

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF FRANKLIN

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Case XXVI
No. 29150 ME-2083
Decision No. 19538

Karie J. Staver, hereinafter referred to as the Petitioner, an employee of the City of Franklin, having, on January 21, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the City of Franklin, Wisconsin, to determine whether said employees desire to continue to be represented by the Franklin Clerical Employees Benevolent Association for the purposes of collective bargaining; and prior to any further action by the Commission, a stipulation for election, executed by the Petitioner and representatives of the Association and the City was filed with the Commission on February 19, 1982; and on February 22, 1982 Counsel for Faye DeLaurier, also an employee of the City, filed written objections to the conduct of a present election, claiming that the petition instituting the instant proceeding was not timely filed, and further, that neither said Counsel nor DeLaurier had the opportunity to examine the showing of interest to determine whether it was sufficient to warrant the processing of the instant matter; and the Commission, being fully advised in the premises, being satisfied that DeLaurier's objections are without merit, and further being satisfied that a question of representation presently exists among certain employees of the City;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time clerical employees of the City of Franklin, excluding employees of the Police and Fire Departments, supervisory, managerial, confidential, and casual employees, who were employed on April 14, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to continue to be represented by the Franklin Clerical Employees Benevolent Association, for the purposes of collective bargaining with the City of Franklin.

Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli, Chairman

Morris Slavney, Commissioner

Herman Torosian: Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

This proceeding was initiated by the filing of a petition by a clerical employee in the employ of the City, requesting an election to determine whether clerical employees of the City desired to continue to be represented by the Association for the purposes of collective bargaining. The Association had been certified as said bargaining representative in December, 1980, following an election conducted by the Commission. Accompanying the petition was a statement, signed by various employees in the bargaining unit, stating as follows:

We, the undersigned members of the Franklin Clerical Employees Benevolent Association, do hereby request an election to discertify the union.

Upon receipt of the petition and the accompanying showing of interest the Commission's Examiner directed a letter to the City, advising of the receipt of the petition, as well as the fact that an undisclosed number of employees had executed a showing of interest in support of the petition. The City was requested to furnish the Commission with a list containing the names of the employees in said clerical unit, as well as any collective bargaining agreement in effect between the City and the Association. The City on January 27, 1982 furnished said list of employees, as well as a copy of the collective bargaining agreement which had existed between the City and the Association from January 1, 1981 through December 31, 1981.

On February 10, 1982, after learning that the City was willing to execute a stipulation for the election, the Commission's Examiner forwarded stipulation forms to the City Clerk, with a letter accompanying same, requesting that representatives of the City and the Association, as well as the Petitioner, Karie Staver, execute the stipulation. A copy of the letter of transmittal was also sent to employee Faye DeLaurier, who had previously executed the aforesaid collective bargaining agreement on behalf of the Association. The executed stipulation was filed with the Commission on February 19, 1982. On February 22, 1982 the Commission received a communication from counsel for DeLaurier, who indicated that DeLaurier was objecting to the instant election proceeding, contending that the petition was not timely filed, and further that the City and Association were presently bargaining. 1/

The City and Staver were apprised of said objections. DeLaurier's counsel filed a brief in support of said objections on March 22, 1982, wherein, in addition to the claim that the proceeding was not timely initiated, it was also claimed that neither DeLaurier nor her counsel had the opportunity to determine whether the showing of interest in support of the petition was adequate.

The Showing of Interest

It is the Commission's policy that where there presently exists a collective bargaining representative and a petition has been filed seeking an election in the bargaining unit represented by said organization, and where such petition has been filed by an employee in the unit, or by a rival labor organization, the petition must be supported by at least 30% of the employees in the unit involved, and further, that the Commission's decision as to the sufficiency of such showing of interest is administratively determined, 2/ primarily so as not to reveal the identity of the employees executing such showing of interest. Herein, upon the

1/ Given the uncertainty as to DeLaurier's status as a representative of the Association during the processing of the instant petition, the Commission find that she arguably possesses standing to raise these issues and thus the Commission will proceed to resolve same.

2/ Milwaukee Board of School Directors (11165) 7/72.

receipt of the names of the employees in the unit from the City Clerk, and upon examining same, the Commission determined that the showing of interest herein constituted at least 30% of the employees in the unit. Therefore, the objection relating to the showing of interest has no merit.

The Agreement and Alleged Bargaining on Successor Agreement

The agreement between the Association and the City, by its terms was to be in effect from January 1, 1981 through December 31, 1981. It did not contain any provision providing for any extension thereof after the latter date. Nevertheless, it provided that proposals on a successor agreement could be submitted by August 1, 1981 by the Association, and further, that negotiations thereon would commence by September 15, 1981. The Association submitted its proposals on December 10, 1981, and on the same date representatives of the City and the Association commenced negotiations thereon. No accord was reached at said meeting. No further meetings were scheduled and none have been held. The collective bargaining agreement expired as of December 31, 1981, some twenty-one days prior to the filing of the petition herein. Where a petition seeking an election is filed after a collective bargaining agreement has expired, the Commission deems such a petition to be timely filed, 3/ and the fact that the incumbent representative and the municipal employer are engaged in bargaining at the time, will not vitiate such timely filing, except where either a petition, or a stipulation seeking mediation-arbitration has been filed prior to the filing of the election petition. 4/ No such mediation-arbitration proceeding was commenced with the Commission. Therefore, the instant proceeding was timely initiated and, based on the stipulation, we have directed the election.

Dated at Madison, Wisconsin this 14th day of April, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

3/ Kenosha VTAE District (14993) 10/76.

4/ Dunn County (17861) 6/80.