

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
ASSOCIATION OF CIVILIAN CORRECTIONAL : Case XLIII  
OFFICERS AND RADIO DISPATCHERS : No. 20869 ME-1371  
Involving Certain Employees of : Decision No. 15136  
WAUKESHA COUNTY (SHERIFF'S DEPT.) :  
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Appearances:

Mr. William P. Kruziki, Correctional Officer, Representative,  
Association of Civilian Correctional Officers and Radio  
Dispatchers, appearing on behalf of the Petitioner.  
Mr. Marshall R. Berkoff, Michael, Best & Friedrich, Attorneys  
at Law, appearing on behalf of the Municipal Employer.  
Mr. Merle Baker, Business Representative, Teamsters Union Local  
No. 695, appearing on behalf of the Intervenor.

DIRECTION OF ELECTION

A petition having been filed with the Wisconsin Employment Relations Commission on September 30, 1976, by Association of Civilian Correctional Officers and Radio Dispatchers requesting that an election to determine a bargaining representative be conducted, pursuant to the Municipal Employment Relations Act, among certain employees of Waukesha County (Sheriff's Department); and a hearing on such petition having been held at Waukesha, Wisconsin, on November 9, 1976, before Dennis P. McGilligan, Hearing Examiner, and during the course of said hearing, Teamsters Union Local No. 695 having been permitted to intervene on the basis that it is the current collective bargaining representative of said employees; and the Commission having reviewed the evidence and the positions of the parties, and being satisfied that a question has arisen concerning representation for certain employees of the Sheriff's Department in the employ of the Municipal Employer;

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 date of this Directive in the collective bargaining unit consisting of all civilian dispatchers and correctional officers of the County of Waukesha Sheriff's Department excluding law enforcement personnel, matrons, clerical employees, professional and technical employees, cadets, supervisors as defined in the ACT and all other employees who were employed by the Municipal Employer on November 9, 1976, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Association of Civilian Correctional Officers and Radio Dispatchers or Teamsters Union Local No. 695 for the purpose of collective bargaining

with the above-named Municipal Employer, on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 23rd  
day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoonstra  
Charles D. Hoonstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

This proceeding was initiated by a petition filed on September 30, 1976 by Association of Civilian Correctional Officers and Radio Dispatchers, hereinafter referred to as the Petitioner, requesting that the Commission conduct an election among certain employees (civilian dispatchers and correctional officers) of the Sheriff's Department, Waukesha County, hereinafter referred to as the Municipal Employer to determine whether said employees desire to be represented by the Petitioner for the purposes of collective bargaining. A hearing was held on November 9, 1976 at Waukesha, Wisconsin, and during the course of the hearing Teamsters Union Local No. 695, hereinafter referred to as the Intervenor, was permitted to intervene. A transcript was issued on November 15, 1976. The Intervenor filed a brief on November 22, 1976. The Municipal Employer responded by letter dated November 24, 1976.

The Intervenor is presently the certified bargaining representative of the employees in question. 1/ In late 1975 the Intervenor and the Municipal Employer commenced negotiations on a collective bargaining agreement to cover the civilian radio dispatchers and correctional officers. On March 3, 1976, the Intervenor petitioned the Commission for fact finding, pursuant to Section 111.70(4)(c)3. 2/ On March 22, 1976, the Intervenor withdrew its Petition for Fact Finding and filed a Petition for Final and Binding Arbitration pursuant to Section 111.77, Wis. Stats. On November 1, 1976 the Commission decided that civilian radio dispatchers and correctional officers employed by the Municipal Employer were not law enforcement personnel within the meaning of Section 111.77 of the Municipal Employment Relations Act and dismissed the Petition for Final and Binding Arbitration. 3/ The Intervenor has sought a review of that determination in the circuit court of Dane County. To date the Intervenor and the Municipal Employer have not agreed upon a collective bargaining agreement.

At the hearing all of the aforementioned parties stipulated to the appropriate bargaining unit and to a list of eligible employees. The parties further stipulated that both the Petitioner and Intervenor would be placed on the ballot. The only issue raised at hearing was whether the appeal by the Intervenor of the aforementioned decision by the Commission not permitting the employees involved herein to use the arbitration procedures specified in Section 111.77, Wisconsin Statutes, constitutes a bar to the processing of the election petition in the instant case.

In its brief the Intervenor points out that the election petition herein was filed because of the assertion by the Petitioner that Local 695 was unable to "do anything" for the people in the unit for the past 11 months. The Intervenor argues that this dissatisfaction arises entirely from the allegedly erroneous decision of the Commission not to

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- 1/ Waukesha County (Sheriff's Department), (13683) 5/75.
  - 2/ Waukesha County (Sheriff's Department), Case XXXV, No. 20247, PF-668.
  - 3/ Waukesha County (Sheriff's Department), (14534-A) 11/76.

permit these employees to use the arbitration procedures specified in state law. The Intervenor states that since a review of that decision dismissing the petition for arbitration is pending, the election petition should be dismissed or held for further action until the Circuit Court has passed on the decision of the Commission.

At the hearing the Municipal Employer took the position that an appeal of the aforementioned decision ought not hold up an election for the unit involved herein. The Municipal Employer points out that the employees have, under Wisconsin law, raised a question of representation, and feels that they are entitled to such a determination. The Municipal Employer notes that final and binding arbitration, if it is available, is the last step of the bargaining process. The Municipal Employer claims that since there is a question whether the Intervenor actually represents the employees the appeal of the aforementioned matter may not be material to the instant case.

The Petitioner simply feels that it has the support of the employees involved and that an immediate election would be in the best interests of the said employees. The Petitioner adds that the Teamsters Union really hasn't "done anything" for the employees over the past eleven months.

The question of whether the Commission ought to defer action on an election petition because of pending litigation is one of administrative policy. Where the outcome of court proceedings could have a dramatic impact on eligibility of individuals to participate in election, the Commission has deferred proceeding on election petition until such time as said court proceedings were determinative of such issue. 4/ However, each case must be evaluated on its merits and in the absence of persuasive reasons the Commission will normally proceed on the election petition. 5/

In the instant case there is no claim that the court case will have any impact on voter eligibility. The Intervenor merely contends that employee dissatisfaction in the aforementioned unit arises entirely from the decision of the Commission not to permit said employees to utilize the procedures for final and binding arbitration provided in state law. The Intervenor evidently feels that a favorable decision in that appeal will influence voter opinion on its behalf.

There is no evidence in the record to support the Intervenor's contention that employee dissatisfaction arises entirely or even in part from the Commission's decision. As a matter of law, final and binding arbitration is available only as the last step of the bargaining process. 6/ Presumably, the Intervenor had many opportunities to reach a collective bargaining agreement with the Municipal Employer from the commencement of negotiations in late 1975 to date. Arbitration, if available, is only one method of reaching accord.

The Petitioner has raised a question concerning representation, and under Wisconsin law is entitled to a timely determination. Based

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4/ Hortonville Joint School District No. 1, (13076-A) 11/74.

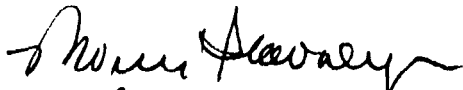

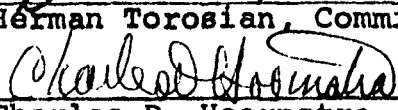
5/ Id.

6/ Because the Intervenor has withdrawn its petition for fact-finding and the Commission has dismissed its petition for arbitration the petition is not deemed untimely under the Commission's decisions in City of Milwaukee (No. 9172 and No. 9477) 7/69 and 1/70, where we held election petitions in abeyance pending the outcome of fact-finding.

on the above, the Commission finds no persuasive reason to refrain from proceeding in the election petition. Therefore, the Commission directs an election to be conducted in the aforementioned unit as noted above.

Dated at Madison, Wisconsin this 3rd day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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