

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MILWAUKEE COUNTY

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Case CLVI  
No. 27724 ME-1989  
Decision No. 18847

Mr. Joseph J. Shutkin, Attorney at Law, 135 West Wells Street, Milwaukee, Wisconsin 53203, for the Petitioner, House of Correction Officers Association.

Patrick J. Foster, Esq., Principal Assistant Corporation Counsel, Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, Wisconsin 53233, for Milwaukee County.

Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, 207 East Michigan Street, Suite 315, Milwaukee, Wisconsin 53202, for the Intervenor, Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO.

The House of Correction Officers Association filed a petition on March 20, 1981 requesting that the Wisconsin Employment Relations Commission conduct an election among certain employees of Milwaukee County and employed at the Milwaukee County House of Correction for the purpose of determining whether said employees desired to be represented by said Association for purposes of collective bargaining regarding wages, hours and conditions of employment. Prior to the conduct of a hearing concerning said petition, Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO was permitted to intervene based on its status as the current certified collective bargaining representative of the employees covered by said petition. Hearing in the matter was held on May 13, 1981 at Milwaukee, Wisconsin by Commission Examiner Stuart Mukamal, during the course of which the parties presented evidence and argument with respect to the matter. The parties agreed not to file post-hearing briefs. Based upon a consideration of the entire record of this matter, the Commission makes and issues the following

3. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as "District Council 48" is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin; and that at all times relevant herein, District Council 48 has been the certified exclusive collective bargaining representative of certain employees of the County, including employees within the classifications of Correction Officer I and Correction Officer II employed at the Milwaukee County House of Correction.

4. That District Council 48 and its affiliated locals and the County were parties to a collective bargaining agreement covering the wages, hours and conditions of employment of County employes represented by District Council 48 that, by its terms was effective up through and including December 31, 1980; and that during the course of negotiations leading up to a successor agreement, the parties agreed to extend the duration of said agreement up through and including March 31, 1981.

5. That during the course of negotiations leading up to a successor to the collective bargaining agreement referred to in Finding of Fact No. 4 hereinabove, the County and District Council 48 became deadlocked in their negotiations, whereupon, on February 4, 1981, District Council 48 filed a petition with the Wisconsin Employment Relations Commission requesting the initiation of mediation-arbitration proceedings pursuant to Section 111.70(4)(cm)6 of the Municipal Employment Relations Act.

6. That subsequent to the filing of the petition for mediation-arbitration referred to in Finding of Fact No. 5 hereinabove, the County initiated an action in the Circuit Court for Milwaukee County for temporary and permanent injunctive relief and for a declaratory judgment; that said action was founded upon the contention that Section 111.70(4)(cm)6 of the Municipal Employment Relations Act was unconstitutional and sought to enjoin the operation of the mediation-arbitration procedure set forth by said statutory provision as it concerned the pending negotiations between District Council 48 and the County; that hearing on said petition was held on March 9, 1981 before the Honorable Leander J. Foley, Jr., at the conclusion of which, Judge Foley denied the County the temporary injunctive relief sought, and ordered that mediation-arbitration proceed in the matter; and that said decision of Judge Foley was confirmed by his written Order in Case No. 544-103 dated March 23, 1981, three days after the petition herein was filed on March 20, 1981.

7. That pursuant to the petition of District Council 48 referred to in Finding of Fact No. 5 hereinabove, numerous informal investigation sessions were conducted by Commissioner Herman Torosian commencing on March 18, 1981 and ending on April 24, 1981; and that on April 27, 1981, the County and District Council 48 submitted final offers to Commissioner Torosian whereupon Commissioner Torosian closed the investigation in the matter and advised the Commission that the parties were at impasse.

8. That on April 28, 1981, the Commission issued its Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Requiring Mediation-Arbitration as Decision No. 18630 whereby it directed that mediation-arbitration be commenced in order to resolve the impasse described in Finding of Fact No. 7 hereinabove.

9. That at the time of the filing of the petition instituting this proceeding, informal investigation pursuant to the petition for mediation-arbitration filed by District Council 48 and referred to in Finding of Fact No. 5 hereinabove was actively underway, in compliance with the March 9, 1981 order of Judge Foley referred to in Finding of Fact No. 6 hereinabove.

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

#### CONCLUSION OF LAW

That, since the petition filed in this matter by the House of Correction Officers Association was filed subsequent to the filing of a petition for mediation-arbitration by the exclusive collective bargaining representative of the employes covered thereunder, said petition was untimely filed, and therefore, it is inappropriate for the Commission to determine whether said petition raises a question concerning representation within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

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

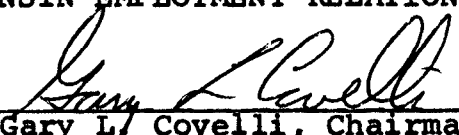
ORDER

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

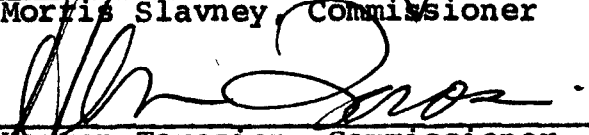
Given under our hands and seal at the City of Madison, Wisconsin this 24th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DISMISSING PETITION FOR ELECTION

The petition instituting this proceeding was filed by the House of Correction Officers Association on March 20, 1981. Both the County and District Council 48 claim that said petition is untimely due to the pendency as of that date of a mediation-arbitration petition which had been filed with the Commission on February 4, 1981 by District Council 48 and covering, among other County employees, those employees set forth by the Association's petition. The County and District Council 48 both cited the Commission's decision in Dunn County 1/ in which it held that:

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 circumstances underlying this matter, as set forth in the Findings of Fact hereinabove, clearly support the invocation of this rule. A mediation-arbitration petition covering the employees affected by the Association's election petition was filed more than one month prior to the filing of the election petition. Furthermore, as indicated in Finding of Fact No. 6, although the County did institute an action in the Circuit Court for Milwaukee County seeking to enjoin mediation-arbitration proceedings on the grounds of the alleged unconstitutionality of the mediation-arbitration provisions of the Municipal Employment Relations Act, the injunction sought was denied. In fact, following a hearing in the matter the County was specifically ordered by the Honorable Leander J. Foley, Jr., on March 9, 1981 to comply with the mediation-arbitration provisions contained in Section 111.70(4)(cm)6 of the Act, 2/ and its request for a temporary injunction with respect to the operation of said provisions was denied. The parties quickly complied with Judge Foley's order, as evidenced by the commencement on March 18, 1981 of an informal investigation with respect to District Council 48's petition for mediation-arbitration by Commissioner Herman Torosian. As of the date of the filing of the Association's petition for election, the informal investigation with respect to District Council 48's petition for mediation-arbitration was actively underway. Thus the Association's contention that no meaningful mediation-arbitration was ongoing as of the date of the filing of its petition is simply incorrect.

The proper interpretation of the "contract bar" policy, as originally applied in the Dunn County decision, must be that an election petition seeking to change or eliminate an existing bargaining representative is untimely filed when filed following the date of filing

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1/ (17861) 6/80.

2/ The fact that Judge Foley's March 9, 1981 order was not confirmed in writing until March 23, 1981 is of no consequence to the issue presented herein, inasmuch as the order was effective as of the date that it issued from the bench. In this connection, it is significant that the parties commenced the informal investigation pursuant to mediation-arbitration Section 111.70(4)(cm)6 prior to the date of the written confirmation of Judge Foley's order.

of a petition for mediation-arbitration involving the same bargaining unit. To permit the processing of an election petition to change or eliminate the bargaining representative subsequent to the filing of a mediation-arbitration petition would undermine the collective bargaining process as well as the integrity of the mediation-arbitration process. Since the petition for election instituting this proceeding was filed more than six weeks following the filing of a petition for mediation-arbitration by the applicable incumbent bargaining representative, and several days following the commencement of the Commission's informal investigation pursuant to applicable statutory mediation-arbitration procedures, it is clearly untimely and is therefore dismissed. The Commission sees no reason to discuss the possible impact of the extension of the collective bargaining agreement beyond its normal termination date, since the mediation-arbitration petition was filed after the latter date, but prior to the filing of the election petition.

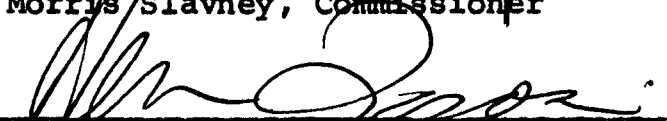
Dated at Madison, Wisconsin this 24th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner