

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GENERAL TEAMSTERS UNION LOCAL 662
Involving Certain Employees of
DUNN COUNTY (HIGHWAY DEPARTMENT)

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: Case XXVII
: No. 26020 ME-7824
: Decision No. 17861
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Appearances:

Mr. Merle Baker, Business Agent, for General Teamsters Union
Local 662.
Mr. William Schembera, Corporation Counsel, for Dunn County.
Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow,
for AFSCME Local 727.

FINDINGS OF FACT, CONCLUSION OF LAW
AND DIRECTION OF ELECTION

General Teamsters Union Local 662 having filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Dunn County Highway Department for the purpose of determining whether said employees wished to be represented by said Union for the purposes of collective bargaining; and hearing having been held in the matter at Menomonie, Wisconsin, on May 6, 1980, before Examiner Peter C. Davis; and during said hearing AFSCME Local 727 having been permitted to intervene based on its status as the current certified collective bargaining representative of the employees involved, and the Commission having considered the evidence, and the briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That General Teamsters Union Local 662, hereinafter referred to as Teamsters, is a labor organization, and has its offices at Eau Claire, Wisconsin.
2. That Dunn County, hereinafter referred to as the County, is a municipal employer, having its offices at Menomonie, Wisconsin; and that among its functions the County maintains and operates a Highway Department.
3. That AFSCME Local 727 is a labor organization affiliated with Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, and has its offices at Eau Claire, Wisconsin; that at all times material herein AFSCME Local 727 has been the certified collective bargaining representative of all employees of the County, employed in its Highway Department, excluding the Highway Commissioner, supervisory personnel and confidential clerical personnel; that also at all times material herein other AFSCME local unions have been, and are, the exclusive collective bargaining representatives of other employees of the County employed in its Health Care Center, Courthouse (including certain employees in the Sheriff's Department), and Department of Social Services; and that at least prior to January 1, 1977, all AFSCME local unions formed the Dunn County Joint Council of Unions, Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO, hereinafter referred to as the Joint Council, for the purpose of jointly

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negotiating a collective bargaining agreement covering County employees represented by the various AFSCME local unions, including AFSCME Local 727.

4. That the Joint Council, on behalf of its various AFSCME local unions, and the County were parties to a collective bargaining agreement covering the wages, hours and working conditions of County employees, in the collective bargaining units represented by the various AFSCME local unions, including AFSCME Local 727 representing the Highway Department employees, for the period of January 1, 1979 through December 31, 1979; that said agreement also provided that negotiations for a successor agreement "shall be started not later than July 1, 1979, and the agreement shall become effective next January 1st; that on or about June 30, 1979 the Joint Council and the County opened negotiations on an agreement which would be effective from January 1, 1980, and continue in effect at least through December 31, 1982; that subsequent to June 30, 1979, representatives of the Joint Council and of the County met on various occasions in an attempt to reach an accord on the 1980-1982 collective bargaining agreement; that no such accord was reached by January 1, 1980; that on January 15, 1980 the membership of the various local unions comprising the Joint Council met for the purpose of considering proposals made by the County for inclusion in the 1980-1982 collective bargaining agreement; that on January 16, 1980 the Joint Council representative, Guido Cecchini, advised County Executive, John Krizek, that the membership of the Joint Council had accepted the County's last proposals, with the exception that the membership of AFSCME Local 727 had rejected the County's proposals relating to wages and hours of work affecting the employees in the Highway Department; and that on the same date said representatives of the Joint Council and of the County orally agreed that the terms of the 1977-1979 collective bargaining agreement would continue indefinitely, and that any wage increase ultimately agreed upon for the employees in the Highway Department would be retroactive to January 1, 1980.

5. That representatives of Joint Council and of the County again met in negotiations on March 17, 1980 and at the time reached an understanding that should the membership of AFSCME Local 727 fail to ratify the County's new and latest offer then AFSCME Local 727 would file a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, requesting the Commission to initiate mediation-arbitration to resolve the issues in dispute involving the County Highway Department employees; that on March 22, 1980 the membership of AFSCME Local 727 rejected the County's latest offer; that on March 27, 1980 the representatives of the Joint Council and of the County executed the following document:

COLLECTIVE BARGAINING AGREEMENT

January 1, 1980 - December 31, 1982

It is hereby understood and agreed to this 27th day of March, 1980 at the City of Menomonie by and between the County of Dunn, Wisconsin hereafter referred to as "Employer" and the Dunn County Joint Council of Unions, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereafter referred to as the "Union" as follows:

1. That the Employer and the Union have reached a Collective Bargaining Agreement effective from January 1, 1980 through December 31, 1982 dated Janu-

ary 16, 1980 with respect to wages, hours, and conditions of employment for the following bargaining groups within the structure of the union:

- a. Health Care Center
 - b. Courthouse
 - c. Social Services
 - d. Sheriff
2. This agreement has been reduced to writing and has been approved and signed by the Employer and the Union except for the Highway Department, a sub-unit of the Union.
 3. With respect to the Highway Department, it is understood and agreed to by both parties that the previous agreement which was effective from January 1, 1977 through December 31, 1979 with regard to wages, hours, and conditions of employment be extended indefinitely until the disagreement between the Highway Department and the Employer regarding wages and hours of work can be resolved either by mutual agreement of the parties or through the mediation/arbitration process as provided in the Wisconsin Statutes which both parties have petitioned for through the WERC.
 4. This document replaces the addendum of January 16, 1980.

6. That on March 28, 1980, AFSCME Local 727 filed a petition with the Commission wherein AFSCME Local 727 alleged that it and the County were deadlocked in their negotiations regarding wages, hours and working conditions of County Highway Department employees; that on the same date Teamsters filed a petition with the Commission, requesting the Commission to conduct a representation election among the County Highway Department employees to determine their bargaining representative; and that the latter petition was accompanied by a showing of interest, which the Commission administratively determined constituted more than 30% of the employees in the County Highway Department collective bargaining unit.

7. That, during the course of the hearing on the election petition, both the County and AFSCME Local 727, contrary to the Teamsters, urged the Commission to dismiss the petition for election, contending that said petition was not timely filed.

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 within the meaning of Sec. 111.70 (4)(d) of the Municipal Employment Relations Act presently exists among all employees of the Dunn County Highway Department, except the Highway Commissioner, supervisory personnel and confidential clerical personnel.

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 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 of the Dunn County Highway Department, except the Highway Commissioner, supervisory personnel and confidential clerical personnel, who were employed by Dunn County on May 6, 1980, 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 Teamsters General Union Local 662 or Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, Local 727 or by no labor organization, for the purposes of collective bargaining with Dunn County with respect to wages, hours, and conditions of employment.


Given under our hands and seal at the
City of Madison, Wisconsin this 5th
day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

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

Both AFSCME Local 727 and Dunn County argue that the election petition is untimely. AFSCME Local 727 asserts that either the extension of the 1977-1979 agreement, to which it and Dunn County have agreed, or the meeting of the minds which exists between it and Dunn County on virtually all portions of a 1980-1982 contract, would bar an election. AFSCME Local 727 also contends that to direct an election during the pendency of a mediation-arbitration petition would "destroy" the mechanism which the Legislature created for peaceful dispute resolution. Dunn County echoes said position and emphasizes the potential for additional expenditures of time and money which a change in bargaining representative would require. It also cites the disruptive impact which the instant election petition has had upon its ability to provide services to the citizenry, as well as the strategic disadvantage which would be inflicted upon it if Teamsters became the bargaining representative after Dunn County had fully exposed its bargaining position during negotiations with AFSCME Local 727. Teamsters asserts that its election petition is timely, as neither the indefinite extension of the 1977-1979 agreement, nor the mere filing of the mediation-arbitration petition should act as a bar to an election.

It has been a long standing policy of the Commission that where there exists a collective bargaining agreement a petition requesting an election among the employees covered by said agreement must be filed within the 60 day period prior to the date reflected in said agreement for the commencement of negotiations on a succeeding agreement. 1/ The Commission has set forth the following rationale regarding the underlying purpose of such a doctrine:

The contract bar policy was established by the Commission for the purpose of encouraging stability in an established bargaining relationship by postponing, but not preventing elections for the purpose of changing or eliminating the bargaining representative during the term of the existing collective bargaining agreement. 2/

However, in recognition of the rights of employees to change or eliminate an existing bargaining representative, said incumbent representative is not absolutely insulated from possible ouster once negotiations for a successor agreement extends beyond the normal expiration date of the existing agreement. We have held that an indefinite extension of the terms of a collective bargaining agreement, cannot, in and of itself, constitute a bar to a petition for an election filed after the regular term of the agreement has expired. 3/ However we have also held that a petition for an election filed after the expiration of an agreement, but during the pendency of a fact finding proceeding was untimely filed. 4/

Since the election petition was filed after the 1977-1979 agreement had expired the Commission must consider whether the agreement to extend

1/ City of Milwaukee (8622) 7/68; City of Kenosha (16278) 3/78.

2/ Durand Unified Schools (13552) 4/75.

3/ LaCrosse County (12931) 8/74; City of Green Bay (16399) 6/78.

4/ City of Milwaukee (9477) 1/70.

same, executed prior to the filing of the election petition, constitutes a bar to a present election among County Highway Department employees, and if not, whether the mediation-arbitration petition filed by AFSCME Local 727 on the same date on which the Teamsters' election petition was filed, bars a present election.

There is no question but that the County and AFSCME Local 727 agreed, prior to the filing of the election petition herein, to extend the 1977-1979 agreement, with respect to its coverage of the County Highway Department employees, until a new agreement was reached. We conclude that such an indefinite extension does not convert the expired agreement into a bar to a present election.

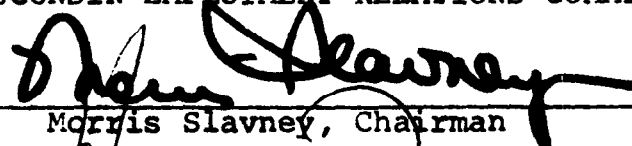
As a general rule the Commission will not process an election petition filed after the normal expiration of a collective bargaining agreement where such petition is filed on a date subsequent to the filing of a petition for mediation-arbitration involving the same collective bargaining unit. The fact that prior to the date on which the election petition was filed the representative of AFSCME Local 727 had intended to file the mediation-arbitration petition does not establish the initiation of such a proceeding prior to the date on which the election petition was filed. The Commission concludes that the date on which the mediation-arbitration petition was filed establishes the date on which the party filing such a petition intended that such a proceeding be commenced. Nor can we conclude that the filing of the mediation-arbitration petition herein takes preference over the election petition filed on the same date. Therefore, since the mediation-arbitration proceeding was not commenced prior to the filing of the election petition, the filing of the mediation-arbitration petition does not bar the present conduct of an election herein.

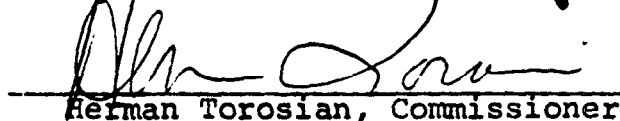
There is no issue with respect to the appropriateness of the collective bargaining unit of Highway Department employees, nor with the eligibles to participate in the election should the Commission direct same. All parties agreed that should an election be directed, the Commission should utilize the date of the hearing herein as the eligibility date for the conduct of the election. Therefore anyone hired after that date will not be deemed eligible to vote in the election.

Dated at Madison, Wisconsin this 5th day of June, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner