

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WESLEY WISEMAN

Involving Certain Employees of

CITY OF ANTIGO

Case XXII  
No. 30133 ME-2130  
Decision No. 20170

Rogers & Runyon, Attorneys at Law, 120 South Mill Street, P. O. Box 438,  
Merrill, Wisconsin 54452, by Mr. James T. Rogers, appearing on behalf of  
Wesley Wiseman.

**Ms. Cindy Fenton**, Staff Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, P. O. Box 8356, Green Bay, Wisconsin 54308, appearing on behalf of the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO.

Mulcahy & Wherry, S.C., Attorneys at Law, 408 Third Street, P. O. Box 1004,  
Wausau, Wisconsin 54401 by Mr. Gary M. Ruesch, appearing on behalf of  
the City of Antigo.

Wesley Wiseman, an employe of the City of Antigo, on July 15, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employes of the City of Antigo to determine whether said employes desire to continue to be represented for the purpose of bargaining by the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO; and hearing in the matter having been conducted on September 14, 1982, at Antigo, Wisconsin, before Douglas V. Knudson, a member of the Commission's staff, during the course of which Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO was permitted to intervene on the basis of claiming an interest in the matter; and a transcript of the proceedings having been prepared; and the parties having had until October 13, 1982, to file post-hearing briefs; and the only post-hearing brief having been received from the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO; and, the Commission having considered the evidence and arguments and being fully advised in the premises, makes and issues the following

1. That Wesley Wiseman, hereinafter referred to as Wiseman, is an individual residing at 137 Fred Street, Antigo, Wisconsin.

2. That Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO, hereinafter referred to as Local 1192, is a labor organization and has its offices at P. O. Box 8356 Green Bay, Wisconsin.

3. That the City of Antigo, hereinafter referred to as the City, is a municipal employer and has its principal offices at 617 Clermont Street, Antigo, Wisconsin.

4. That Local 1192 and the City are presently parties to a collective bargaining agreement containing the following relevant provisions:

The City hereby recognizes the Union as the exclusive bargaining agent for the purpose of bargaining collectively on all matters pertaining to wages, hours and working conditions of employment, for all regular full-time and regular part-time employees of the Street Department, Park Department, Cemetery

Department, Water Department and Sewerage Department but excluding the Director of Public Works, Street Superintendent, Director of Parks and Recreation, Superintendent of the Water and Sewer Department, the Bookkeeper in the Street Department and all seasonal, temporary and part-time employees.

#### ARTICLE 29 - DURATION

This Agreement shall be binding and in full force and effect from January 1, 1982, until December 31, 1982, both days inclusive. Notice of desire to add, delete, or amend this Agreement shall be sent by either party to the other, in writing, prior to September 1 to become effective January 1 of the following year. If neither party sends notice to the other prior to September 1, this Agreement shall automatically be renewed and become binding, and in full force and effect for another calendar year.

5. That Wiseman, who is employed in the bargaining unit described above, on July 15, 1982, filed a petition with the Wisconsin Employment Relations Commission initiating the instant proceeding, wherein he requested an election among the employees in said bargaining unit to determine whether said employees desired to continue to be represented by Local 1192 for the purposes of collective bargaining.

6. That during the conduct of the hearing herein Wiseman indicated a desire to amend the petition filed by him, requesting that the Commission place the name of "Antigo City Municipal Employees Union" on the ballot in any election directed herein; that Local 1192, unlike the City, objected thereto, claiming that "Antigo City Municipal Employees Union" does not exist; and, further, that the initial petition filed by Wiseman should be dismissed, on the contention that election petitions cannot be filed by an individual employee.

7. That, Wiseman admitted during the course of the hearing that "Antigo City Municipal Employees Union" was not in existence, but that should its name be placed on the ballot and if a majority of the employees would select "it" as their bargaining representative, such organization would represent the employees in the unit for the purpose of collective bargaining.

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

#### CONCLUSIONS OF LAW

1. That, pursuant to Section 111.70(4)(d)5 of the Municipal Employment Relations Act (MERA), individual municipal employees may file a petition with the Wisconsin Employment Relations Commission seeking an election among employees in an appropriate collective bargaining unit to determine an existing question of representation, and since Wesley Wiseman is a municipal employee, within the meaning of Section 111.70(1)(b) of MERA, employed by the City of Antigo, in the collective bargaining unit covered by the petition filed herein, Wesley Wiseman is a proper party petitioner.

2. That a question of representation, within the meaning of Section 111.70(4)(d) of MERA, presently exists among the employees of the City of Antigo, employed in the following described appropriate collective bargaining unit:

All regular full-time and regular part-time employees of the Street Department, Park Department, Cemetery Department, Water Department and Sewerage Department, but excluding the Director of Public Works, Street Superintendent, Director of Parks and Recreation, Superintendent of the Water and Sewer Department, the Bookkeeper in the Street Department and all seasonal, temporary and part-time employees.

3. That, in as much as prior to the close of the hearing herein the evidence did not establish the existence of "Antigo City Municipal Employees Union", said alleged organization is not a "labor organization" within the meaning of Section 111.70(4)(j) of MERA, and therefore it has no right, within the meaning of Section 111.70(4)(d)3 of MERA to be placed on the ballot in the election directed herein.

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

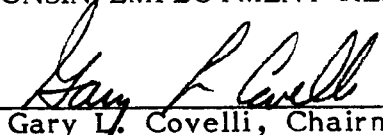
DIRECTION OF ELECTION


That an election by secret ballot 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 employees of the Street Department, Park Department, Cemetery Department, Water Department and Sewerage Department, but excluding the Director of Public Works, Street Superintendent, Director of Parks and Recreation, Superintendent of the Water and Sewer Department, the Bookkeeper in the Street Department and all seasonal, temporary and part-time employees, who were employed by the City of Antigo on December 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 a majority of said employees voting desire to be represented by the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO, for the purpose of collective bargaining with the City of Antigo on wages, hours and conditions of employment.


Given under our hands and seal at the City of  
Madison, Wisconsin this 14th day of December, 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 ELECTION

Local 1192 contends that the petition filed by Wiseman should be dismissed since it was filed by an individual employee, and in support thereof, cites two prior Commission decisions, namely, City of Milwaukee (14819) 8/76 and City of Green Bay (12682) 5/74. Neither of said decisions are to the point. The former case involved a petition seeking a referendum to determine the continuation of a fair share agreement. In that regard Section 111.70(2) permits only the labor organization or the municipal employer involved to file such a petition. The City of Green Bay involved a petition to clarify an existing collective bargaining unit.

Here, Wiseman, an employee in the bargaining unit, filed the petition requesting an election to determine whether the employees in the unit desire to continue to be represented by Local 1192. Such a proceeding involves a question concerning representation within the meaning of MERA. Section 111.70(4)(d)5 of MERA states, in part, the following:

Questions as to representation may be raised by petition of the municipal employer or any municipal employee or any representative thereof....

Therefore, it is clear that Wiseman has a statutory right to file the petition herein.

Following the close of the hearing and on September 22, 1982 Wiseman's counsel submitted a document, signed by a significant number of employees, which contained the following statement:

We, the undersigned employees of the City of Antigo, presently represented by the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO, do petition the WERC to conduct an election to decertify the Antigo City Employees Union, Local 1192, AFSCME, AFL-CIO, and to also conduct an election to certify as our bargaining unit the Antigo City Municipal Employees Union.

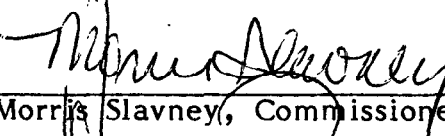
Evidence at the hearing established that Antigo City Municipal Employees Union was not in existence at that time. The document referred to above does not in itself establish the existence of said organization. Furthermore, it should be noted that the petition requesting said election was not timely filed, since the 1982 collective bargaining agreement between Local 1192 and the City set forth September 1, 1982 as the date on which either party could notify the other of an intent to "add, delete, or amend" same for the year 1983. The petition seeking decertification of Local 1192, filed on July 15, 1982, was timely filed, since it was filed within 60 days prior to said reopening date. The second petition was not timely filed, since it was filed after said date. But more importantly, the record does not establish that Antigo City Municipal Employees Union has been established or exists for the purpose of collective bargaining. We are therefore not placing the latter organization on the ballot. However, the employees have the opportunity to determine for themselves whether they desire to continue to be represented by Local 1192.

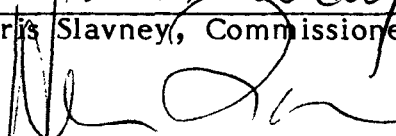
Dated at Madison, Wisconsin this 14th day of December, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner