

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF KENOSHA

Case XLI  
No. 21505 ME-1434  
Decision No. 16278

Mr. Richard W. Abelson, District Representative, appearing on behalf of the Intervenor, Local 71, City of Kenosha, AFSCME, Council 40, AFL-CIO.

Kenosha Fire Department Public Safety Dispatchers, hereinafter referred to as the Petitioners, having on March 23, 1977 filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, in a unit consisting of Public Safety Dispatchers in the employ of the City of Kenosha (Fire Department) to determine whether said employees desire to be represented by Petitioners for the purposes of collective bargaining; and hearing in the matter having been held on May 18, 1977 at Kenosha, Wisconsin, Duane McCrary, Examiner, being present; and Local 71, AFSCME, Council 40, AFL-CIO, having been permitted to intervene on its claim that it presently represents said employees in an over-all city-wide unit; and the Commission having considered the evidence and being fully advised in the premises, and being satisfied that the Public Safety Dispatchers do not constitute an appropriate collective bargaining unit;

NOW, THEREFORE, it is

That the petition filed in the instant matter be, and the same hereby is, dismissed.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 30th  
day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Chairman

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER DISMISSING PETITION

Public Safety Dispatchers in the employ of the City of Kenosha have, since at least July 1, 1976, been included in a city-wide collective bargaining unit represented by AFSCME, the Intervenor herein. The Petitioners, who are all employed as Public Safety Dispatchers, filed the petition initiating the instant proceeding, seeking to establish themselves as a separate bargaining unit and also seeking an election to determine their bargaining representative, if any. The City contends that the Public Safety Dispatchers should constitute a separate appropriate unit inasmuch as there is a significant difference in community of interest between said positions and those remaining employees in the existing city-wide unit and that therefore the Public Safety Dispatchers properly constitute an appropriate unit and the incumbents should be permitted to determine their bargaining representative. AFSCME asserts (1) that the petition was untimely filed, and (2) that the Public Safety Dispatchers are most properly included in the existing city-wide unit. AFSCME and the City, at all times material herein, were parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees in the city-wide unit. Said agreement contained the following provisions material herein:

"ARTICLE XXXIV - TERMINATION - NON-ECONOMIC ITEM RE-OPENER

34.01 This Agreement shall be in full force and effect from January 1, 1976, to and including December 31, 1977, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least one hundred twenty (120) days prior to the date of expiration.

34.02 The parties agree that this Agreement may be re-opened solely for the purpose of negotiations on non-economic items. Items which involve wages, hours of work, or any other items or benefits which are traditionally considered to be economic shall not be re-opened, provided, however, that economic items involving reclassification of existing job positions are subject to such re-opener. In the event one of the parties desires such re-opener, such party shall notify the other of its desires in writing with a complete list of the specific revisions requested on or before August 1, 1976. . . ."

Under the above provisions if either party desired to cancel or terminate the agreement such notice of cancellation or termination was required to be served on the other party on approximately September 2, 1977. On the other hand, if either party desired to re-open the agreement on non-economic items, such notice of re-opener would have had to be served on the other party on or before August 1, 1976. The Commission's policy with respect to timely filing of petitions for election where there presently exists a collective bargaining representative is set forth as follows:

"Where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of employment of employees in an appropriate bargaining unit, a petition requesting an election among said employees must be filed within the 60-day period

prior to the date reflected in said agreement, resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employees in the unit covered thereby unless the period of negotiations as set forth therein extends beyond six months prior to the budgetary deadline date of the municipal employer involved. In the latter unit, petitions for elections will be entertained by the Commission if they are filed in good faith within sixty days prior to such six month period." 1/

In the instant proceeding the petition was filed on March 23, 1977. Here, the petition was, technically not timely because it was filed too early. It is our practice in such cases to have the Examiner conducting the hearing point out at the hearing to the party raising that issue, in circumstances such as these, that the practical effect thereof would be to require, at most, a resubmission of the petition after passage of an appropriate short period of time (e.g., here approximately twelve days after the May 18 hearing). Since such a dismissal on the timeliness ground, followed by a refile and additional convening of a hearing are often inconvenient to all concerned, the defense is often forgone following such an Examiner statement. No such approach was followed herein, however, so that technically, the petition was filed too early. Nevertheless, we do not find it necessary to rest our dismissal of the petition on that ground in view of the fact that evidence with respect to all issues was adduced during the hearing concerning the merits of the petition set forth below.

The Public Safety Dispatchers are non-uniformed personnel employed by the Fire Department of the City. The official announcement for the position sets forth duties and responsibilities thereof as follows:

"Serves as radio dispatcher receiving and transmitting telephone and radio messages to and from Fire and/or Police units. Maintains written log of all incoming and outgoing calls and dispatches. Assists in the coordination of Police and Fire functions by controlling the movement of department vehicles and manpower. Keeps Police patrols advised on developments and the proper approach in handling of crimes and criminals when such guidance is necessary. Operates teletype, typewriter, and various electronic equipment."

Both the Petitioners and the City contend that the specialized training and duties of the positions involved warrants their establishment as a bargaining unit, separate and apart from other City employees. They argue that duties, skills, working conditions, supervision, location and labor policy affecting said positions are sufficiently different from other City employees. The City emphasizes that the Public Safety Dispatchers have, in effect, duties which affect the safety of the citizens of the community, and thus work under certain strains which are not present in other positions in the existing unit.

On the other hand AFSCME contends that the separate unit desired here would establish an excessive fragmentation of City units. It also argues that, while the Public Safety Dispatchers require prior training and special skills, other employees in the existing unit also require training and special skills.

A review of the record indicates that there are a number of positions in the existing city-wide unit which require some training and special skills, and in addition, involve the safety of the citizens of the community. Among the positions included in the existing unit are police clerk-matrons, pumping plant operator, filtration plant operator, sewage plant operator and sanitarians. The Public Safety Dispatchers have been in the city-wide bargaining unit covered

by the existing collective bargaining unit and as a result their conditions of employment are similar to those of other employees in the unit, as well as are their benefits, as reflected in the agreement, and thus they have a community of interest with the other employees in the bargaining unit.

Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act requires that the Commission "shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. . ." In view of the present structure of the existing city-wide unit, the size of the unit sought herein, and the community of interest which the Public Safety Dispatchers share with the other employees in the existing unit, we conclude that the unit sought is inappropriate 2/ and therefore we are today dismissing the petition.

Dated at Madison, Wisconsin, this 30th day of March, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

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2/ City of Greenfield (14529) 4/76.