

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

ADAMS-FRIENDSHIP FEDERATION OF :
TEACHERS, LOCAL 3337, WFT, AFT, AFL-CIO :

Case X
No. 20182 ME-1294
Decision No. 14525-B

Involving Certain Employees in the :
Employ of :

ADAMS-FRIENDSHIP JOINT SCHOOL :
DISTRICT NO. 1 :

Appearances:

Goldberg, Previant and Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of Wisconsin Federation of Teachers.
Mr. Gordon L. Sardeson, Superintendent of Schools, appearing on behalf of Adams-Friendship Joint School District No. 1.
Ms. Priscilla MacDougall, Staff Counsel, appearing on behalf of the Wisconsin Education Association Council.

DIRECTION OF ELECTION

Adams-Friendship Federation of Teachers, Local 3337, WFT, AFT, AFL-CIO, hereinafter referred to as the Petitioner, having on January 27, 1976, 1/ filed a petition with the Wisconsin Employment Relations Commission, herein Commission, requesting the conduct of an election, pursuant to Section 111.70(4) of the Municipal Employment Relations Act, among certain employees of Adams-Friendship Joint School District No. 1, hereinafter referred to as the District, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Friendship, Wisconsin, on March 9 and during the course of the hearing, Adams-Friendship Education Association, hereinafter referred to as the Intervenor, having been permitted to intervene in the matter on the basis that it is the recognized collective bargaining representative of said employees; and the Commission on April 12 having dismissed said petition on the ground that it was untimely filed; and Petitioner thereafter on April 27, having filed a Motion to Reconsider or to Reopen the Hearing, wherein it requested that it be accorded an opportunity to adduce evidence regarding the circumstances surrounding the filing of its petition; and the Commission on May 6, having issued an Order Reopening Hearing; and hearing on said matter having been conducted before Hearing Officer Amedeo Greco, on May 28 at Madison, Wisconsin; and the Commission having reconsidered the matter and now being satisfied that the petition filed herein was timely filed, and further that a question of representation exists among the employees involved;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the opening of school in the collective bargaining unit consisting of all staff members, including classroom teachers, special teachers, guidance counselors, librarians, department heads, teaching principals, part-time teachers, teachers on leave, but excluding all full-time principals, elementary and secondary school coordinator,

1/ All dates hereinafter refer to 1976.

business manager and superintendent, who were employed by Adams-Friendship Joint School District No. 1 on May 28, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employes desire to be represented by Adams-Friendship Federation of Teachers, Local 3337, WFT, AFT, AFL-CIO, or Adams-Friendship Education Association, or whether they seek no representation for collective bargaining purposes with Adams-Friendship Joint School District No. 1.

Given under our hands and seal at the
City of Madison, Wisconsin this *11th*
day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman
Herman Torosian
Herman Torosian, Commissioner
Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The issue presented herein turns on whether there existed "good cause" surrounding the circumstances of the filing of Petitioner's petition which warrants waiver of the Commission's timeliness requirements, with Petitioner contending, and Intervenor denying, that such "good cause" exists. 2/

As noted above, the Commission on April 12, originally dismissed the instant petition because it was untimely filed. Therein the Commission found that, pursuant to its Milwaukee 3/ policy, the petition to be timely filed should have been filed within 60 days prior to and including January 26. Since the petition was not received by the Commission until January 27, one day after this deadline, the Commission held that the petition was untimely. Thereafter, pursuant to its subsequent request, Petitioner was accorded an opportunity at a reconvened hearing to adduce evidence regarding the circumstances surrounding the filing of its petition.

During the reconvened hearing, Petitioner, in essence, maintained that it had originally mailed a petition to the Commission on January 21, and that said petition apparently was misplaced in the mail and never received by the Commission. In this connection, Fred Skarich, Petitioner's Business Representative, testified that he called Petitioner's Milwaukee, Wisconsin, office on the afternoon of January 21 and telephonically directed Office Manager Marietta Hartung to mail to the Commission a representation petition for the above-described unit. Hartung verified that Skarich on that day telephoned and directed her to mail the petition, and that she prepared the petition over Skarich's signature that she personally mailed the petition on January 21, and that, pursuant to her normal practice, she logged that entry in a log book which is maintained in her office.

