

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
WISCONSIN COUNCIL 40, AFSCME, :
AFL-CIO : Case CIV
Involving Certain Employees of : No. 30895 ME-2172
DOUGLAS COUNTY : Decision No. 20608
(HIGHWAY DEPARTMENT) :
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Appearances:

- Mr. James A. Ellingson, Route 1, Box 2, Brule, Wisconsin 54820, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.
Mr. Scott D. Soldon, Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Milwaukee, Wisconsin 53202, appearing on behalf of Teamsters Local 346.
Mr. William Sample, Employers Industrial Relations Council, 2001 London Road, Duluth, Minnesota 55812, appearing on behalf of Douglas County (Highway Department).

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER HOLDING PETITION FOR ELECTION IN ABEYANCE

Wisconsin Council 40, AFSCME, AFL-CIO, having, on December 15, 1982, filed a petition requesting the Wisconsin Employment Relations Commission, hereinafter referred to as the Commission, to conduct an election among certain employees of Douglas County employed in its Highway Department, for the purpose of determining whether those employees wished to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of collective bargaining; and Teamsters Local Union No. 346 having been permitted to intervene in the matter on the basis that it is the exclusive bargaining representative of the employees who are the subject of the instant petition; and the parties having agreed to waive hearing in the matter and to submit written briefs limited to the issue of whether AFSCME's election petition was timely filed; and the County having informed the Commission that it did not wish to take any position regarding the timeliness or untimeliness of the election petition; and Teamsters Local Union No. 346 having filed a brief on February 2, 1983; and AFSCME having, on February 11, 1983, filed a letter with the Commission waiving its right to file a brief; 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 Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization having its offices located in care of Mr. James A. Ellingson, Route 1, Box 2, Brule, Wisconsin 54820.
2. That General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees Local Union No. 346 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Teamsters, is a labor organization having its offices located at 2802 West First Street, Duluth, Minnesota 55806.
3. That Douglas County, hereinafter referred to as the County, is a municipal employer, which has its offices located at the Douglas County Courthouse, 1313 Belknap Street, Superior, Wisconsin 54880, and which, among its functions, operates a Highway Department.
4. That, on December 15, 1982, AFSCME filed a petition seeking an election in a bargaining unit consisting of all regular full-time and all regular part-time employees of the Douglas County Highway Department, excluding confidential, supervisory, or administrative employees, to determine if the employees covered by this unit description wished to be represented by AFSCME for purposes of collective bargaining.

5. That the Teamsters and the County are parties to a collective bargaining agreement covering the employees of the County's Highway Department which contains, among its provisions, the following material herein:

ARTICLE 1.

RECOGNITION: A. The Employer agrees to and does hereby recognize the General Drivers, Dairy Employees, Warehousemen, Helpers & Inside Employees, Local Union No. 346 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and those persons authorized to and acting on behalf of said Labor Union.

REPRESENTATION: B. The Union shall be the sole representative of all classifications of employees covered by this Agreement in collective bargaining with the Employer, and there shall be no discrimination against any employee because of non-Union affiliation.

. . .

ARTICLE 37

Section 1. EFFECTIVE DATE: The effective date of this Agreement will be January 1, 1982, to and including December 31, 1983.

Section 2. It is understood if the parties desire to do so, this Article may be waived and negotiations could commence no later than July 1st, 1983 provided a sixty (60) day notice of re-opening is served on the other party to this agreement.

Section 3. EXPIRATION: This Agreement shall remain in effect for two (2) calendar years. At the end of such calendar years either party may terminate this Agreement, provided such termination is transmitted through the United States mail to the responsible signatories to this Agreement. In no case may termination notice be sent less than thirty (30) days prior to the expiration date herein agreed.

Section 4. RENEWAL: Should neither party to this Agreement send a notice of termination and/or opening as described in Section 2 of this Article, this Agreement will be considered to have been automatically renewed for another calendar year.

Section 5. Effective January 1, 1983, this Agreement may be reopened by either party for the purpose of negotiations on Article 21, Health and Welfare, and Appendix A, Wages.

. . .

6. That the collective bargaining agreement described in Finding of Fact 5 does not grant any express right to the County or the Teamsters to unilaterally terminate the agreement prior to December 31, 1983; that the reopener provision set forth in Article 37, Section 5, does not make an election appropriate for the purpose of determining a collective bargaining representative for the period beginning January 1, 1983.

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

CONCLUSIONS OF LAW

1. That the election petition filed by Wisconsin Council 40, AFSCME, AFL-CIO for the period commencing January 1, 1983 was not timely filed.

2. That the election petition filed by Wisconsin Council 40, AFSCME, AFL-CIO will be deemed timely filed for the purpose of determining a collective bargaining representative for the period beginning January 1, 1984 if AFSCME files a new showing of interest with the Commission on or before June 30, 1983.

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

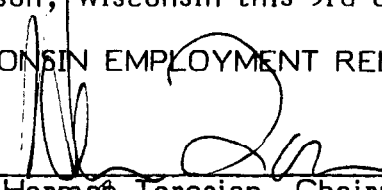
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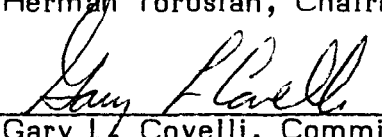
That the instant election petition will be held in abeyance until July 1, 1983 pending potential receipt of a showing of interest.

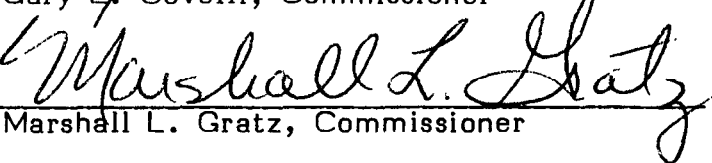
Given under our hands and seal at the City of
Madison, Wisconsin this 3rd day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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- 1/ 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.
(Continued on Page Four)

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 HOLDING PETITION FOR ELECTION IN ABEYANCE

The Positions of the Parties:

As noted above, the Teamsters are the only party to file a brief in this matter. The Teamsters contend that both the Commission and the National Labor Relations Board (NLRB) adhere to rather strict contract bar policies guided by a policy of encouraging stability in existing collective bargaining relationships. The Teamsters assert that the NLRB applies a "flat rule" that where a contract specifically provides for reopening for wage negotiations, that reopening does not open the contract for contract bar purposes, and the Teamsters urge the Commission to follow this rule. Any other conclusion, according to the Teamsters, would only lead to increased instability by discouraging parties from entering multi-year agreements which include reopener provisions.

Discussion:

The Commission's established policy regarding the timely filing of election petitions during the term of an existing collective bargaining agreement is:

It has been a long standing policy of the Commission that where there exists a collective bargaining agreement a petition requesting an election among the employees covered by said agreement must be filed within the 60 day period prior to the date reflected in said agreement for the commencement of negotiations on a succeeding agreement. 2/

This contract bar doctrine is fundamentally a policy decision designed to further the underlying purpose of "maintaining reasonable stability in the collective bargaining process". 3/ The relevant policy considerations have been more fully elaborated thus:

(I)n order to effectuate the policies and purposes of MERA, we have, in the early years of the administration of MERA, adopted and applied a policy indicating that the rights of employees to select or reject a bargaining representative must be weighed against the need to encourage stability in an existing collective bargaining relationship. 4/

The present case is not the first time the Commission has confronted an issue concerning the application of these policy considerations to a multi-year contract which contains a provision for a limited reopening of that contract before its ultimate termination date. In North Lake Joint School District No. 7, the Commission was confronted with an election petition filed on December 6, 1973, concerning employees covered by a collective bargaining agreement in effect from July, 1973, until June 30, 1975. That agreement provided for commencement of negotiations in January, 1974, which negotiations were limited to salaries and calendar, and for negotiations on a complete successor agreement to commence in January, 1975. The Commission's resolution of that matter is instructive here:

2/ Dunn County (Highway Department) (17861) 6/80, at 5, citing City of Milwaukee (8622) 7/68, at 9.

3/ Brown County (19891) 9/82, at 7.

4/ City of Prescott (Police Department) (18741) 6/81, at 5.

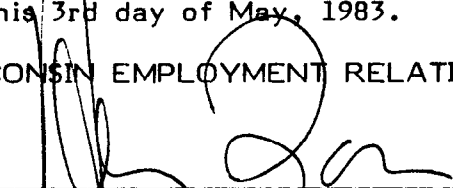
. . . we hold that the provision for negotiations in 1974, or (sic) salaries and calendar only, with no expressed right to terminate the agreement prior to its 1975 termination date, does not constitute such a reopener as would permit a present election, which, if conducted, would destroy the stability of the collective bargaining relationship between the NLEA and the District, as reflected in their two-year collective bargaining agreement. Accordingly, we have dismissed the petition as being untimely filed. 5/

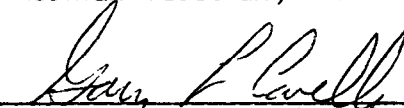
Accordingly, the January 1, 1983 date specified in Article 37, Section 5, of the collective bargaining agreement between the County and the Teamsters does not trigger the 60-day window period provided for the timely filing of election petitions. However, under the above policy, the arguable implications of the provisions of Article 37, Section 2, as regards the opening of negotiations for the period beginning January 1, 1984, lead us to declare that the petition AFSCME filed in this matter will be deemed timely filed for purposes of an election to determine representation of the employees in question for the period commencing January 1, 1984, if AFSCME files a fresh showing of interest on or before June 30, 1983. Absent such a filing, the instant petition shall be dismissed and the timeliness of any subsequent election petition will be determined in the normal course of the processing of any such subsequent petition. In any event, Teamsters and the County are now free of election petition constraints on their bargaining pursuant to the Article 37, Section 5 reopener.

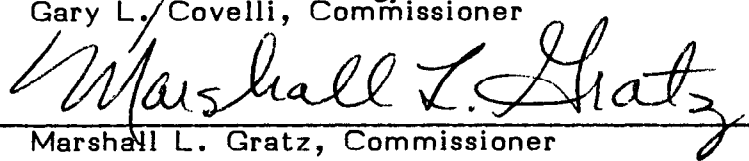
Dated at Madison, Wisconsin this 3rd day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner