

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BROWN COUNTY

Case CXXXVIII
No. 28757 ME-2059
Decision No. 19891

Lawton & Cates, Attorneys at Law, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703, for the City of Green Bay City Hall Employees Union Local 1672-A, AFSCME, AFL-CIO, and for Brown County Public Employees Union Local 1901, AFSCME, AFL-CIO.

Drivers, Warehouse and Dairy Employees Union, Local 75 having, on October 23, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employees in the employ of Brown County; and, on December 22, 1981, Parins, McKay & Mohr, S.C., on behalf of certain employees, having also filed a petition with the Commission seeking an election among the same employees; and hearing in the matter having been conducted at Green Bay, Wisconsin, before Examiner Christopher Honeyman, on April 7 and June 14, 1982, 1/ during the course of which Brown County Public Employees Union Local 1901, affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, was permitted to intervene in the matter on its claim that it represented the employees involved; and during the course of the hearing, the petition filed on December 22, 1981 having been amended to reflect that the Petitioner thereon be the Brown County Neville Public Museum Employees Association; and the parties having filed briefs in the matter, the last of which was received on June 15, 1982; and the Commission, having considered the record and the arguments of the parties, being fully advised in the premises makes and issues the following

1. That Drivers, Warehouse and Dairy Employees Union, Local 75, hereinafter referred to as Teamsters, is a labor organization, and has its offices at 1546 Main Street, Green Bay, Wisconsin 54302.

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2. 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.

3. That City of Green Bay City Hall Employees Union Local 1672-A, AFSCME, AFL-CIO, hereinafter referred to as Local 1672-A, and 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 employees 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.

4. 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.

5. 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.

6. 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 election in three separate collective bargaining units of City employees to determine what, if any, the employees in said units desired for the purposes of collective bargaining; that said units were as follows:

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.

7. 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.

8. That on October 23, 1981 Drivers, Warehouse and Dairy Employees Union, Local 75, hereinafter referred to as the Teamsters, filed a petition with the Wisconsin Employment Relations Commission (WERC), 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.

9. That, in support of a petition to be filed with the WERC, on December 15 and 16, 1981 certain employees employed at the Neville Public Museum or the 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, and as a result, they would become 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 therein said employees requested that said firm be certified as their bargaining representative; and that on December 22, 1981 said firm filed such "petition" with the WERC.

10. 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.

11. 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; and that, however, because of the pending representation proceeding, the County has refused to collectively bargain with Wisconsin Council 40 and its affiliated Local 1901 with respect to said employees, after such a demand had been made by Wisconsin Council 40 Staff Representative Miller on December 11, 1981.

12. That prior to the conduct of any hearing in the instant matter, and on January 8, 1982, Teamsters notified the WERC, in writing, that it desired to withdraw its petition requesting a representation election among the employees employed by the County in the Neville Public Museum and the Hazelwood Historical House; that on January 12, 1982, the WERC forwarded copies of the Teamsters petition, the withdrawal letter, and a copy of the petition filed by the law firm of Parins, McKay & Mohr, S.C., to agents of the County and to representatives of AFSCME; and that in a letter accompanying same, the Commission advised that the parties would be contacted with respect to setting a date for hearing in the matter.

13. That on February 2, 1982, Local 1672-A filed a complaint with the WERC, wherein it alleged (a) that it was the exclusive collective bargaining representative of "all curators employed by the City of Green Bay in its Public Museum", (b) that on December 11, 1981 said Union requested that the County commence bargaining with respect to said employees who were to be transferred to County employment, (c) that the County refused to do so, and that the County should, among other things, be ordered to bargain with said Union.

14. That hearing in the instant representation proceeding, as well as in the above noted complaint proceeding, was conducted by Examiner Honeyman on April 7, 1982; that prior to any further action by the Examiner, on April 15, 1982, Counsel for Local 1901 directed an inquiry to the Examiner, and copies thereof to the remaining parties, inquiring as to the identity of "the name of the organization/entity designated by the employees in their showing of interest cards filed in support of the Election Petition"; that on April 22, 1982 the Examiner responded to such inquiry and, by letter of said date, identified the "designated representative" as Parins, McKay & Mohr, S.C., and in said letter indicated that the status of the latter firm was not in issue during the hearing in the instant matter; that on April 26, 1982 Counsel for Local 1901, by letter, indicated that the latter organization "takes the position" that said firm was not a "labor organization"; that, in light thereof, the Examiner set further hearing to take evidence with respect to said issue, and on May 3, 1982 issued a notice setting further hearing for June 14, 1982; and that further hearing was held on the latter date, during which Attorney Mohr, on behalf of the employees of the Museum, moved

that their petition be amended to change their designated representative from Parins, McKay & Mohr, S.C., to the Association, which had been formally formed in the interim.

15. That the Association, with acquiescence by the County, requests the Commission to conduct elections among employees of the County who are employed in the following described voting groups:

Voting Group 1

All full-time and regular part-time employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding professional, managerial, supervisory and confidential employees;

Voting Group 2

All full-time and regular part-time professional employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding managerial, supervisory, and confidential employees;

to determine whether the employees in Voting Group 2 desire to be included in a single collective bargaining unit with the employees in Voting Group 1, and what representation, if any, the employees in either a single unit or in two units, as established in the unit determination election, desire for the purposes of collective bargaining.

16. That Local 1901 contends that the Commission should not conduct any election in the instant matter, claiming that the petitions filed herein were untimely filed, and that the law firm of Parins, McKay & Mohr, S.C. is not a labor organization within the meaning of the Municipal Employment Relations Act; and that Local 1901, contrary to the Association and the County, contends that the position of Museum Curator II (Supervisor of Education) occupied by Jeanne Schuldes, is a supervisory position, and that the Museum Executive Secretary, Bonita Cagle, is a confidential employee.

17. That when the City operated the Museum, Schuldes, the Museum Curator II, was not deemed to be a supervisor, and she was included in the collective bargaining unit covered by the bargaining agreement which had existed between the City and Local 1672-A; that Schuldes has no authority to hire, fire, promote, transfer, lay off, discipline or reward employees, nor to effectively recommend such action, nor does she have any authority to resolve employee grievances; and that, while she spends no more than ten percent of her time in scheduling lectures to be given by two Hazelwood part-time lecturers, she does not schedule the hours during which such lectures are given.

18. That, although the job description of the position of the Museum's Executive Secretary characterizes the position as "confidential secretary to Museum Director", the Director's role in labor relations matters has been limited, and that Cagle has access only to general personnel matters; that since the County has operated the Museum, the structure of the Museum Board has changed, and there has been less involvement in, or knowledge, of policy matters by said Secretary, and that, in any event, confidential labor relations matters have been handled almost exclusively by the County's Personnel Department; and that when the City operated the Museum, Cagle was also in the unit covered by the then existing collective bargaining agreement between the City and Local 1672-A.

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

CONCLUSIONS OF LAW

1. That the employees of Brown County, employed in the Neville Public Museum and the Hazelwood Historical House, who executed the showing of interest in support of the election petition filed by Parins, McKay & Mohr, S.C., and who during the course of the instant proceeding adopted the name of Brown County Neville Public Museum Employees Association, constitute a labor organization within the meaning of Sec. 111.70(j) of the Municipal Employment Relations Act.

2. That, inasmuch as the duty of the City of Green Bay to collectively bargain with any labor organization representing employees employed at the Neville Public Museum and the Hazelwood Historical House, on wages, hours and working conditions for the year 1982 was extinguished as a result of the transfer of such facilities to Brown County as of January 1, 1982, the fact that the petitions filed by Drivers, Warehouse and Dairy Employees Union, Local 75, as well as by certain employees employed in said facilities, were not filed by July 15, 1981, or subsequent to December 31, 1981, does not preclude the filing of said petitions from timely raising of a question of representation among the employees of Brown County employed in said facilities, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

3. That the positions of Museum Curator II and Museum Executive Secretary, since they are neither supervisory nor confidential positions, are occupied by individuals who are "municipal employees" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

4. That employees of Brown County employed in the following voting groups may constitute either two separate and distinct appropriate collective bargaining units, or one single appropriate collective bargaining unit, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act:

Voting Group 1

All full-time and regular part-time employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding professional, managerial, supervisory and confidential employees.

Voting Group 2

All full-time and regular part-time professional employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding managerial, supervisory, and confidential employees.

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

DIRECTION OF ELECTIONS

That elections 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 following voting groups for the purposes indicated therein:

Voting Group 1

All full-time and regular part-time employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding professional, managerial, supervisory and confidential employees, who were employed on September 9, 1982 except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented, for the purposes of collective bargaining with Brown County on wages, hours and conditions of employment, by Brown County Neville Public Museum Employees Association, or by Brown County Public Employees Union Local 1901, AFSCME, AFL-CIO, or by neither of said organizations.

Voting Group 2

All full-time and regular part-time professional employees of Brown County employed at the Neville Public Museum and Hazelwood Historical House, excluding managerial, confidential and supervisory employees, who were employed on September 9, 1982, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining

- (1) Whether a majority of said employees in said voting group desire to be included in a single collective bargaining

unit with those eligible employees in Voting Group 1,

and


- (2) Whether a majority of such employees voting desire to be represented, for the purposes of collective bargaining with Brown County on wages, hours and conditions of employment by Brown County Neville Public Museum Employees Association, or by Brown County Public Employees Union Local 1901, AFSCME, AFL-CIO, or by neither of said organizations.

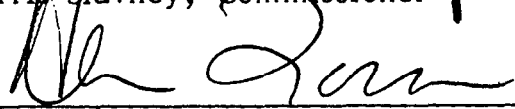
Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

The facts material to the disposition of the issues raised in this election proceeding are fully set forth in the Findings of Fact and need not be repeated in the instant memorandum. Local 1901, one of the intervening AFSCME Locals, contends that the petitions filed herein were untimely in that they were filed in a period following the date on which an agreement between the City of Green Bay and AFSCME Local 1672-A could have been reopened for negotiations on a successor agreement, but prior to the expiration of that collective bargaining agreement. It supports its position by citing established WERC policy with respect to the "timely" filing of petitions for elections during the term of an existing collective bargaining agreement. Said policy is as follows:

The Commission will not entertain petitions for elections to determine bargaining representatives where there presently exists a collective bargaining agreement unless said petition is filed in a period within sixty days prior to the date on which the agreement may be reopened for negotiations on a new agreement, or where during the sixty day period prior to the date when either party may notify the other as to its intent to terminate the agreement. 2/

However, the above "contract bar" policy is not etched in stone. The Commission, where circumstances warrant, has made exceptions thereto where the underlying purpose of maintaining reasonable stability in the collective bargaining process would not be served by its application. The Commission has applied such an exception where the labor organization had become defunct. 3/ In the instant setting one of the parties to the agreement, existing at the time the Teamsters' petition and the Association's petition were filed, the City, ceased to be the employer of the employees involved as of December 31, 1981. Both AFSCME Locals were aware that such would occur. At no time prior to December 11 was there any bargaining between the City and AFSCME Locals, nor was a demand made for same until December 11, some two and one-half weeks prior to the expiration of the agreement and take-over of the Museum by the County. Clearly, the petition for election did not affect the stability of the collective bargaining process - the underlying reason for the contract/bar policy - since the first demand on the County, the "successor" employer, for negotiations was made on December 11. Under such circumstances we conclude that the "contract bar" policy is not applicable herein.

Local 1901 also claims that (1) the firm of Parins, McKay & Mohr, S.C., is not a labor organization and therefore has no standing to be placed on any ballot in an election seeking to determine bargaining representative, and (2) that, likewise, Brown County Neville Public Museum Employees Association cannot appear on the ballot because the unit employees did not authorize said Association to so appear.

As to the issue regarding the status of Parins, McKay & Mohr, S.C., the Examiner properly scheduled a second day of hearing in the matter for the purpose of taking evidence as to the right of the law firm to file an election petition. The Examiner called Counsel Mohr, who signed the original of the employee petition, as a witness to elicit evidence as to the "labor organization" on whose behalf Mohr executed and filed the petition. Mohr gave testimony as elicited by the Examiner. Counsel for Local 1901 objected to Mohr as a witness, as well as to the interrogations by the Examiner of Mohr regarding such status. While we agree that calling an attorney as a witness should be avoided if possible, given the factual situation herein, and the manner in which the issue was raised, the fact that Mohr is an attorney does not disqualify him from testifying with respect to the issue

2/ City of Milwaukee (8622) 7/68; Barron County (Social Services Dept.) (18505) 8/80.

3/ Durand Jt. School District No. 1 (13552) 4/75.

involved. Mohr signed the petition on behalf of the employees, at their request. Counsel for Local 1901 objected when the Examiner called Mohr to the stand, on the ground that "it is probably unprofessional conduct to have a lawyer take a witness stand, where he is an advocate in a case." Normally, where opposing Counsel insists, the attorney witness does not participate as counsel. However, in a non-adversary proceeding such as involved herein, we conclude that neither the Examiner's calling Attorney Mohr as a witness, nor Mohr's testimony in response to questions by the Examiner, were improper.

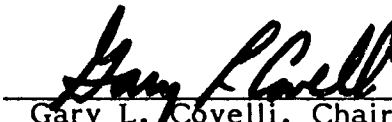
In this regard, the uncontroverted testimony of Mohr establishes that at the time of the December 22 petition employees were organizing the captioned Association and had named officers but decided to wait in naming the organization since, due to the change of employers, they did not know what the proper name of the Museum would be. The Petitioner was allowed at the June 14 hearing to amend its petition to reflect the name of the Petitioner as the Brown County Neville Public Museum Employees Association, which Association exists for the purpose of representing Museum employees in negotiating over the wages, hours and conditions of employment.

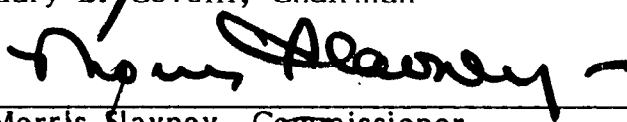
Based on the above, we conclude that the instant petition is not time barred, and that the instant petition, as amended, was filed by a labor organization. 4/

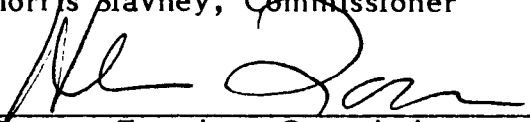
Local 1901 would exclude the Museum Curator II and the Executive Secretary to the Museum Director as a supervisor and a confidential employee respectively. As noted in the Conclusions of Law, the facts support a contrary conclusion. Both of said positions are occupied by "municipal employees" and are eligible to vote in their respective voting groups.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

4/ The Commission has previously set forth the following with respect to "labor organization" status:

It is significant to note that the Legislature did not see fit to impose any formal requirements on a labor organization, such as the requirement that it have a constitution or by-laws, or that it admit employees to formal membership, or that it charge employees dues. The only requirement set out, other than the requirement that the organization have the appropriate intent, is that the employees participate; there is no requirement that the nature of the participation be any more formal than that desired by the employees themselves. See, Manitowoc County (10899) 3/72; City of Milwaukee (Museum Board) (14819) 8/76; City of Cudahy (19507) 3/82.