

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXII
No. 21633 ME-1435
Decision No. 15997-A

The Wisconsin Employment Relations Commission heretofore and on December 16, 1977, issued Findings of Fact, Conclusion of Law and Order in the above-entitled matter, wherein it dismissed a petition filed by the above-named Petitioner requesting that an election be conducted among all regular and part-time clerical and secretarial employees excluding confidential, managerial and supervisors in the employ of the above-named Municipal Employer, on the basis that an employe handbook existing between said Municipal Employer and the West Allis-West Milwaukee Education Secretaries' Association constituted a valid existing collective bargaining agreement between said Municipal Employer and said Association, and that "as a result, the instant petition, which was not supported by a showing of interest, has been untimely filed since, as of the date on which the petition herein was filed said agreement, by its terms, would not expire for at least nineteen months". The Commission file in the case indicates that the Commission, on December 16, 1977, in a joint letter, addressed to Mr. Earl L. Gregory, a Staff Representative of the above-named Petitioner, and to Ms. Carolyn Burrell, an attorney at law associated with Foley and Lardner, Milwaukee, Wisconsin, Counsel for the Municipal Employer, enclosed a copy of its decision in the matter. Thereafter, Gregory, on behalf of the Petitioner, telephonically advised the Commission on January 9, 1978 that he had not received a copy of the Commission's decision. On January 10, 1978, the Commission mailed a copy of its decision to Gregory. Thereafter, in the letter addressed to the Commission, dated January 11, 1978, Gregory acknowledged receipt of the Commission's decision on the same date, and therein indicated that he was appealing the Commission's decision and was requesting a rehearing in the matter, taking issue with the Commission's determination that the petition was untimely filed and not supported by a showing of interest, and in the latter regard Gregory alleged that the showing of interest was not raised as an issue during the course of the original hearing. The Commission, by letter dated January 12, 1978, advised Gregory and counsel for the Municipal Employer that Gregory would be required to submit an affidavit to the effect that he had not received a copy of the Commission's decision until January 11, 1978, and further, therein the Commission provided counsel for the Municipal Employer until January 28, 1978, to file a response to Gregory's motion. Thereafter, and on January 19, 1978, the Commission received an affidavit executed by Gregory, wherein he alleged that he had not received the Commission's decision until January 11, 1978, and therein further took exception to the Commission's determination that the policy handbook previously described above constituted a valid bar to the conduct of an election, and further, that during the course of the hearing Gregory had in his possession authorization cards executed by

a sufficient number of employees to meet any showing of interest requirement which the Commission may have imposed, and finally, in said affidavit Gregory requested that the document constitute a petition for unit clarification, or that a rehearing be held at an early date. By letter dated January 17, 1978, counsel for the Municipal Employer filed a response with the Commission opposing Gregory's request for rehearing, as well as the request for unit clarification; and the Commission, having considered the matter pursuant to Section 227.12 of the Wisconsin Statutes, makes and issues the following

ORDER

1. That the Conclusion of Law and Memorandum Accompanying Findings of Fact, Conclusion of Law and Order Dismissing Petition previously issued herein are hereby deemed amended by deleting all references to the Petitioner's alleged failure to submit a showing of interest.

2. That the Petitioner's request that the matter be reheard be, and the same hereby is, denied.

3. That the request to commence a proceeding on a unit clarification is hereby denied on the basis that the affidavit filed by the Petitioner is insufficient to warrant the initiation of such a proceeding.

Given under our hands and seal at the
City of Madison, Wisconsin, this 26th
day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hohnstra
Charles D. Hohnstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER

Petitioner argues that it did not receive a copy of the Commission's December 16, 1977 decision until January 11, 1978, and that, as a result, its January 12, 1978 request for rehearing was timely filed. As to the request itself, Petitioner argues that it was prepared to offer a showing of interest at the hearing and that the Commission erred in finding no such showing existed. Additionally, Petitioner argues that the employees herein never ratified the agreement reached between the District and the Association. Furthermore, Petitioner requests that the Commission clarify the bargaining unit herein.

The District, in turn, asserts that the request for rehearing is untimely and that, further, there is no basis to Petitioner's request for rehearing and its request for unit clarification.

As to the question of timeliness, the Commission is satisfied that Petitioner's request has been timely filed, as it was filed within twenty (20) days after Petitioner was served with a copy of the decision herein. Section 227.12 of the Wisconsin Statutes provides that a party can file a motion for rehearing within twenty (20) days after service of the order. Since Petitioner has averred that it did not receive a copy of our decision until after a second copy was mailed January 10, 1978, it follows that the time for filing the instant request did not commence until after it was served with the decision. Accordingly, as the request has been filed within the twenty (20) days period, it has been timely filed.

Turning to the merits of said request, the Commission found that the original petition was untimely filed by virtue of the current agreement between the District and the Association. Accordingly, it is immaterial as to whether a showing of interest has been tendered. As a result, the Commission is hereby deleting all references to said showing in its decision. 1/

The Commission also finds no merit to Petitioner's claim that employees did not approve of the ultimate agreement reached as the record indicates that employees did discuss parts of the agreement among themselves and subsequently approved parts of the agreement.

The Petitioner has also requested that the Commission conduct a unit clarification proceeding to determine the status of the employees herein. Such a request is nebulous, to say the least, and we suggest that the Petitioner file a formal petition requesting a unit clarification and setting forth in detail therein the clarification which the Petitioner desires the Commission to consider.

Dated at Madison, Wisconsin, this 26th day of January, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

1/ The Commission's reason for including reference to the showing of interest requirement was merely to put the Petitioner on notice that such a showing will be required in the event it desires to refile its petition later.