

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF GREEN BAY CITY HALL	:	
EMPLOYEES UNION, LOCAL	:	
1672-A, AFSCME, AFL-CIO,	:	
	:	
and	:	Case CXLIV
	:	No. 29229 MP-1303
BROWN COUNTY PUBLIC EMPLOYEES	:	Decision No. 19442-A
UNION, LOCAL 1901, AFSCME,	:	
AFL-CIO,	:	
	:	
	:	
Complainants,	:	
	:	
BROWN COUNTY	:	
	:	
	:	
Respondent.	:	
	:	
	:	

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703, for Complainant Labor Organizations.
Mr. John C. Jacques, Assistant Corporation Counsel, Northern Building, 305 East Walnut Street, Green Bay, Wisconsin 54301, for Respondent County.
 Parins, McKay & Mohr, S.C., Attorneys at Law, by Mr. Frederick J. Mohr, 415 South Washington Street, Green Bay, Wisconsin 54305, for Brown County Neville Public Museum Employees Association, Intervenor.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

City of Green Bay City Hall Employees Union, Local 1672-A, AFSCME, AFL-CIO having, on February 2, 1982, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Brown County had refused to collectively bargain with it with respect to certain employes in the employ of Brown County, in violation of Sec. 111.70(3)(a)4 of the Municipal Employment Relations Act; and the Commission having appointed Christopher Honeyman, a member of its staff, to act as Examiner in the matter; and hearing in the matter having been conducted at Green Bay, Wisconsin, on April 7, 1982, during the course of which Brown County Public Employees Union, Local 1901, AFSCME, AFL-CIO, was permitted to be named as a Co-complainant, and wherein Brown County Neville Public Museum Employees Association was permitted to intervene as a party in interest; and the record having been closed on June 15, 1982; and the parties having filed briefs in the matter, and having waived issuance of the decision by the Examiner, and having agreed that the Commission should issue the original decision in the matter; and the Commission, having considered the record, the arguments and briefs of Counsel, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That City of Green Bay City Hall Employees Union Local 1672-A, AFSCME, AFL-CIO, hereinafter referred to as Local 1672-A, and that Brown County Public Employees Union, Local 1901, AFSCME, AFL-CIO, hereinafter referred to as Local 1901, are labor organizations affiliated with Wisconsin Council 40, AFSCME, AFL-CIO; that Local 1672-A and Local 1901 represent various municipal employes for the purpose of collective bargaining; and that the principal representative of said Locals is James Miller, a Staff Representative of said Wisconsin Council, AFSCME, AFL-CIO, whose address is 1425 Western Avenue, Green Bay, Wisconsin, 54303.
2. That Brown County, hereinafter referred to as the County, is a municipal employer; and that the offices of its Corporation Counsel are at 305 East Walnut Street, Green Bay, Wisconsin 54301.
3. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer, and has its principal offices at the City Hall, Green Bay, Wisconsin.

4. That Brown County Neville Public Museum Employees Association, hereinafter referred to as the Association, is a labor organization, and has its mailing address c/o Parins, McKay & Mohr, 415 South Washington Street, P. O. Box 1098, Green Bay, Wisconsin, 54305.

5. That prior to January 1, 1982, and at least for the past number of years, the City has maintained and operated the Neville Public Museum and the Hazelwood Historical House, both located in the City, and in said operation the City employed both professional and non-professional employees; that on February 2, 1968 the Wisconsin Employment Relations Commission conducted elections in three separate and distinct collective bargaining units of City employees, namely the following:

Unit No. 1

All employees of the City employed in the City Hall and associated departments, but excluding registered nurses, caseworkers, engineers, sanitarians, curators, department heads, elected and appointed officials, supervisors, confidential employees, and all other employees;

Unit No. 2

All sanitarians employed by the City in its Health Department, but excluding department head, supervisors, and all other employees;

Unit No. 3

All curators employed by the City in its Public Museum, excluding department head, supervisors, and all other employees of the City;

that non-professional employees employed in the museum were included among the employees in Unit No. 1; that on March 12, 1968 the Commission certified the result of the elections in said bargaining units, indicating that the employees in each of said units selected Local 1672-A's parent organization, Wisconsin Council 40, AFSCME, AFL-CIO as their bargaining representative; and that in said relationship the City and Local 1672-A have been parties to successive collective bargaining agreements covering the wages, hours and conditions of employment of the employees of the City who were represented by Local 1672-A, the last of said agreements, which covered the employees in Unit Nos. 1 and 3 as noted above, as well as registered nurses and caseworkers, had an expiration date of December 31, 1981, and provided that either party could reopen same for negotiations on a successor agreement, on or before July 15, 1981; and that, however, neither the City nor Local 1672-A chose to reopen said agreement for that purpose, and said agreement did expire on December 31, 1981.

6. That, pursuant to an "Inter-Governmental Cooperation Agreement" executed by duly authorized representatives, the City and County agreed that the properties involving the Neville Public Museum and the Hazelwood Historical House, would be transferred from the City to the County, and that on January 1, 1982 the employees of the City employed therein would become County employees, retaining the fringe benefits accumulated and earned while employed by the City.

7. That on October 23, 1981, Drivers, Warehouse and Dairy Employees Union Local 75, hereinafter referred to as Teamsters, filed a petition with the Wisconsin Employment Relations Commission, requesting that a representation election be conducted among County employees employed at the "Neville Public Museum, including Hazelwood", to determine whether said employees desired to be represented by Teamsters for purposes of collective bargaining.

8. That on December 15 and 16, 1981 certain employees employed at the Neville Public Museum and/or Hazelwood Historical House executed a document wherein they set forth that as of January 1, 1982 said museum, as well as said historical house, would be operated by the County; that they would, as of said date, be

employees of the County; and that they had retained and authorized the law firm of Parins, McKay & Mohr, S.C. of Green Bay, Wisconsin, to act as their collective bargaining representative, and asked that said firm be certified as their bargaining representative; and that on December 22, 1981 said firm filed such petition with the Wisconsin Employment Relations Commission.

9. That non-professional and professional employees employed at the Neville Public Museum and the Hazelwood Historical House did in fact become County employees on January 1, 1982.

10. That, at no time material herein, has Wisconsin Council 40, AFSCME, AFL-CIO or its affiliated Locals involved herein, ever requested that the City bargain collectively with respect to the wages, hours and working conditions of the employees employed at the Neville Public Museum and/or the Hazelwood Historical House, to become effective after the expiration of the 1981 collective bargaining agreement between the City and Local 1672-A; that on December 11, 1981 James Miller, a representative of Local 1901, requested that the County recognize and collectively bargain with said labor organization as the representative of the employees employed at the Neville Public Museum and the Hazelwood Historical House with respect to wages, hours and working conditions of said employees, commencing January 1, 1982; and that, however, the County has refused, and continues to refuse, to recognize Local 1901 as said collective bargaining representative, and has refused, and continues to refuse, to collectively bargain with Local 1901 in said regard.

11. That, as found in the companion election proceeding involving the parties herein, 1/ a timely question concerning representation was raised by a labor organization among the employees of the County employed at the Neville Public Museum and the Hazelwood Historical House, and was pending at the time Local 1901 made its request that the County recognize and collectively bargain with said organization with respect to said employees; and that in said regard, the Commission, today in that companion case, has directed elections to be conducted among said employees for the purposes of establishing appropriate bargaining unit or units, as well as to determine what representation, if any, said employees desire for purposes of collective bargaining.

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

CONCLUSION OF LAW

1. That Brown County, its officers and agents, by refusing to recognize and bargain collectively with Brown County Public Employees Union, Local 1901, AFSCME, AFL-CIO, as the representative of professional employees of the County employed at the Neville Public Museum and the Hazelwood Historical House, did not commit, and is not committing, any prohibited practice within the meaning of Sec. 111.70(3) (a)4, or any other provision of the Municipal Employment Relations Act.

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

1/ Decision No. 19891.

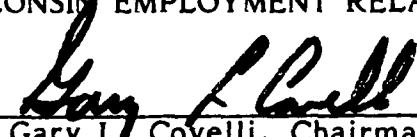
ORDER 2/


IT IS ORDERED that the complaint of prohibited practices filed in the instant matter be, and the same hereby is, dismissed.

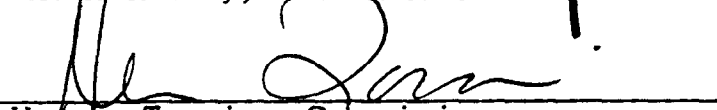
Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

- 2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The complaint filed herein alleged that the County, the successor to the City as the employer of professional employes at the Neville Public Museum and Hazelwood Historical House, refused to collectively bargain with an AFSCME Local in violation of the provisions of the Municipal Employment Relations Act (MERA). The facts are not in dispute. Local 1675-A of AFSCME was the certified bargaining representative of both the professional and non-professional employes employed at such facilities when they were operated by the City. The professionals-curators were established as a separate unit, while the non-professional employes were included in a single bargaining unit with "City Hall" employes. The City employes became County employes on January 1, 1982, working in the same facilities as previously. The County admits that it has refused to recognize and bargain with Local 1901. Complainants contend that the County is the successor of the employes formerly represented by its sister AFSCME Local, and that the U. S. Supreme Court decision in NLRB vs. Burns International Security Services 3/ requires the County to recognize and bargain with Local 1901 since, as successor to the City in the operation of the facilities, the County must assume the bargaining obligations with respect to the employes.

The County would persuade the Commission that private employment "successorship" doctrines, with respect to collective bargaining obligations, should not be applied to the municipal employment sector. In addition, it contends that at the time the bargaining request was made, a timely petition was filed, which raised a question of representation among the employes involved herein. The Association, which was permitted to intervene in the proceeding as a party in interest, supports the contentions of the County. The Union contends the petition relied upon by the County was not timely filed and was filed by Parins, McKay & Mohr, which is not a labor organization within the meaning of the Municipal Employment Relations Act.

Here, while the County succeeded the City as the employer in providing the museum service, the County did not unlawfully refuse to bargain with Local 1901 with respect to the professional museum employes because, as the Commission has concluded in the companion election case issued today involving the same parties, a timely petition for election, filed by a labor organization 4/, was pending at the time, which raised a valid question concerning representation.

Under such circumstances the County had no duty to bargain with Complainant, and accordingly, the complaint has been dismissed.

Dated at Madison, Wisconsin this 9th day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Lovelli
Gary L. Lovelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

3/ 406 U.S. 272 (1972), 68 LC 24,142.

4/ Said issues of timeliness and status of the Petitioner as a labor organization were specifically argued by the parties and decided by the Commission.