

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
SCHOOL DISTRICT OF DELAVAN-
DARIEN

Involving Certain Employes
Represented By

DELAVAN-DARIEN SCHOOLS
SECRETARIES AND AIDES
ASSOCIATION

Case IX
No. 31885 ME-2244
Decision No. 21159

Appearances:

Mr. Kenneth Cole, Director, Employee Relations, Wisconsin Association of School Boards, Inc., 122 West Washington Avenue, Madison, Wisconsin 53703, appearing on behalf of the District.

Ms. Melissa Cherney, Staff Attorney, Wisconsin Education Association Council, 101 West Beltline Highway, P.O. Box 8003, Madison, Wisconsin 53708, appearing on behalf of the Association.

FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER

School District of Delavan-Darien having, on July 8, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employes of said municipal employer to determine whether said employes desire to be represented by Delavan-Darien Schools Secretaries and Aides Association for the purposes of collective bargaining; and a hearing having been held on August 23, 1983, in Delavan, Wisconsin, before Christopher Honeyman, a member of the Commission's staff; and the parties having waived briefs; the Commission, having considered the record and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the School District of Delavan-Darien, hereinafter referred to as the District, is a municipal employer and maintains its principal offices at 324 Beloit Road, Delavan, Wisconsin 53115.

2. That the Delavan-Darien Schools Secretaries and Aides Association, hereinafter referred to as the Association, is a labor organization which maintains its principal offices at 202 East Chestnut Street, Burlington, Wisconsin 53105.

3. That the Association is the exclusive bargaining representative of all aides and secretaries employed by the District, excluding secretary to the Superintendent, secretaries to the Building Principal, secretary to Business Manager, secretary to Director of Instruction, central office bookkeeping staff and employes contracted for less than 175 days.

4. That in negotiations over a 1982-83 collective bargaining agreement, the District and Association agreed on all items but a "fair share" provision; and that the parties proceeded to mediation-arbitration concerning said provision.

5. That on or about June 4, 1982, Mary Drushella, President of the District's Board of Education, received a letter as follows:

This letter is to request that the Board of Education of Delavan-Darien School District recognize the following organization as the exclusive bargaining agent on matters of wages, hours, and condition of employment for all secretaries.

The name of the organization shall be the Delavan-Darien Educational Secretaries Association here after referred to as D.D.E.S.A.

At this time there are 12 secretaries employed in the school district of which 9 wish to become members of D.D.E.S.A.

On the enclosed statements you can see that we have 9 members who want D.D.E.S.A. to become the exclusive bargaining agent for them.

We thank you for your time and await your answer.;

that this letter was signed by three secretaries employed by the District and was accompanied by questionnaires signed by nine secretaries in the affirmative and one in the negative to the following question: "Shall the secretaries form as (sic) association, so they may be an exclusive bargaining agent for the Delavan-Darien Area School Secretaries;" and that on about the same date, Carol Rice, President of the Association, received a letter stating as follows:

Because the Delavan-Darien Schools Secretaries and Aides Association does not meet the needs of more then 51% of the secretaries employed by the school district, we are requesting separation from your association so we may self organize to meet our needs.

and that said letter was unsigned except with the term "the Secretaries."

6. That on or about September 8, 1982, Rice received the following letter signed in typing by eight secretaries:

This is to inform you at this time that the secretaries are still seeking separation from the Secretaries & Aides Association.

We feel that the dues are way to (sic) high for what we get out of the Association. We also know there are a number of aides who feel the same way.

that on or about September 21, 1982, Rice received the following letter signed by the same eight secretaries, also in typing:

This letter is to request a decision regarding separation of the secretaries from the Secretaries and Aides Association.

We are asking for separation from the Secretaries and Aides Association for several reasons. The first reason that we ask for separation is that we do not believe in the Association. We feel that the Association has not and will not accomplish more for us than we could accomplish on our own. The second reason that we ask for separation is that we feel the union dues are way too high. How can you justify such high dues? We would prefer to have that money in our pay checks.

The Wisconsin Employment Relations Commission has informed us that we do not have to petition them for separation since the Secretaries and Aides Association was voluntarily recognized by the School District of Delavan-Darien and since no election was held by the Commission to create such Association, the separation can be done voluntarily. Since we feel we have the School Board's approval, we are asking for separation.

We want to be cordial about this, it is not our intention to create any hard feelings and is not meant personally toward any one of you, but you should be aware that we will go to all extremes to get this separation.

that copies of both of these letters were received by Drushella; and that the Association did not agree to the requests for separation of the aides and secretaries.

7. That sometime during the 1982-83 school year approximately three to four of the eight employees who had signed the above-described letters made a similar request of the School Board at a regularly scheduled School Board meeting.

8. That the arbitration hearing in the mediation-arbitration proceeding referred to above was held on April 8, 1983; and that on or about April 7, 1983, Drushella received the following letter, signed by the same eight secretaries referred to above:

We are writing you this letter before you go into arbitration with the hopes that you can use this letter during arbitration.

We want you to know that our feelings remain the same regarding our views of belonging to the Delavan-Darien Secretaries and Aides Association.

We still feel that the "Association" has not and will not accomplish more for us than we could accomplish on our own. We asked for this separation in "good faith". Why is it constitutional to force someone to join a union to which they do not wish to be a member of?

We also would like to have it noted that in September of 1982 we sent a letter to the Delavan-Darien Secretaries and Aides Association requesting a decision regarding our request for separation from them and they did not have the common courtesy to respond to our request.

9. That during the 1982-83 school year the District employed a total of thirty-four (34) employees in the job classifications covered by the bargaining unit set forth in Finding of Fact 3 above.

10. That the District has demonstrated that some twenty-five percent (25%) of the bargaining unit has expressed dissatisfaction with the present composition and representative of the bargaining unit; that the record contains no objective evidence that any employees other than the eight secretaries have indicated dissatisfaction; and that therefore, the District has not demonstrated by objective considerations that it has reasonable cause to believe that the Association does not continue to represent a majority of the employees in the collective bargaining unit.

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

CONCLUSION OF LAW

That no question concerning representation exists within the meaning of Sec. 111.70(4)(d)3, Stats.

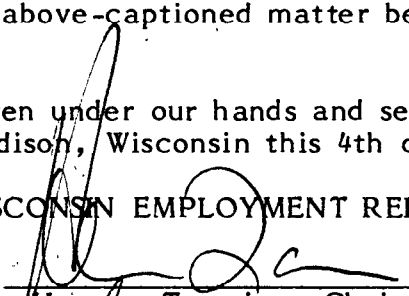
Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

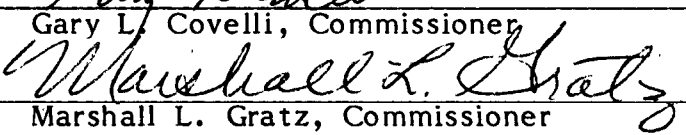
That the petition filed in the above-captioned matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

_____
Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

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.

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 FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

The issue presented by this case is whether the District relies on objective considerations for its belief that the Association no longer represents a majority of the employees in the bargaining unit. In Wauwatosa Board of Education, 2/ we stated "an employer petitioning for an election in an existing unit must demonstrate to this agency at the hearing, by objective considerations, that it has reasonable cause to believe that the incumbent organization has lost its majority status since its certification or the date of voluntary recognition."

In this case, the Association was initially recognized voluntarily for a bargaining unit composed of secretaries and aides, a common bargaining unit in school systems of this size. The District argues that the record shows that unsolicited communications from various bargaining unit members indicated to the Board that a substantial number of employees wished to "separate from the existing unit." The District contends that this is merely another way of saying that the employees wished to have an election to determine the true representative of the bargaining unit.

The Association contends that the historical bargaining unit is a mixed unit of secretaries and aides and that this is an appropriate unit. The Association argues that the letters and oral requests to the Board do not represent "even a small percentage, let alone a majority" of employees, and also that these letters do not ask for an election. The Association further argues that the letters do not request that the signers no longer be represented, but express a view that they wish to be in a separate unit.

The Employer has petitioned for an election in the overall unit rather than for severance of the secretaries. In the overall unit, all of the direct evidence is that the dissatisfaction with the Association, however it is expressed, is entirely within the limited group consisting of secretaries. More significantly, the number of employees who have expressed dissatisfaction falls, at best, short of 25% of the existing unit, and far short of a majority. For this reason we conclude that the Employer has not demonstrated by objective considerations that it has reasonable cause to doubt the Association's majority status in the petitioned-for unit, and we accordingly dismiss the petition.

While the number of employees expressing dissatisfaction would be sufficient to show "objective considerations" had the District petitioned in an existing unit consisting solely of secretaries, 3/ we note that Sec. 111.70(4)(d)(2)(a) of MERA requires us to "... avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." In accordance with that statutory amendment we have not in recent years established as appropriate

2/ 8300-A (2/68), aff'd. Dane County Circuit Court 8/68.

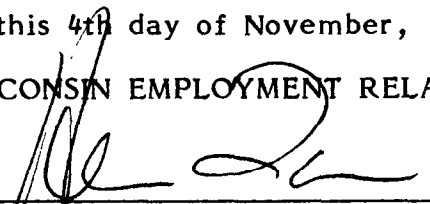
3/ Ibid.

any new bargaining unit composed solely of secretaries, in school districts of this size. 4/

Dated at Madison, Wisconsin this 4th day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

4/ cf., Lodi Jt. School District No. 1, 16667 (11/78); Columbus School District, 17259 (9/79); Richland School District, 17945 (7/80). In School District of Watertown, 17404 (11/79), we allowed elections in stipulated separate units of secretaries, custodial employees and food service workers; but the secretarial unit alone contained 32 employees.