

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MILWAUKEE DISTRICT COUNCIL 48,
AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF WAUWATOSA

Case LXX
No. 30580 ME-2154
Decision No. 21145-A

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Street,
Milwaukee, WI 53202 by Ms. Christine E. Linder, appearing on behalf of
the Union.

Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, 700 North
Water Street, Milwaukee, Wisconsin 53202 by Mr. Donald J. Cairns,
appearing on behalf of the Municipal Employer.

ORDER DISMISSING OBJECTIONS
TO CONDUCT OF ELECTION

The Wisconsin Employment Relations Commission having on December 14, 1983 conducted an election in the above-entitled matter to determine whether a majority of the employees voting in a unit consisting of all regular full-time and regular part-time office, clerical and administrative employees ("white collar") of the City of Wauwatosa, but excluding supervisory, confidential, managerial, executive, professional and craft employees, Crossing Guards and Crossing Guard Alternates, and employees included in existing collective bargaining units, desired to be represented by District Council 48, AFSCME, AFL-CIO for the purposes of collective bargaining with the City of Wauwatosa on wages, hours and conditions of employment; and copies of the tally sheet reflecting the ballots cast in said election having been distributed to the parties on the date of the election; and District Council 48 having on December 23, 1983 filed an Objection to Conduct of Election premised upon the City's refusal to provide District Council 48 with the addresses and phone numbers of employees on the voting eligibility list; and the City having on December 27, 1983 filed a response thereto; and District Council 48 having replied on January 9, 1984 and the Commission having considered the matter and concluded that the Objection should be dismissed as untimely filed;

NOW, THEREFORE, it is

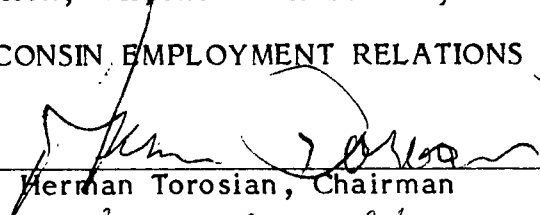
ORDERED 1/

That the Objection to Conduct of Election is hereby dismissed.

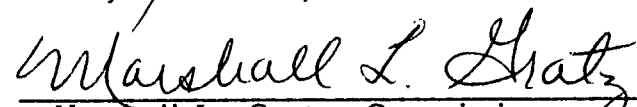
Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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
(Footnote Continued on Page Two)

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.

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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING ORDER DISMISSING
OBJECTIONS TO CONDUCT OF ELECTION

ERB 11.10 specifies:

ERB 11.10 Objections to election. (1) FILING; FORM; COPIES. Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and 5 copies of such objections shall be signed and filed with the commission, the original being sworn to.

ERB 10.08(1) and (4) state in pertinent part:

ERB 10.08 Time for filing papers other than letters. (1) COMPUTATION OF TIME. In computing any period of time prescribed by or allowed by these rules or by order of the commission or individual conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. (Emphasis added)

. . .

(4) COMPLETION OF FILING. Papers required by s. 111.70, Stats., this chapter, chs ERB 11, 12, 13, 14, 15, 16, 17, 18, 30 and 31, or order of the commission, to be filed with the commission, its agent, a fact finder, an arbitrator or with a mediator-arbitrator, shall be deemed filed upon actual receipt at the place specified for such receipt before the close of business. (Emphasis added)

. . .

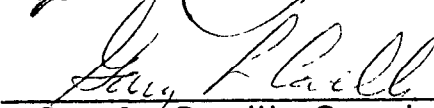
Inasmuch as the tally sheets were distributed on December 14, 1983, the foregoing rules required that any objection to the conduct of the election had to be received in the Commission's offices on or before December 21, 1983. As District Council 48's objection was not received until December 23, 1983 it was not timely filed and has therefore been dismissed.

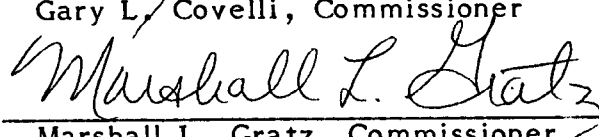
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