of the current 1973-1974 collective bargaining agreement between the Respondent and Milwaukee District Council #48, because at the time the parties negotiated said two-year agreement the members of the Machinists Group were covered by that agreement and continue to be bound by it.

Respondent appears to rely on the fact that negotiations between Milwaukee County and District Council #48 for a 1973 agreement began on August 15, 1972, and that prior to the Commission's March 14, 1973 Direction of Election in the matter of the petition filed by the Machinists Group, the Respondent and District Council #48 concluded negotiations with respect to wages, hours and conditions of employment for employes in the over-all unit for both 1973 and 1974.

Therefore, the Respondent argues, the provisions of the latter agreement bind the employes of the Machinists Group until its expiration on December 31, 1974. 2/

It is undisputed that the initial steps setting in motion the chain of events leading to the Machinists establishing themselves as a separate craft unit apart from the over-all unit represented by District Council #48 began on August 8, 1972 with the Machinists' petition for election. Thus, it is apparent that the entire period of negotiations, beginning on August 15, 1972 and concluding prior to March 14, 1973, between the Respondent and District Council #48 occurred within the period during which the election petition of the Machinists Group was pending and the question of representation in the process of determination. It was during this period of time when the Petitioner, by its petition, claimed the Machinist employes for Milwaukee County no longer wished to be represented by District Council #48 but rather desired to constitute themselves as a separate craft unit, that Respondent and District Council #48, who were fully aware of said petition, concluded their negotiations and entered into the current 1973-74 collective bargaining agreement.

Subsequently, the Wisconsin Employment Relations Commission conducted an election among the Machinists Group and, based on the results, certified the Machinists Group as the exclusive bargaining representative for said employes.

On August 3, 1973, the Commission amended its Certification of Representatives to reflect the exclusive bargaining representative as District #10. By said certification, Complainant was entitled to bargain immediately, on behalf of the Machinists, on all issues related to wages, hours and conditions of employment for the year 1974 as requested.

Respondent cannot now ignore the rights of the newly certified unit on the strength of its apparently gratuitous inclusion of the Machinists in the overall bargaining unit represented by District Council #48 and argue that said employes must wait until the expiration of the 1973-1974 agreement entered into by Respondent and District Council #48,

2/ Respondent called attention to a letter written by one of the Commissioners of the Wisconsin Employment Relations Commission dated January 15, 1973 to Gregory Martin, Secretary of the Machinists Group, purporting to bear on the issue herein. The record does not reflect the precise issue to which the correspondence addressed itself, but in any event, the Examiner does not find said correspondence relevant nor binding upon the Examiner.

when said agreement was negotiated and finalized during the pendency of the Machinists election petition and during the time the Machinists were exercising their statutory right in determining their exclusive bargaining representative.

Based on the above facts, the Examiner concludes that the Respondent, by refusing to bargain with the Complainant upon demand made on October 23, 1973, violated and continues to violate Section 111.70(3)(a)(4) of the Wisconsin Statutes.

Dated at Madison, Wisconsin this 17th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Examiner