

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
FEDERATION OF INDEPENDENT TEACHERS
Involving Certain Employees of
JOINT SCHOOL DISTRICT #1, VILLAGE
OF HORTONVILLE, ET AL

Case V
No. 17869 ME-1053
Decision No. 12823

Appearances:

Block & Seymour, S.C., Attorneys at Law, by Mr. Jerome H. Block,
appearing for the Petitioner.
Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by
Mr. Jack D. Walker, appearing for the Municipal Employer.
Mr. Wayne Schwartzman, Staff Counsel, Wisconsin Education
Association Council, appearing for the Intervenor.

ORDER OF DISMISSAL

Federation of Independent Teachers having, on April 25, 1974, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the Wisconsin Municipal Employment Relations Act among certain employees of Joint School District #1, Village of Hortonville, et al; and a hearing on such petition having been conducted at Appleton, Wisconsin, on May 14, 1974, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being satisfied that the petition filed herein should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the petition for election filed in the above-entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 25th
day of June, 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

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

The Hortonville Education Association (HEA) and Hortonville Joint School District No. 1 were parties to a collective bargaining agreement for the 1972-1973 school year, wherein the District recognized HEA as the exclusive collective bargaining representative for all classroom teachers, librarians and guidance counselors (hereinafter jointly referred to as teachers) employed by the District, excluding principals, assistant principals, supervisors, administrators and all other employees. The parties were unsuccessful in their negotiations for a successor agreement, and a strike of teachers in the aforesaid bargaining unit commenced on March 18, 1974. Thereafter, the District took action to terminate the employment of those teachers participating in the strike, and it hired replacements for striking teachers.

One teacher who initially participated in the strike returned to work on April 29, 1974. Pursuant to an Order of the County Court for Outagamie County, five additional teachers, who initially participated in the strike, were reinstated at a later date.

On April 25, 1974, the Federation of Independent Teachers (FIT) filed a petition requesting the Commission to conduct an election among the teachers in the employ of the District, wherein it contended that the teachers desired to be represented by FIT, and further that the HEA represented terminated teachers. Said petition was supported by a showing of interest executed by the teachers who were at that time in the employ of the District. Following an administrative determination that the showing of interest was sufficient to warrant the conduct of the hearing, the hearing was conducted, pursuant to a Notice, on May 14, 1974.

A copy of the petition and notice of the hearing in the instant matter were served on the HEA and, at the outset of the hearing, HEA moved to intervene in the proceeding. Such motion was opposed by FIT and the District, contending that the HEA was engaged in an illegal strike. In its brief, the District reasserts its opposition to the intervention by HEA, relying particularly upon the decision of this Commission in City of Milwaukee (6575-B) wherein the Commission announced a policy of refusing to process any fact finding petition filed by a labor organization which is engaged in a strike. The District would equate the instant representation proceeding with a fact finding proceeding, and would have us deny the HEA participation herein.

We do not find the District's argument to be persuasive. Fact finding proceedings are included in the Municipal Employment Relations Act (MERA) as a strike substitute, and there was logic in the denial of access to the substitute to a party already engaged in the activity sought to be substituted for. While also directed ultimately towards the policy of labor peace in municipal employment, election proceedings under MERA are directed to quite different issues than are fact finding proceedings. The Commission has permitted incumbent collective bargaining representatives to intervene in representation proceedings wherein their status as exclusive representative is challenged on a petition filed by employees, the employer or a competing labor organization, so long as the incumbent continues to claim to represent employees in the bargaining unit.

HEA claims to represent some teachers employed in the bargaining unit at the time of the hearing. There has been no finding or order which would disqualify the HEA from representing the teachers of the District for the purposes of collective bargaining. We are mindful of the pending litigation in the Circuit Court for Outagamie County, wherein the HEA claims that the striking teachers have a right to reinstatement to their former positions. We find that HEA has met the requirements for intervention in this proceeding.

The record indicates that the normal size of the bargaining unit involved in this case is approximately 90 teachers. Three refrained from participation in this strike and, of those, two hold undisputed contracts for employment for the 1974-1975 school year, while it was not clear whether the third would be returning next year. The majority, but not all, of the replacement teachers hold individual employment contracts entitling them to notice on or before June 15, 1974, of the District's intentions with respect to employment of those individuals for the 1974-1975 school year. Some of the teachers listed on the District's proposed eligibility list have no contractual relationship whatever concerning their present or future employment. As of the date of the hearing herein, none of the replacement teachers had been offered employment for 1974-1975, and the District held open the possibility that employment might not be offered to all of the replacement teachers. The teachers reinstated, pursuant to the Order of the Court, declined to enter into individual employment contracts in the form proffered to the replacement teachers, claiming that they have valid contracts for 1974-1975, which claim is disputed by the District. A number of the replacement teachers have some alleged defect in their certification, and the eligibility of those individuals for employment during the 1974-1975 school year remains in question.

The District conducted a survey among the teachers working in the District subsequent to the strike, but prior to the hearing, for the purpose of determining whether such teachers (a) were interested in employment for 1974-1975, (b) might be interested in employment for 1974-1975, or (c) were not interested in employment for 1974-1975. The District declined to provide the responses to that survey as a post-hearing exhibit, but the Superintendent of Schools testified that only approximately two-thirds of those polled indicated that they were, or might be, interested in further employment in the District.

The parties have advanced numerous arguments for and against the conduct of a representation election at this time, and several issues have arisen concerning the eligibility of employees to vote in any such election. FIT and the District both favor the early conduct of an election among the teachers, who were actively employed as of the date of the hearing herein, and would exclude the teachers who participated in the strike from the eligibles in the election. HEA contends that no election should be held while the employment status of a number of teachers remains unresolved, and that any election should be deferred pending the resolution of eligibility issues concerning both strikers and those claimed eligible by the FIT and the District.

It is apparent that the identity of those teachers who would be eligible to vote in a present election is unsettled, and that a substantial turnover of teachers is not unlikely among those claimed eligible by FIT and the District.

We are, therefore, dismissing the petition without prejudice to the right of any labor organization, or the District, to refile a new petition at such time as the employment status of a substantial portion of teachers in the employ of the District has been established. Such a petition must be supported by a new showing of interest should it be filed by an organization other than the HEA. 1/

Dated at Madison, Wisconsin, this 25th day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner

1/ Since the Commission has determined to dismiss the petition, it deems it unnecessary to discuss other issues raised during the course of the hearing.