

**BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

**MERTON JOINT SCHOOL DISTRICT NO. 9**

**DIRECTION OF ELECTION**

NOW, THEREFORE, it is

**DIRECTED**

Given under our hands and seal at the  
City of Madison, Wisconsin, this 26th  
day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

**Morris Slavney, Chairman**

~~Zel S. Rice II, Commissioner~~

Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Background:

The Wisconsin Education Association, Arrowhead District Council, hereinafter identified as the Petitioner, is a labor organization having among its membership teachers employed by Richmond, Hartland, Stonebank, Merton, Nashotah, Bark River, North Lake, Lakeside and Swallow Elementary School Districts. At all relevant times the Merton Education Association, hereinafter referred to as MEA, has been the voluntarily recognized exclusive collective bargaining representative of "the non-supervisory certified Degreed Teacher personnel" in the employ of Merton Joint School District No. 9, hereinafter referred to as the District.

At the November 30, 1972 meeting of the MEA membership, 18 of the 20 bargaining unit members voted in favor of three resolutions. The first appointed the Petitioner as the bargaining agent of such bargaining unit. The second declared the unit's intent "to join and participate with other school districts (sic) in the organization known as the Wisconsin Education Association Arrowhead District Council" and declared "their intent to abide by the constitution and by-laws of said Council as adopted." The third dissolved the MEA. On or about December 19, 1972, the Petitioner by letter to the District requested recognition as the bargaining representative of its teachers and notified the District of such resolutions. On January 9, 1973, and at all times thereafter, the District refused to recognize the Petitioner and insisted that it would recognize only the MEA. Thereafter, but prior to February 13, 1973, the members of the Petitioner in the employ of the District held a meeting wherein it authorized the Merton teachers to reorganize and bargain on behalf of themselves with the District. Prior to February 13, 1973, the teachers in the employ of the District formed the MEA as "an affiliate of the Arrowhead District Council, the Wisconsin Education Association and the National Education Association." Such organization sent a letter dated February 13, 1973, to the District giving notice of its formation, and requesting that the District consider "the resolution of December 19, 1972" null and void. There is no evidence that any relevant action was taken December 19, 1972, by the MEA or the Petitioner other than Petitioner's notice to the District of the resolutions dated November 30, 1972.

On or about October 27, 1973, the MEA and the District entered into a collective bargaining agreement in effect August 25, 1973 to August 24, 1974, which agreement provides in relevant part:

"RECOGNITION OF THE MERTON EDUCATION ASSOCIATION

The School Board recognizes the Merton Education Association, an affiliate of the Wisconsin Education Association, as the organization to represent the non-supervisory certified Degreed Teacher personnel of the District in conferences and negotiations with the Board or its representatives, on questions of wages, hours and conditions of employment (as per Statute 111.70) without waiver of the Board's powers and duties with respect to such personnel as otherwise provided by law. Title I, E.E.A., and other similarly funded federal project employees are excluded from this Agreement."

Eighteen of the twenty bargaining unit members thereafter signed a resolution dated November 16, 1973, again appointing the Petitioner as their bargaining agent, and authorizing such agent "to perform all duties of a bargaining agent as allowed under applicable law and decisions by tribunals of competent jurisdiction." Although Petitioner requested recognition in a letter dated November 19, 1973, the District, by letter dated November 30, 1973, refused to recognize Petitioner "until and unless it is certified as such by the Wisconsin Employment Relations Commission." Petition was filed herein on December 6, 1973.

Discussion:

The District contends that the instant petition should not be processed for the reason that the Petitioner seeks certification as the first step to "coordinated bargaining" and because the existing collective bargaining agreement constitutes an agreement between the parties thereto which would not permit reorganization of the MEA. We hold that nothing in the Municipal Employment Relations Act prevents the Petitioner from seeking to represent more than one unit of employees, nor shall we, on such basis, deny the Petitioner any election to which it is otherwise entitled.

Nor does there exist any agreement between the parties not to petition. The agreement contains an ordinary recognition clause and detailed negotiation procedures. There exists no specific agreement by the MEA, or the Wisconsin Education Association, Arrowhead District Council, not to presently reorganize or file representation petitions.

Neither party contends that the present agreement existing between the MEA and the District constitutes a bar to a present election. 1/

The collective bargaining unit covered by the existing contract contains the following provision:

"Title I, E.E.A., and other similarly funded Federal project employees are excluded from this Agreement."

While the present collective bargaining agreement excludes federally funded teaching personnel from the unit, if such federally funded employees are employed, either on a regular full-time or regular part-time basis, they are included in the unit and are eligible to vote in the election. However, since the parties voluntarily excluded them from the existing agreement, their conditions of employment are not presently covered by said agreement.

We have directed an election herein. Should the Petitioner be selected as the representative of the employees in the unit prior to expiration date of the agreement, it is obligated to enforce and administer the substantive provisions thereof, 2/ in accordance with

---

1/ In argument the present agreement provides for a January 15, 1974 re-opening date, and since the petition was timely filed the agreement cannot constitute a bar to a present election.

2/ The timely filing of the petition would result in the expiration of the agreement on August 24, 1974.

6558


the policy expressed in City of Green Bay (6548) 11/63, wherein we stated in relevant part as follows:

"In the event the Board conducts an election during the term of an ordinance or a collective bargaining agreement and the employees select a representative other than the one previously recognized in the ordinance or agreement, the representative so selected normally will be obligated to enforce and administer the substantive provisions therein inuring to the benefit of the employees covered by the ordinance or agreement. Any provision which runs to the benefit of the former bargaining agent normally will be considered extinguished and unenforceable."


Dated at Madison, Wisconsin, this 26th day of June, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slaveney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner