

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
DEBBIE MIELKE	:	Case XV
Involving Certain Employes of	:	No. 18285 ME-1101
CITY OF NEW BERLIN	:	Decision No. 13173-A
	:	
	:	

Appearances:

Ms. Debbie Mielke, appearing on her own behalf.
Hayes and Hayes, Attorneys at Law, by Mr. Tom E. Hayes, appearing on behalf of the Employer.
Mr. Robert W. Lyons, District Representative, appearing on behalf of the Intervenor.

FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER DISMISSING PETITION FOR AN ELECTION

Ms. Debbie Mielke, an employe of the City of New Berlin, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among dispatchers and clerk-dispatchers in the employ of the Police Department of the City of New Berlin to determine whether employes occupying such positions desired to sever themselves from an existing collective bargaining unit consisting of certain employes of the City of New Berlin. Hearing in the matter was held on December 4, 1978 at New Berlin, Sherwood Malamud, Examiner being present, and at the commencement of the hearing District Council 40, AFSCME, AFL-CIO, and its affiliated Local No. 2676, was permitted to intervene on the basis that said labor organization is the certified collective bargaining representative of the employes in the collective bargaining unit involved. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Debbie Mielke, hereinafter referred to as the Petitioner, is a resident of Mukwonago, Wisconsin, and is employed as a dispatcher by the City of New Berlin in its Police Department.
2. That the City of New Berlin, hereinafter referred to as the City, is a municipal employer, having its principal office in the City Hall, New Berlin, Wisconsin.
3. That District Council 40, AFSCME, AFL-CIO and its affiliated Local No. 2676, hereinafter referred to as the Union, is the certified collective bargaining representative of employes of the City in the following appropriate collective bargaining unit:

All regular full-time and all regular part-time office clerical, technical and related occupational positions, professional library employes and craft employes but excluding professional engineers, elected officials, department heads, supervisors, confidential employes, managerial employes, seasonal employes, student co-op employes, temporary employes, and employes employed in previously certified bargaining units.

4. That at the time of the hearing herein the City and the Union were parties to a collective bargaining agreement, covering the employes in the aforementioned bargaining unit, which agreement, by its terms, was effective from January 1, 1977 through December 31, 1978; and that said agreement contained, among its terms, the following provision:

Article 27.02

Reopening Date. This Agreement shall continue in full force beyond December 31, 1978 automatically, from year to year, unless notice is given to the other party in writing of a desire to negotiate modifications of the Agreement. Such notice is to be given prior September 1, 1978 and on September 1, of the succeeding years to effect a termination of the same year.

5. That on August 31, 1978 Robert W. Lyons, District Representative of the Union, mailed a letter to the City, wherein the Union notified the City of the Union's intent to reopen the Agreement for the purpose of negotiating changes in wages, hours and other conditions of employment to become effective January 1, 1978; that on October 9, 1979, Mielke, allegedly on behalf of herself and other dispatchers and clerk-dispatchers employed in the Police Department of the City filed the petition with the Commission initiating the instant proceeding, wherein Mielke requested the Commission to conduct an election among the dispatchers and clerk-dispatchers in the employ of the Police Department of the City to determine whether the occupants of such positions desired to sever themselves from the existing collective bargaining unit represented by the union; that on November 9, 1978 the Union presented its proposals for amendments and additions to be included in a successor of the 1977-1978 collective bargaining agreement; and that thereafter, and at least on the date of the hearing herein, the Union and the City were continuing negotiations on a successor agreement covering the wages, hours and conditions of employes in the aforesaid collective bargaining unit.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That since the petition initiating the instant proceeding was filed after the Union gave timely notice to the City of the Union's intent to open negotiations on an agreement to succeed the 1977-1978 collective bargaining agreement covering wages, hours and conditions of employment of employes of the City, which unit includes, among others, the positions of dispatchers and clerk-dispatchers employed in the Police Department of the City, said petition is deemed untimely filed, and therefore said petition does not timely raise either a question concerning the appropriate unit, and/or a question concerning representation, among any of the employes in the unit involved herein, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

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

ORDER

IT IS HEREBY ORDERED 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 19th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF
LAW AND ORDER DISMISSING PETITION FOR AN ELECTION

DISCUSSION:

In Wauwatosa Board of Education (8300-A) 2/68, aff'd Dane County Circuit Court, 8/68, the Commission stated:

Where there exists a valid collective bargaining agreement which contains provisions for reopening same for the purpose of negotiating terms and conditions of a new agreement, the Commission will only process petitions seeking an election among the employes covered by said agreement if said petitions are filed within a sixty (60) day period preceding the date established for the reopening of the agreement.

The basis for such Commission policy maintains, in our opinion, the stability of the relationship between the existing collective bargaining representative and the municipal employer, without causing an unreasonable deprivation of the rights of employes with respect to representation matters. The petition filed herein was not filed within the sixty-day time period noted above. In fact, it was filed after the commencement of the collective bargaining process leading, hopefully, to a successor collective bargaining agreement between the Union and the City.

We have dismissed the petition solely on the basis that it was untimely filed. It should be noted that during the course of the hearing the Examiner also took evidence with regard to the merits of the petition. Had it been necessary to determine the merits of the petition we would have concluded that a unit consisting of dispatchers and clerk dispatchers in the Police Department would not constitute a separate appropriate unit since such a conclusion would have resulted in undue fragmentation of the existing bargaining unit.

Dated at Madison, Wisconsin this 19th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner