

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF BRILLION

Involving Certain Employees of

CITY OF BRILLION (POLICE DEPARTMENT)

Case VIII
No. 28395 ME-2030
Decision No. 18945

City of Brillion having, on July 23, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among law enforcement employees with the power of arrest in the employ of its Police Department to determine whether said employees desire to continue to be represented for the purposes of collective bargaining by Brillion Police Department Employees Unit, Local 1362, Council 40, AFSCME, AFL-CIO; and the parties having filed pre-hearing briefs by August 24, 1981 with respect to the issue of whether the petition was timely filed; and the Commission being satisfied that the petition be dismissed as being untimely filed;

NOW, THEREFORE, it is

ORDERED

That the petition for election filed in the instant matter be,
and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin this 4th
day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney, Commissioner

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DISMISSING PETITION FOR ELECTION

On July 23, 1981 the City filed the instant petition wherein it stated that it had reasonable cause to believe the Union had lost its majority status as the bargaining unit representative of law enforcement personnel in its employ.

There is a collective bargaining agreement between the City and the Union covering the wages, hours and conditions of employment of said employees. Said agreement covers the time period commencing January 1, 1980 through December 31, 1981. Said agreement contains the following provision: "Either party wishing to negotiate a subsequent agreement shall notify the other party in writing by July 1, 1981." In a letter dated June 17, 1981 the Union advised the City of its desire to negotiate changes in the current agreement, which changes would become part of a subsequent agreement to be effective on January 1, 1982.

The Union argues that the petition was untimely filed because it was filed after the reopener date specified in the current agreement.

The City contends that a date for notification of the intention to renegotiate is different than a date for the commencement of negotiations. Since the current agreement does not contain a date for the commencement of negotiations, the Commission's policy does not apply to this situation, and therefore, the petition is timely filed. The parties agreed to file briefs with respect to the issue of "timeliness" of the petition.

It is a well-established policy of the Commission not to entertain a petition for an election 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. 1/

Herein the County erroneously has interpreted the aforestated policy of the Commission to mean that the 60 day period applies only when there is a specified date on which negotiations are to be commenced. Although the Commission has utilized the phrase "for the commencement of negotiations" in previous decisions, 2/ an examination of said decisions clearly reveals that the key element, in determining the timeliness of a petition in those, as well as other, decisions, was the appearance of a specified date by which notification of an intent to commence negotiations had to be given, rather than a date certain upon which negotiations actually had to commence.

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

2/ City of Kenosha (16278) 3/78; Outagamie County (11923) 6/73.


The petition filed by the City herein was not filed within the 60 day period preceding July 1, 1981, the reopener date contained in the current agreement between the parties. Had the petition been filed within said period, even after the Union's notice of June 17th, the Commission would have deemed the petition to have been timely filed. The petition was untimely filed and is being dismissed on that basis.

Dated at Madison, Wisconsin this 4th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Commissioner


Herman Torosian, Commissioner