

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DURAND UNIFIED SCHOOLS, JOINT
DISTRICT NO. 1, CITY OF DURAND
ET AL.

Case II
No. 18514 ME-1129
Decision No. 13552-A

Durand Unified Schools, Joint District No. 1, City of Durand, et al., hereinafter referred to as the School District, having on November 20, 1974 filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among certain of its employees to determine whether said employees are represented for the purposes of collective bargaining, by the Durand Education Association, affiliated with the Wisconsin Education Association Council and the National Education Association, hereinafter referred to as the DEA-EA, or the Durand Education Association, affiliated with the Wisconsin Federation of Teachers and the American Federation of Teachers, hereinafter referred to as the DEA-FT; and after hearing and argument, the Commission having issued an Order dismissing said petition on April 23, 1975; 1/ and the DEA-FT having, on May 5, 1975, filed a motion for reconsideration in the matter; 2/ and the Commission, being fully apprised of the facts and arguments of the parties with regard to said motion, not being persuaded that it should alter its original determination in the matter;

NOW, THEREFORE, it is

That the motion for reconsideration in the instant matter be, and the same hereby is, denied, and that Order of Dismissal issued on April 23, 1975 stands.

Given under our hands and seal at the
City of Madison, Wisconsin this 16th
day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

German Torosian, Commissioner

- 1/ Decision No. 13552.

- 2/ The School District, by letter dated May 15, 1975 indicated a desire to join in said motion for reconsideration.

..O. 13552-A.

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION FOR RECONSIDERATION

On April 23, 1975, the Commission dismissed the petition instituting the initial proceeding herein as untimely filed under its Wauwatosa policy. 3/ In doing so, the Commission found that the facts herein did not justify a deviation from its Wauwatosa policy. On May 5, 1975, the DEA-FT, having retained counsel for such purpose, filed a motion for reconsideration based, in part, on the Commission's failure to consider its decision in the Chippewa Falls case. 4/

In support of its argument that the Commission should have exercised its discretion to conduct an election in this case, the DEA-FT contends:

1. That such refusal is contrary to the Commission's decision in the Chippewa Falls case;
2. That the decision is based on an erroneous assumption that a contrary decision would encourage raiding, which assumption is not borne out by the number of cases of such a type handled by the Commission since the Chippewa Falls case;
3. That the finding that there is not a schism in this case is based on a failure to recognize that the dispute herein is an internal dispute; and
4. That the practical effect of the Order dismissing the petition deprives the employees involved of any representation.

The DEA-EA contends that the motion for reconsideration should be denied and contends:

1. That by filing a motion for reconsideration, the DEA-FT is seeking to thwart the right of the employees to be represented by the DEA-EA;
2. That the DEA-FT has not and cannot produce a "showing of interest";
3. That the DEA-EA is not defunct, and that the evidence of minority activity will not support the need for an election at this time; and
4. That the practical affect of the Commission's decision is not to deprive the employees of representation, since the School District has a currently enforceable obligation to bargain with the DEA-EA.

The School District joined in the motion for reconsideration and argues in support thereof that the Commission erroneously assumed that the outcome of a lawsuit now pending in Pepin County Circuit Court will determine its obligations under the agreement even though it is not a party to that lawsuit.

3/ Wauwatosa Board of Education (8300-A) 2/68, aff'd Dane Co. Cir. Ct. 8/68.

4/ Chippewa Falls School Dist. No. 1 (8767) 11/68. None of the parties to this proceeding referred to the Chippewa Falls decision in their arguments, even though it involved affiliates of the NEAC and WFT.

APPROPRIATENESS OF MOTION TO RECONSIDER

The Commission agrees with the DEA-FT that it is appropriate to entertain the motion filed herein in light of its failure to consider the Chippewa Falls decision which, the DEA-FT argues, is in conflict with the Commission's decision in this case.

The question raised by the DEA-EA as to whether the DEA-FT can establish a showing of interest 5/ as contemplated by the Wauwatosa case is irrelevant to this proceeding. Neither the DEA-FT nor the DEA-EA has been asked to provide such a showing, which would be unnecessary under the circumstances. If the Commission were to conclude that its contract bar policy should not be applied herein because of the existence of a schism, it would likewise be inappropriate to apply its showing of interest policy.

Similarly, the fact that the DEA-EA is not defunct is irrelevant to the questions raised herein. While defunctness can constitute a sound and separate basis for refusing to apply the contract bar policy, none of the parties to this proceeding is arguing that the DEA is defunct. On the record herein, the only possible basis for refusing to apply the contract bar policy, is a finding of a schism.

Finally, the DEA-EA's argument that the School District has a currently enforceable obligation to bargain with the DEA-EA is circular in that it assumes the answer to the question which gave rise to the petition herein and the action pending at Pepin County Circuit Court. The threshold issue herein is whether the Commission should allow the Petitioner to attempt to raise that question on the basis of an election petition which is untimely under its Wauwatosa policy.

MERITS OF THE MOTION FOR RECONSIDERATION

In our Chippewa Falls decision, the Commission was faced with the issue as to whether the petition was timely filed. Therein we also stated ". . . we must consider another factor, and that is the apparent schism among most of the officers, members of the Executive Board and members of the negotiating committee, from allegiance to the Association to allegiance to the Union. The teacher representatives, who first attempted to commence negotiations while affiliated with the Association, prior to the actual commencement of negotiations, changed their affiliation to the Union." We did not find a schism to exist among the membership of the incumbent organization. The primary basis for directing an election in Chippewa Falls was premised on the fact that the petition was timely filed in the absence of a reopener date. As we indicated in our Order of Dismissal issued herein, there is a superficial similarity between the instant facts (and the facts in the Chippewa Falls case) and a true schism. As the DEA-FT points out in its brief, the dispute is "internal" in the sense that it arises within the DEA. However, the dispute arises at the local level and stems from a desire on the part of a number of the members of the local to be affiliated with a rival labor organization whose existence preceded the alleged "schism".

The DEA-FT's contention that the decision was based on the Commission's desire to discourage raids misreads the intent of the

5/ By letter dated May 20, 1975, the DEA-FT offered to provide a 30 percent showing of interest provided the DEA-EA were also required to do so.

Commission. The Commission assumes that raids will occur regardless of its policy in this area. The purpose of the Wauwatosa policy is to promote stability during the term of a labor agreement. The Commission has determined that it will not allow a competing labor organization to use the statutory election processes to displace an existing certified or voluntarily recognized bargaining representative during the term of a labor agreement, except where such processes may be timely initiated and the petition is supported by the required showing of interest. To find the existence of a schism and direct an election under the facts existing in the instant case would be contrary to the rationale underlying the Wauwatosa policy.

The DEA-FT's contention that the decision to refuse to direct an election herein, has the "practical effect" of depriving the employees of any representation, like the DEA-EA's contention that the School District is under a currently enforceable duty to bargain with the DEA-EA, invites the Commission to venture an opinion as to the effect that the dispute between the two factions within the DEA has had on the School District's duty to bargain. Primarily, it is inappropriate to determine that issue in an election proceeding. Secondly, as the Commission indicated in its Order of Dismissal herein, the answer to the question of which faction represents the DEA will be forthcoming as part of the Court's decision in a case now pending in Pepin County Circuit Court. The School District's contention that the Court's decision in that regard will not be binding on it because it is not a party to that lawsuit, if correct as a matter of law, means, at most, that it will be free to relitigate that issue if an action is brought before the Commission.

For the above and foregoing reasons, the Commission denies the motion for reconsideration.

Dated at Madison, Wisconsin this 16th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

German Torosian
German Torosian, Commissioner