

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GREEN BAY PUBLIC WORKS DEPARTMENT
EMPLOYEES ASSOCIATION

:
:
: Case LXV
: No. 22801 ME-1523
: Decision No. 16399
:
:
:

Involving Certain Employees of
CITY OF GREEN BAY (DEPARTMENT OF
PUBLIC WORKS)

Appearances:

Mr. Thomas J. Parins, Attorney at Law, appearing on behalf of the
Petitioner.
Mr. Donald VanderKelen, City Negotiator, appearing on behalf of
the Municipal Employer.
Mr. Glen Tarkowski, Business Representative, appearing on behalf
of Intervenor Teamsters Local No. 75.
Mr. James Miller, Business Representative, appearing on behalf
of Intervenor Wisconsin Council of County and Municipal
Employees, Council 40, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSION OF LAW AND DIRECTION OF ELECTION

Green Bay Public Works Department Employees Association, herein-
after referred to as the Association, having, on March 6, 1978, filed
a petition with the Wisconsin Employment Relations Commission request-
ing the Commission to conduct an election pursuant to Section 111.70
(4)(d) of the Municipal Employment Relations Act (MERA), among certain
employees employed in the Green Bay Department of Public Works for the
purpose of determining whether said employees desire to be represented
by the Association for purposes of collective bargaining; and a hear-
ing on said petition having been held at Green Bay, Wisconsin, on
April 27, 1978, before Stephen Pieroni, a member of the Commission's
staff; and during the course of the hearing Teamsters Local No. 75
having been permitted to intervene in the proceeding on its claim that
it is the certified collective bargaining representative for the employees
involved herein; and Wisconsin Council of County and Municipal Employees,
Council 40, AFSCME, AFL-CIO, having been permitted to intervene in the
proceeding on the basis of its providing the requisite showing of inter-
est; and the Commission, having considered the evidence and arguments
of the parties, issues the following Findings of Fact, Conclusion of
Law and Direction of Election.

FINDINGS OF FACT

1. That Green Bay Public Works Department Employees Association, hereinafter referred to as the Association, is a labor organization and has its offices at 415 South Washington Street, Green Bay, Wisconsin, and its principle representative is Thomas J. Parins.
2. That the City of Green Bay, hereinafter referred to as the Municipal Employer, has its offices at 100 North Jefferson Street, Green Bay, Wisconsin and its principle representative for labor negotiations is Donald VanderKelen.
3. That Teamsters Local No. 75, hereinafter referred to as Teamsters, is a labor organization and has its offices at 1546 Main Street, Green Bay, Wisconsin.

4. That the Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, hereinafter referred to as Council 40, is a labor organization and has its offices at 1425 Western Avenue, Green Bay, Wisconsin.

5. That the Municipal Employer and the Teamsters were parties to a collective bargaining agreement effective January 1, 1977, and continuing in full force and effect until December 31, 1977, covering wages, hours and working conditions of all employees of the Municipal Employer's Public Works Department, employed in the Street Division, Sanitation Division and Sewer Division, excluding seasonal, supervisory, managerial, confidential, office and clerical employees; and that said agreement contained the following provision material herein:

"ARTICLE 26. DURATION OF AGREEMENT

This Agreement shall become effective as of January 1, 1977 and shall remain in force and effect to and including December 31, 1977 and shall renew itself for additional one (1) year periods until and unless either party, prior to June 1, before the expiration of this Agreement and the expiration of any of its renewal dates, notify the other party in writing that it desires to alter or amend the same at the end of the contract. . . ."

6. That prior to June 1, 1977 Teamsters notified the Municipal Employer of its intent to reopen negotiations for a successor agreement covering the employees in the bargaining unit involved; that the parties met in at least one negotiation session prior to December 31, 1977, and thereafter the parties met in 1978 on the following dates for the purposes noted: January 19 - contract negotiations; January 30 and February 13 - discussion of dental insurance; and March 6 - contract negotiations and discussion of grievances; and that the Teamsters and the Municipal Employer orally extended the 1977 collective bargaining agreement for an indefinite period after December 31, 1978.

7. That on March 6, 1978, the Green Bay Public Works Department Employees Association, hereinafter referred to as the Association, filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among the employees in the unit involved herein "in order that the Association be certified" as the bargaining unit representative; that hearing on such petition was conducted at Green Bay, Wisconsin, on April 27, 1978, during the course of which Teamsters indicated a desire to be placed on the ballot should an election be conducted by the Commission; and that also a similar request was made by the Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, said organization having submitted an adequate showing of interest for such intervention.

8. That following the filing of the petition by the Association the Municipal Employer did not engage in any further negotiations; that neither the Municipal Employer nor the Teamsters petitioned the Commission prior to December 31, 1977 for factfinding, and that, on January 1, 1978, or thereafter neither the Municipal Employer nor the Teamsters petitioned the Commission to initiate Mediation-Arbitration with respect to the unit involved herein; and that the Municipal Employer and the Teamsters did not reach an agreement on the terms of a 1978 collective bargaining agreement, covering the employees involved herein, prior to the filing of the election petition by the Association.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That a question of representation exists among all employees in the City of Green Bay Public Works Department employed in the Street

Division, Sanitation Division and Sewer Division, excluding seasonal, supervisory, managerial, confidential, office and clerical employees within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty days of the date of this directive in the appropriate collective bargaining unit consisting of all employees in the City of Green Bay Public Works Department in the Street Division, Sanitation Division and Sewer Division, excluding seasonal, supervisory, managerial, confidential, office and clerical employees, who were employed by the Municipal Employer on April 27, 1978, 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 Green Bay Public Works Department Employees Association, or Teamsters Local No. 75, or Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Green Bay with respect to wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 2nd
day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND DIRECTION OF ELECTION

During the course of the hearing all the parties stipulated that the appropriate collective bargaining unit should consist of all employees employed in the City of Green Bay Public Works Department in the Street Division, Sanitation Division and Sewer Division, excluding seasonal, supervisory, managerial, confidential, office and clerical employees. The parties also stipulated to the list of eligible voters if an election were directed.


The only issue in dispute is whether the Association's petition was timely filed. The Association's petition for election was received by the Commission on March 6, 1978. It is clear that the 1977 collective bargaining agreement between the Teamsters and the Municipal Employer expired on December 31, 1977. The Municipal Employer and the Teamsters offered unchallenged testimony that the terms of the 1977 collective bargaining agreement were extended for an indefinite period and that grievances were processed under that agreement after its expiration date. On the basis of that evidence, the Municipal Employer and the Teamsters raised the issue of a contract bar to the instant petition. The Commission has previously ruled that the indefinite extension of a collective bargaining agreement cannot, in and of itself, constitute a bar to a petition for representation election. 1/

We, therefore, conclude that the petition herein is timely filed and we have consequently directed an election.

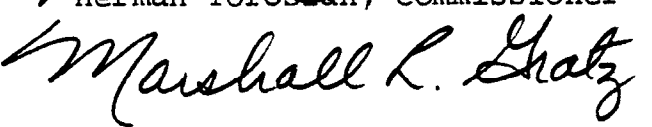
Dated at Madison, Wisconsin this 2nd day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

1/ LaCrosse County (12931) 8/74; Appleton School District No. 10
(9045) 5/69.