Skarich testified that he telephoned the Commission's Staff Director, Byron Yaffe, on January 26, and inquired as to whether the petition had been received by the Commission. Skarich was informed that it had not been received. Skarich immediately thereafter telephoned Hartung in Milwaukee and directed her to contact the Commission. After Hartung did so, and learned that the Commission had not received the January 21 petition, she filed another petition by special delivery, along with accompanying cover letter, which were received by the Commission on January 27.

In light of the foregoing, particularly the fact that its January 21, petition was never received by the Commission, Petitioner contends that it did all it could to file a timely petition and that the above events constitute "good cause" within the meaning of ERB 10.08(4) so as to warrant waiver of the Commission's timeliness rule.

The Intervenor, on the other hand, maintains that the petition should not be entertained. It asserts that, in fact, there are no "extenuating circumstances that would require the enormous task of having an election" and that, further, Petitioner "was late in filing and they want to be excused for their lateness."

2/ The District takes no position on this issue.

3/ City of Milwaukee (8622) 7/68.

In considering this matter, it should first be noted that the parties at the original March 8 Commission hearing did not specifically address themselves to the question of whether January 26 constituted the deadline for the filing of the petition. Instead, Petitioner and Intervenor there both claimed that the petition had to be filed by certain other dates, as they both failed to consider the Commission's policy enunciated in City of Milwaukee, supra. Because of this misapplication of the Commission's policy, the parties did not adduce evidence of the District's budgetary deadline. As a result, the Hearing Officer, who conducted the original hearing, on March 25 wrote to the parties after the hearing had been conducted and asked for that information. In such unusual circumstances, where neither party addressed themselves to the precise issue at hand, the Commission finds that Petitioner is not precluded from now adducing evidence on this point.

As to the merits of that issue, ERB rule 10.08(4) provides in pertinent part:

"(4) COMPLETION OF FILING. Papers required by Section 111.70 Wis. Stats., these rules, or order of the Commission, to be filed with the commission or its agent, or with a fact finder, shall be deemed filed upon actual receipt at the place specified for such receipt and must be received before the close of business of the last day of the time allowed for such filing or will not be accepted as timely filed unless good cause be shown warranting waiver, in which case the commission or fact finder, as the case may be, may upon receipt, deem the document filed at the time it was deposited in the United States mail or with a telegraph office."

In light of this language, the crucial question herein is whether Petitioner has established "good cause" so as to warrant waiver of the usual rule that materials filed with the Commission "shall be deemed filed upon actual receipt . . ."

Here, as noted above, both Skarich and Hartung testified that Skarich on January 21, directed Hartung to file a representation petition with the Commission, and Hartung testified, without contradiction, that she personally mailed said petition to the Commission later that day. The log book in Petitioner's Milwaukee offices notes that such a petition was filed with the Commission that day. 4/ Five days after that petition was mailed, Skarich on January 26, telephoned the Commission's office to determine whether the petition had been received by the Commission, and then learned that it had not been received.

4/ Since the log book was unavailable at the hearing, the Hearing Officer, over the Intervenor's objection, directed Petitioner to forward copies of the January 21 and 26 entries to all parties after the conclusion of the hearing. In so doing, the Hearing Officer stated the Intervenor and the District would be accorded an opportunity to examine the original log book, at their convenience, and to object to the receipt of the January 21 and 26 entries if they believed that said entries were suspect. After receiving said copies, the Intervenor objected to their consideration, primarily because the pertinent entries are at the end of the days' listings.

Inasmuch as the representation proceeding herein was not an adversary hearing which required the use of all formal rule of evidence, and as Hartung's testimony to the effect that she mailed a representation petition to the Commission on January 21, was uncontradicted, the Commission has considered the January 21 log book entry only for the limited purpose of corroborating Hartung's testimony.

Skarich thereafter immediately contacted Hartung who, in turn, mailed a second petition that day, which was received by the Commission on January 27.

In such circumstances, where Petitioner's original petition was never received by the Commission, and where Petitioner immediately filed another petition when it learned of that fact, the Commission finds that there exists "good cause" to warrant waiver of the Commission's normal rule that documents "shall be deemed filed upon actual receipt Accordingly, in light of the particular facts of this case, the petition shall be deemed filed at the time it was deposited in the United States mail. Since said petition was mailed on January 26, and as that was the deadline for the filing of such a petition under the Commission's rule in the City of Milwaukee, supra, the Commission concludes that said petition was timely filed. As a result, the Commission has directed that a representation election be concluded among the employees in the petitioned-for unit.

Dated at Madison, Wisconsin this 11th day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Moornstra
Charles D. Moornstra, Commissioner