

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
BARRON COUNTY : Case XXIV
Involving Certain Employees of : No. 26611 ME-1881
BARRON COUNTY (DEPARTMENT OF : Decision No. 18005
SOCIAL SERVICES) :
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ORDER TO SHOW CAUSE WHY PETITION FOR
ELECTION SHOULD NOT BE DISMISSED

Barron County, hereinafter referred to as the County, on July 28, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among employees in the employ of its Department of Social Services to determine whether said employees desire to be represented for the purposes of collective bargaining by Local 518-A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, or by Northwest United Educators, hereinafter referred to as NUE, or by neither of said organizations; and that the Commission, based on its records and based on written information submitted to it is of the belief that:

1. AFSCME was certified by the Commission as the collective bargaining representative of the employees involved on April 5, 1971; 1/
2. The County and AFSCME are parties to a collective bargaining agreement, which by its terms, will expire on December 31, 1980, and which agreement also provides, among other things, that AFSCME, on or before July 1, 1980, may reopen same for negotiations on the 1981 collective bargaining agreement;
3. That on June 19, 1980, NUE notified the County that the membership of AFSCME had affiliated with NUE, and that at the same time NUE submitted to the County its proposals for a 1981 collective bargaining agreement covering the employees involved;
4. That prior to July 1, 1980, AFSCME submitted its proposals to the County for the 1981 collective bargaining agreement;
5. That at no time has NUE filed a petition with the Commission requesting that a representation election be conducted among the employees involved; and
6. That AFSCME has notified neither the County nor the Commission that it has abandoned its representative status;

1/ Barron County, II, (10146).

and based upon the above, because the petition filed herein was filed after the collective bargaining agreement had been reopened pursuant to its terms, and because the Commission is satisfied that the County be required to show cause why the petition should not be dismissed as being untimely filed;

NOW, THEREFORE, it is


ORDERED


That Barron County show cause, in writing, by Wednesday, August 21, 1980, why the petition filed herein should not be dismissed as being untimely filed, and further, that if no response is forthcoming by Barron County by said date, the Commission will dismiss the petition.


Given under our hands and seal at the
City of Madison, Wisconsin, this 11th
day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary J. Covelli, Commissioner

MEMORANDUM ACCOMPANYING
ORDER TO SHOW CAUSE WHY PETITION FOR
ELECTION SHOULD NOT BE DISMISSED

Following an election conducted by it, the Commission on April 5, 1971, certified AFSCME as the collective bargaining representative for employees of the County's Department of Social Services, and since that date there has existed a collective bargaining relationship between AFSCME and the County. The last collective bargaining agreement between AFSCME and the County was executed on July 31, 1979. Said agreement covered the wages, hours and working conditions of the employees involved and was to be effective from January 1, 1979, to at least December 31, 1980. Said agreement provided that AFSCME could reopen same for a 1981 agreement by so notifying the County on or before July 1, 1980, and at the same time submitting its proposals for a new agreement. Pursuant to the same provision, the County was to respond by August 1, 1980, with its proposals for a new agreement, and that negotiations would actually commence no later than September 1, 1980.

On July 28, 1980, the County filed the instant petition wherein it indicated, among other things, that NUE claimed that by vote of AFSCME membership, it had been replaced as the bargaining representative. In said petition the County also indicated that it was not aware of any showing of interest or any petition for an election filed by NUE. In its letter transmitting the petition, the County also indicated that both organizations had timely submitted proposals for the 1981 collective bargaining agreement, and that as a result, the County was, in effect, in a quandry as to what organization was, in fact, the bargaining representative. The County indicated that it stood ready to negotiate with the proper representative.

Along with its transmittal letter the County also included a copy of a letter addressed to the County, dated June 19, 1980, over the signature of the Unit Director of NUE, wherein that Director indicated that NUE was enclosing its proposals for the 1981 contract and further that it was notifying the County that by a vote the membership of AFSCME was now associated with NUE.

On July 28, 1980, the Commission directed a letter to the Counsel of the County and to the representatives of both AFSCME and NUE, wherein the Commission indicated that the petition had been received, that the NUE was now claiming to represent the employees involved, and further, whether the parties could, in effect, expedite the matter. The Commission also advised that it might set hearing in the matter if all interested parties would not execute a stipulation for an election.

AFSCME responded to the Commission's letter of July 28, 1980, by a letter received by the Commission on August 5, 1980, wherein it set forth that it was the certified bargaining representative, that it properly reopened the collective bargaining agreement in timely fashion, that the County had submitted counter-proposals to AFSCME in a timely fashion, and that NUE had not timely filed a petition for an election with the Commission. AFSCME, based on the above, indicated that it had no reason to relinquish its status as the bargaining representative, that NUE's claim was untimely and inappropriate and further that in AFSCME's belief no hearing was necessary. AFSCME accompanied the copy of its collective bargaining agreement with its August 5 letter.

It is a well-established policy of the Commission not to entertain petitions for elections to determine bargaining representative where there presently exists a collective bargaining agreement unless said petition is filed in a period within 60 days prior to the date on which the collective bargaining agreement may be reopened for negotiations on a new agreement or during the 60 day period prior to the date when either party may notify the other as to its intent to terminate the agreement.^{2/}

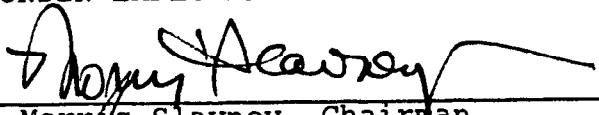
There is no doubt that the petition filed by the County was not filed prior to July 1, 1980, the reopening date in the existing agreement. It apparently filed the petition when it was satisfied that both employe organizations were presenting conflicting claims on their representative status.

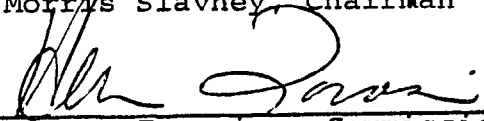
As early as June 19, 1980, NUE, by letter to the County, for the first time advised the County of its claim of representative status. Such claim was made at least two weeks prior to the date on which the existing agreement could be reopened. At any time prior to July 1 a petition for an election filed by NUE with the Commission would have been timely filed. Where an employe organization represents employes and another employe organization files a petition requesting an election claiming to now represent the employes, such a petition must not only be timely filed, but also must be supported by a showing of interest establishing that at least 30 percent of the employes in the collective bargaining unit involved support the petition for an election to determine whether the employes desire a change in their bargaining relationship. At no time did NUE advise the Commission that it intended to, or would, file a petition for election. At no time prior to July 28, 1980, did the County apprise the Commission of the conflicting claims of representation.

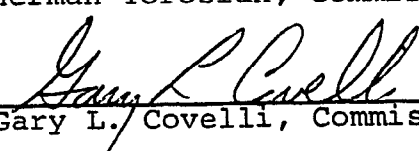
Furthermore, even had the County's petition been filed prior to July 1, 1980, it is doubtful that the mere claim of NUE that the membership of AFSCME had voted to affiliate with NUE, would constitute a sufficient basis for the County to reasonably believe that AFSCME lost its majority status. The Commission would have required additional evidence to support the claim of NUE. Therefore, the Commission today has issued the instant Order to show cause. Representatives of both organizations are requested to file their positions and briefs in support of their positions, by the date on which the County is to respond to our Order.

Dated at Madison, Wisconsin, this 11th day of August, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

^{2/} See Wauwatosa Board of Education (8300-A) 2/68 as modified by City of Milwaukee (8622) 7/68.