

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
HOUSE OF CORRECTION : Case CLIX
OFFICERS ASSOCIATION : No. 29224 ME-2086
Involving Certain Employees of : Decision No. 19753
MILWAUKEE COUNTY :

Appearances:

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

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
FOR FURTHER HEARING CONCERNING PETITION FOR ELECTION

House of Correction Officers Association filed a petition on February 1, 1982 requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of Milwaukee County employed at the House of Correction for the purpose of determining whether said employees desire to be represented by said Association for purposes of collective bargaining; and hearing in the matter having been conducted on March 23, 1982, before Examiner Sherwood Malamud, and at the outset of the hearing Milwaukee District Council 48, AFSCME, AFL-CIO having been permitted to intervene in the matter; and the parties having agreed to limit said hearing to the issue as to whether the instant petition was timely filed; and briefs having been received by April 28, 1982; and the Commission, having reviewed the record and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That House of Correction Officers Association, hereinafter referred to as the Association, is a labor organization having its offices c/o Joseph J. Shutkin, Attorney at Law, 135 West Wells Street, Milwaukee, Wisconsin 53203.
2. That Milwaukee County, hereinafter referred to as the County, is a municipal employer, having its offices at the Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, Wisconsin 53233, and that among its various functions, the County operates a House of Correction located at 8885 South 68th Street, Franklin, Wisconsin 53132.
3. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208; and that at all times relevant herein, AFSCME has been, and is, the certified exclusive collective bargaining representative of certain employees of the County, including employees occupying the classifications of Correction Officers I and II, employed at the House of Correction.

4. That the Association on February 1, 1982 filed the instant petition, wherein it requested the Wisconsin Employment Relations Commission to conduct an election in a collective bargaining unit consisting of such Correction Officers I and II; that the employees occupying such classifications have been, and are presently included in a County-wide collective bargaining unit, which has been, and which currently is, represented for the purposes of collective bargaining by AFSCME; and that, in said relationship, AFSCME and the County are parties to a presently existing collective bargaining agreement, which contains, among its provisions, the following material herein:

1.04 DURATION OF AGREEMENT

(1) The provisions of this Memorandum of Agreement shall become effective on December 21, 1980, unless otherwise herein provided. Unless otherwise modified or extended by mutual agreement of the parties, this Agreement shall expire on December 31, 1982.

(2) The initial bargaining proposals of the County and the Union for a successor agreement shall be exchanged prior to the first meeting of the Personnel Committee in September, 1982, at a time mutually agreeable to the parties.

Thereafter, negotiations shall be carried on in an expeditious manner and shall continue until all bargainable issues between the parties have been resolved.

(3) This timetable is subject to adjustment by mutual agreement of the parties consistent with the progress of negotiations.

5. That during the course of the hearing AFSCME, contrary to the Association, contended that the petition filed herein was not timely as it was not filed on a date falling within a 60 day period prior to the date established in the existing agreement for the commencement of negotiations on a successor agreement; that the Association argues that the agreement does not provide a date certain for the commencement of such negotiations, and therefore the petition should be deemed to have been timely filed; 1/ that at the time of the hearing herein no date had been set for the first September meeting of the Personnel Committee; and that in any event said September meeting date would be established by the County sometime in June or July, 1982.

6. That, pursuant to the collective bargaining agreement existing between AFSCME and the County, the County could establish September 1 as the date for the first meeting of its Personnel Committee in September, 1982, and thus a petition seeking the conduct of a representation election among the employees involved herein, which was filed on a date more than 60 days prior to September 1, 1982, would normally be deemed to be prematurely filed; and that the instant decision is being issued on a date falling within 60 days prior to September 1, 1982.

7. That the dismissal of the instant petition, filed on February 1, 1982, on the basis that it was not timely filed, could result in an identical petition being filed by the Association on any date prior to September 1, 1982, and thus could result in a duplication of proceedings, and in a repetition of administrative detail on the part of the Wisconsin Employment Relations Commission.

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

CONCLUSION OF LAW

1. That, in order to avoid a duplication of proceedings and a repetition of administrative detail, the Wisconsin Employment Relations Commission deems that the petition filed herein, at least as of the date of the instant decision, raises

1/ The County expressed no position with respect to the issues of "timeliness".

a timely question of representation among the employees of Milwaukee County involved herein, within the meaning of Sec. 111.70(4)(d) 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

ORDER

That further hearing be conducted in the instant matter before Examiner Sherwood Malamud, at a time and place established by the Examiner, for the purpose of adducing evidence and argument with regard to the issues remaining in the instant matter.

Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of July, 1982.

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 FOR FURTHER HEARING
CONCERNING PETITION FOR ELECTION

The policy of the Commission in determining the timeliness of a petition for an election is as follows:

. . . where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of the employment of employees in an appropriate collective bargaining unit, a petition requesting an election among said employees must be filed within the sixty day period prior to the date reflected in said agreement, resolution or ordinance for commencement of negotiations for changes in wages, hours and working conditions. . . . 2/

At issue in the present matter is whether the language of Section 1.04 of the agreement between the County and AFSCME establishes a date for the commencement of negotiations from which the 60 day period may be calculated.


While it is true, as argued by the Association, that the agreement does not specify a date certain for exchanging initial proposals, said language does establish that such an exchange will occur some time prior to the end of September, 1982. Since commencement of negotiations is so specifically tied to September, we conclude that, in light of said provision, a petition for election is timely, if filed within a 60 day period prior to September 1. We chose to use September 1 in calculating the 60 days because ". . . the first meeting of the Personnel Committee in September, 1982 . . ." could possibly occur on September 1, 1982. 3/

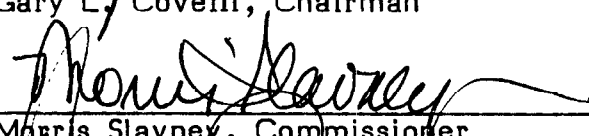
Finally, if the Commission were to conclude otherwise and ignore the September reference we arguably could conclude that a petition filed a year prior to the expiration date or subsequent to September, 1982 might be timely filed even though it is patently clear from Section 1.04 that initial proposals must be exchanged some time prior to this date in September.

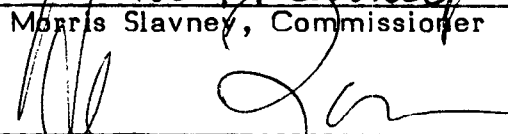
Thus the instant petition filed in February was not timely since it was not filed 60 days prior to September 1. However, we will process the instant petition because if we were to dismiss same as of this date the Association could immediately refile its petition within the timely period.

Dated at Madison, Wisconsin this 16th day of July, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

2/ City of Milwaukee (8622) 7/68; Barron County (18005) 8/80.

3/ Article 1.04(3) does not allow for the alteration of the timetable for the exchange of initial bargaining proposals as said provision refers to the "progress of negotiations" which would, of course, follow said initial exchange.