

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE, Employed in the
MUSEUM BOARD

Case CLXIII
No. 20242 MR(C)-60
Decision No. 14819

Podell and Ugent, Attorneys at Law, by Ms. Nola Hitchcock Cross, appearing on behalf of District Council 48, AFSCME, AFL-CIO, and its appropriate affiliated Local(s).

Mr. James B. Brennan, City Attorney, by Mr. Nicholas M. Sigel, Principal Assistant City Attorney, appearing on behalf of the City of Milwaukee.

Messrs. Milton Spearbraker and H. Michael Madaus, appearing on behalf of Petitioner.

The above named Petitioner having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct a referendum among certain employees of the City of Milwaukee to determine whether the required number of such employees favor the continuation of the fair-share agreement in effect between the City of Milwaukee and their collective bargaining representative, District Council 48, AFSCME, AFL-CIO (and its appropriate affiliated local), and hearing in the matter having been conducted on March 31, 1976, at Milwaukee, Wisconsin, Hearing Officer Marshall L. Gratz appearing on behalf of the Commission, and the Commission having considered the evidence, arguments and briefs submitted by the parties, and being satisfied that the Petitioner is not a labor organization within the meaning of Section 111.70(1)(j) of the Municipal Employment Relations Act, and therefore, has no standing to file a petition, pursuant to Section 111.70(2) of the Municipal Employment Relations Act, requesting a referendum to determine whether the employees in the collective bargaining unit involved desire that the fair share agreement be terminated;

ORDERED

Given under our hands and seal at the
City of Madison, Wisconsin this 2nd
day of August, 1976.

By

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On February 27, 1976, a petition, executed by Milton C. Spearbraker, an individual employed as a printer by the Milwaukee Public Museum, was filed with the Commission, on behalf of "Professional Staff Employees of the Milwaukee Public Museum", requesting the Commission to conduct a referendum in a collective bargaining unit consisting of employees in the employ of the Milwaukee Public Museum to determine whether said employees desire to terminate a fair-share agreement existing between Milwaukee District Council 48, AFSCME, AFL-CIO (and its appropriate affiliated local) and the City of Milwaukee. During the course of the hearing held on March 31, 1976, the parties were given full opportunity to present evidence and argument, and following receipt of the transcript, briefs were filed.

POSITIONS OF THE PARTIES:

AFSCME, contrary to the Petitioner, argues that the petition should be dismissed for the following reasons:

1. Petitioner Spearbraker lacks standing to file the instant petition because "Professional staff employees of Milwaukee Public Museum" is not a labor organization. Spearbraker's group lacks any semblance of an "organization". It amounts to no more than a small and exclusive group of co-workers rapping at coffee breaks such that no meaningful "participation" by employees exists. It has not engaged in discussions with management, and its purposes are so indefinite and obscure as to preclude the conclusion that it intends to do so.
2. Petitioner seeks a vote in an inappropriate unit. The museum unit, although perhaps still technically under separate certification, has been combined by the City and the Union with several other units for contract negotiation and administration purposes. Such combination is consistent with the anti-fragmentation provisions of MERA and with Commission policy as reflected in cases decided under MERA.
3. The petition fails to name Milwaukee County as the municipal employer. Milwaukee County is in the process of taking over ownership and operation of the museum. The transaction has gone far enough to indicate that the County is now responsible for administering the museum employees' contract with the Union. Therefore, the County is an indispensable party to the instant proceeding.
4. Whether the museum employees are treated as a part of the Union's city-wide unit or as part of the Union's county-wide unit to which they are or will be entitled to accrete, the petition lacks a showing of interest from 30% of the members of the combined unit.

In the alternative, the Union, contrary to Petitioner, argues that the Commission, in its discretion, should delay the requested referendum until such time as the uncertainties about the Union's collective bargaining relationship and unit structure are resolved by completion of museum purchase negotiations between the City and the County. 1/

The City also opposed the petition.

