

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

EAU CLAIRE ASSOCIATION OF EDUCATORS

For An Election Among Certain
Employes of

EAU CLAIRE AREA SCHOOL DISTRICT

Case XV
No. 25826 ME-1803
Decision No. 17644-B

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Bruce M. Davey,
appearing on behalf of the Association.

Habush, Habush and Davis, S.C., by Mr. John S. Williamson,
Jr., appearing on behalf of the Federation.

ORDER DISMISSING
PETITION FOR AMENDMENT OF CERTIFICATION

The Wisconsin Employment Relations Commission, having on March 12, 1980 conducted a hearing on its order to show cause in the above entitled proceeding; 1/ and the Eau Claire Association of Educators, hereinafter referred to as the Association, and the Eau Claire Federation of Teachers, Local 696, hereinafter referred to as the Federation, having appeared and stated their positions and arguments in support of and in opposition to said motion; 2/ and the Commission having considered the positions and arguments of the parties and, after due deliberations, entered a bench ruling dismissing the Association's Petition for Amendment of Certification and indicated its intent to issue a written order to that effect

NOW THEREFORE it is

ORDERED

That the Petition for Amendment of Certification filed by the Eau Claire Association of Educators be and the same hereby is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

1/ Decision No. 17644, March 11, 1980.

2/ The Eau Claire Area School District had been telephonically notified of the hearing but elected not to appear and take a position in the matter.

MEMORANDUM ACCOMPANYING
ORDER DISMISSING
PETITION FOR AMENDMENT OF CERTIFICATION

As noted in the preface to our order to show cause, the Association filed a Petition for Election on February 22, 1980 which was supported by the requisite 30% showing of interest and which appeared on its face to be timely filed. On the same date the Association filed a Petition for Amendment of Certification wherein it requested that the Commission amend its certification issued on June 16, 1971, 3/ wherein it certified the Federation as the representative of the certified personnel employed by the Eau Claire Board of Education, hereinafter referred to as the Board, to reflect that the Association is the certified representative of the employes in the bargaining unit in question. It is the Association's claim that the Federation's membership has voted to become the Association. The question of the legal efficacy of that vote in terms of the contractual and property rights of the members of the labor organization is currently pending in the Eau Claire County Circuit Court. 4/ Our order to show cause directed the Association to demonstrate why its Petition for Amendment of Certification should not be dismissed in view of the fact that it had also filed, a Petition for Election which was supported by the requisite showing of interest and which appeared to be timely filed.

ASSOCIATION'S POSITION:

At the outset of the hearing the Association stated its position as follows:

1. The Commission should proceed to set a hearing on its election petition and expedite the election and that the Association would agree to abide by the results.
2. After the results of the election have been certified the Association would agree to withdraw its Petition for Amendment of Certification.
3. In the event the Federation still desires a determination of the remaining questions raised by the Petition for Amendment of Certification, particularly with regard to the proper disposition of the assets of the organization, then the Commission should proceed to a decision on that petition to determine whether prior to the election the Association in fact succeeded the Federation.

In support of its position the Association argues that it is not attempting to "interfere with" or "make impossible" a fair election as contended by the Federation and alleges and offers to prove in response that: (1) the internal procedures followed by the executive board in disaffiliating from the Federation and becoming the Association were democratic and representative of the employes in the unit; and (2) the Federation has circulated literature

3/ Decision No. 10313.

4/ Mary Mickel et al. v. Noel Ness et al. Case No. 80 CV 97. On February 28, 1980 the court, Hon. Thomas H. Barland, deferred the question of the proper certification of representative to the Commission and retained jurisdiction over the remaining issues in that case.

to employes, which literature misrepresents the Association's position with regard to its desire for a quick election.

In response to a question posed by the Chairman as to what jurisdiction the Commission would have for issuing an order amending its June 16, 1971 certification, after having issued a new Certification based on the results of an election, the Association alleged that disputes over its representative status might arise, and had in fact arisen, during the period since the inception of its alleged successor status and prior to the issuance of a new certification based on an election.

FEDERATION'S POSITION:

The Federation contends that, by seeking an election while it is simultaneously holding itself out as a successor labor organization, the Association is seeking to interfere with the election process and make it impossible to conduct a fair election. In support of this claim the Federation contends that the Association had precluded a prompt determination of its alleged successor status by filing the Petition for Amendment of Certification and asking the Court to defer to the jurisdiction of the Commission. If the Commission adopts the procedure urged by the Association, the Federation contends that there will be no reason for a Commission amendment of the certification since it will have already been "amended," and any question as to who should have been treated as the certified representative in the interim will be moot.

For these reasons the Federation urges the Commission to dismiss the Petition for Amendment of Certification and proceed to an election. Further, in proceeding to an election, the Federation argues that the Association should be required to declare whether they are an "outside" union seeking a change of representation or whether they desire to be treated as the incumbent union, so that the Federation can challenge the latter claim in the appropriate forum. According to the Federation there are no available precedents in labor law wherein a labor organization has been permitted to seek an election while simultaneously claiming to be the lawful representative of the affected employes by virtue of alleged successorship status.

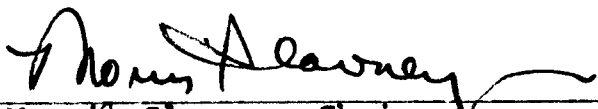
DISCUSSION:


At the outset we note our agreement with the Federation's argument that the Association's position herein is unique in labor law and cannot be sustained. If the Commission were to conduct an election and certify the results prior to taking any action on the Petition for Amendment of Certification, there would remain no issue over which the Commission may properly assert its jurisdiction. The Commission might in an approximate case have the authority to resolve issues such as those raised by the proceedings in Circuit Court as an adjunct of its authority to determine whether a prohibited practice has been committed involving an existing collective bargaining agreement, especially in the case of a labor organization claiming to be a successor. Absent such a proceeding, it has no statutory jurisdiction to interpret the constitution and bylaws of labor organizations.


In the Commission's view the "issue of certification" raised by the two petitions herein is best resolved by proceeding on the election petition and dismissing the Petition for Amendment of Certification. Both parties assert their desire for a quick resolution of the question of representation that has arisen. The Commission has received a timely 6/ petition for an election, supported by an adequate showing of interest. Based on that petition and the events which precipitated the court proceedings, and the filing of the Petition for Amendment of Certification herein, there can be little doubt that there presently exists a question concerning representation, which, in our view, can best be resolved through the election processes of the Commission.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of March, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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6/ At the hearing the Federation agreed that it would not raise any arguments that the petition was untimely, notwithstanding its claim that it could have done so. The parties have executed a stipulation for an election.