1/ At the hearing, AFSCME also argued that the instant petition was time-barred by the results of previous contract ratification votes and by the percentage of employees who have had dues deduction authorizations in effect at certain times. These arguments were apparently abandoned since there is no reference to them in AFSCME's brief. In any event, the Commission finds no merit to those arguments.

DISCUSSION:

Standing of Petitioner:

Only the "municipal employer or a labor organization" may file petition for a fair share continuation referendum. 2/ The Commission has interpreted that right to extend also to "anyone acting on behalf of a municipal employer or a labor organization." 3/ Petitioner's standing, therefore, stands or falls on the question of whether "Professional staff employees of the Milwaukee Public Museum" is a labor organization within the meaning of MERA.

The term "labor organization" is defined in sec. 111.70(1)(j) Wis. Stats., as follows:

" . . . [A]ny employe organization in which employes participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment."

In interpreting that definition, the Commission has stated:

"It is significant to note that the Legislature did not see fit to impose any formal requirements on a labor organization, such as a requirement that it have a constitution or by-laws, or that it admit employes to formal membership, or that it charge employes dues. The only requirement set out, other than the requirement that the organization have the appropriate intent, is that the employes participate; there is no requirement that the nature of the participation be any more formal than that desired by the employes themselves." 4/

The record reveals that, beginning in January, 1976, informal discussions began among groups of museum employes in the instant unit who consider themselves to be professional employes. The discussions generally took place during coffee breaks. While at least one such discussion was publicized by a memorandum circulated among only the approximately twenty-two non-management members of the museum's scientific staff (professionals employed by the museum in scientific endeavors), other meetings have involved additional museum employes, totalling some forty-two, all of whom consider themselves to be professional employes.

A petition showing interest in discontinuing the fair-share provision of the current collective bargaining agreement covering museum employes was passed among the forty-two employes noted above, apparently by Spearbraker. Spearbraker testified, without contradiction, that he was asked by the employes signing said petition to file appropriate papers with the Commission to achieve a vote on continuation of the fair-share provision.

2/ Section 111.70(2) of MERA provides, in pertinent part, as follows:

"Such fair-share agreement shall be subject to the right of the municipal employer or a labor organization to petition the commission to conduct a referendum."

3/ Commission Rule ERB 15.04 of the Wisconsin Administrative Code (1972) provides, in pertinent part, as follows:

"Petition for referendum (1) WHO MAY FILE. A petition to determine the continuation of a fair-share agreement may be filed by a municipal employer or by a labor organization, or by anyone acting on their behalf."

4/ Manitowoc County (Park Lawn Home), Dec. No. 10899 (3/72).

The employees on whose behalf the instant petition was filed, referred to hereinafter as the Spearbraker group, have as their purposes promoting the conduct of a fair-share continuation vote and increasing their influence over determinations of their wages, hours and working conditions. They seek the latter end either by improving the quality of representation of their particular interests by AFSCME, their current certified representative, in its dealings with management or by forming a separate unit and local union affiliated with AFSCME and some other union.

The Spearbraker group has no formal structure whatever. No concept of membership has evolved, and meetings generally have not been formally announced. The precise nature of the discussions had among the above described employees is unclear except that for one meeting the president of AFSCME's museum local was invited to speak concerning what AFSCME had done for the employees in the group assembled. The Spearbraker group has no constitution or by-laws and no officers; nor has it ever approached representatives of management in any regard whatever.

The fact that the Spearbraker group has no formal structure is not determinative as to whether it is a "labor organization". However, the primary purpose of the Spearbraker group, as set forth above, indicates that the employees therein desire to either improve the quality of their present representation or to organize a labor organization either separately affiliated with AFSCME or with another union. The desire to improve the quality of the present representation does not qualify the Spearbraker group as a labor organization. An unfulfilled intent to form a labor organization does not qualify said group as an existing labor organization, and, therefore, we have concluded that the Petitioner is not a labor organization within the meaning of the Act.

We see no reason to consider the remaining issues raised during the course of the hearing, and we have dismissed the petition filed herein.

Dated at Madison, Wisconsin this 2nd 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