

In the Matter of the Petition of  
GREEN BAY POLICE SUPPORT  
EMPLOYEES UNION  
  
Involving Certain Employees of  
CITY OF GREEN BAY (CITY HALL)

**Appearances:**

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DISMISSING PETITION FOR ELECTION

## FINDINGS OF FACT

- No. 21210

Annex, which is in effect from January 1, 1983 until December 31, 1983; that this collective bargaining agreement contains, among its provisions, the following:

#### ARTICLE I

##### RECOGNITION AND UNITS OF REPRESENTATION

The Employer recognizes the Union as the exclusive representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment for the Unit of Representation consisting of all employees of the City of Green Bay employed as follows:

A. "All employees of the City of Green Bay 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 of the Municipal Employer."

B. "All caseworkers employed by the City of Green Bay in its Department of Welfare, excluding department head, supervisors and all other employees of the Municipal Employer."

. . .

#### ARTICLE IV

##### NEGOTIATIONS

. . .

Negotiations shall proceed in the following manner: the party requesting negotiations shall notify the other party in writing of its request by the 15th day of July.

. . .

that the City and AFSCME are parties to a collective bargaining agreement which covers certain Park Police employees, and which is in effect from January 1, 1983 until December 31, 1983; and that this agreement contains, among its provisions, the following:

#### ARTICLE I

##### RECOGNITION AND UNITS OF REPRESENTATION

The Employer recognizes the Union as the exclusive representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives, on questions of wages, hours, and conditions of employment for the Unit of Representation consisting of all employees of the City of Green Bay employed as follows:

A. "All employees of the City of Green Bay Park Police, excluding supervisors and all other employees of the City of Green Bay."

. . .

#### ARTICLE III

##### NEGOTIATIONS

. . .

Negotiations shall proceed in the following manner: the party requesting negotiations shall notify the other party in writing of its request by the 15th day of July.

. . .

5. That on June 28, 1983 James Miller, an AFSCME Staff Representative, sent the following letter to the members of the Green Bay City Council:

Pursuant to the Current Labor Agreement, Local 1672A, Green Bay City Hall, Parking Utility, Transit and Park Police AFSCME, AFL-CIO is hereby giving notice to the Employer of its desire to amend and otherwise revise the Current Labor Agreement between the parties, to become effective January 1, 1984.

The Union will seek to amend and otherwise revise the Current Agreement concerning wages, hours, fringe benefits and conditions of employment. A detailed list of proposals will be submitted at our first meeting.

Please advise me as to a convenient date to begin negotiations.

6. That the PSEU filed a petition for election involving municipal employees which was received by the Commission on July 14, 1983; that this petition contained the following "description of claimed appropriate bargaining unit": All civilian police and Municipal Court employees employed by the City of Green Bay at the City Hall Annex located at 301 South Adams Street, Green Bay, WI 54301, excluding only supervisory, confidential, managerial or executive civilian employees, and all sworn police officers and the Municipal Judge; that the PSEU petition contained an addendum which stated in its entirety;

4. Twenty-nine out of the total of thirty employees in the claimed bargaining unit have joined and are active in the Green Bay Police Support Employees organization and have jointly and severally retained the law firm of Parins, McKay, Mohr & Beinlich, S.C. to represent them.

The petitioner organization, and the respective employees who belong to petitioner, presently are represented by the City of Green Bay City Hall Employees Union, Local #1672-A, AFSCME, AFL-CIO, which organization has been recognized as the Union that is the exclusive representative for the following employees of the City of Green Bay:

A. All employees of the City of Green Bay 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 of the Municipal Employer.

B. All caseworkers employed by the City of Green Bay in its Department of Welfare, excluding department head, supervisors and all other employees of the Municipal Employer.

That petitioner and member employees do not believe that they are appropriately a part of the bargaining unit represented by the City of Green Bay City Hall Employees Union, Local #1672-A, but rather claim that they should constitute a separate bargaining unit consisting of the employees described in Paragraph 2 above. The basis of this claim is that all of the employees described in Paragraph 2 above are employed at the Green Bay City Hall Annex, which is a separate physical entity from the Green Bay City Hall, all of them have a continuity in interest not only as to the site of their location, but also in that they are support employees of the City of Green Bay Police Department and the City of Green Bay Municipal Court, and their wages, hours and conditions of

employment differ significantly from other employees within the City of Green Bay City Hall Employees Union.

5. The current labor agreement between the City of Green Bay City Hall Employees Union and the City of Green Bay is effective January 1, 1982 (sic) and terminates December 31, 1983, except that that agreement is to be automatically renewed from year to year unless negotiations are instituted on or before July 15, 1983.

That each of the above-described twenty-nine employees of the claimed appropriate bargaining unit have signed a statement and authorization for representation indicating that petitioner organization is their choice for a representative, and that the law firm of Parins, McKay, Mohr & Beinlich, S.C. is authorized to file this Petition with the Wisconsin Employment Relations Commission on behalf of petitioner organization and the individual employees, and have additionally indicated that they no longer desire to be represented by the City of Green Bay City Hall Employees Union.

that the signed statement and authorization referred in this addendum was not included with the PSEU's petition; that on August 4, 1983, Richard McLaughlin, an Examiner on the Commission's staff, sent a letter to the attorney representing the PSEU which stated in relevant part: "Mr. Parins should supply the Commission with the authorization statements described in the addendum to his petition as soon as possible."; that the PSEU's attorney responded to this letter with a letter issued on August 10, 1983 and received by the Commission on August 12, 1983 which stated in relevant part:

Enclosed please find a Statement and Authorization for Representation bearing the original signatures of more than thirty percent of the claimed Bargaining Unit membership. There obviously was a mix-up along the line in that the original Statement and Authorization did not end up in your hands.

Also enclosed please find an Amendment to the original Petition. This Amendment was necessitated by the fact that the Park Police Officers, who are in fact civilian employees working at the Green Bay City Hall Annex, were under the impression that they belonged to the City of Green Bay City Hall Employees Union, when in fact they apparently constitute a separate Bargaining unit with a separate collective bargaining agreement with the City of Green Bay. This Unit consists of only three employees who in fact are included in the description of the claimed appropriate Bargaining Unit set forth in the original Petition filed in this action. The confusion is understandable since the terms of the Green Bay Park Police Employees Union's Labor Agreement is virtually identical to that of the Green Bay City Hall Employee's Union and that the same bargaining representatives represent both units and understandably negotiate both contracts at the same time. It was only after receiving the list of employees within the claimed Bargaining Unit from the City did I realize, after a conversation with the Personnel Director, that two separate bargaining agreements exist. In any event.

Employment Relations Commission requesting that the civilian support employees for the police and justice system of the City of Green Bay employed at the City Hall Annex be declared an appropriate Bargaining Unit in and of itself and separate from the City Hall Employees Bargaining Unit and that AFSCME, Local 1672 and 1672A, be decertified as their bargaining representative, and that the Green Bay Police Support Employees Association be certified as such bargaining representative."; and that the Commission, upon receipt of the PSEU's amended petition and showing of interest, determined that the election sought in the July 14, 1983 election petition was supported by at least 30% of the employees of the bargaining unit claimed appropriate by the PSEU.

7. That AFSCME, contrary to the PSEU, contends that the PSEU election petition is untimely because filed subsequent to June 28, 1983, the date on which AFSCME notified the City of its desire to commence negotiations on a successor agreement, and because the PSEU election petition was not accompanied by a 30% showing of interest when originally filed on July 14, 1983; that the PSEU, contrary to AFSCME, contends that the petitioned for bargaining unit is appropriate; and that the City has not taken any position regarding the timeliness of the PSEU election petition, or on the appropriateness of the petitioned for bargaining unit.

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

#### CONCLUSION OF LAW

That the petition for election involving municipal employees filed by the Green Bay Police Support Employees Union and received by the Commission on July 14, 1983, was neither timely filed nor timely amended on August 12, 1983; and that no question concerning representation within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act presently exists among the City Hall and Park Police Bargaining Units described in Finding of Fact 4 above.

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

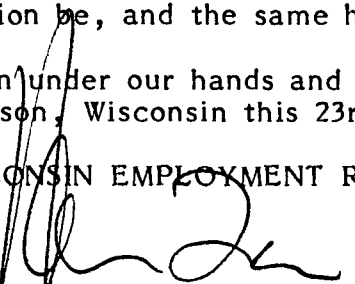
#### ORDER 1/

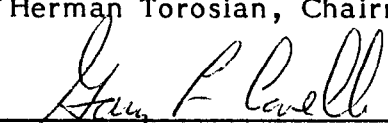
That the instant election petition be, and the same hereby is, dismissed.

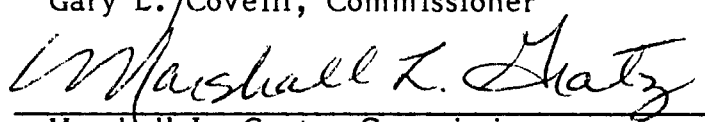
Given under our hands and seal at the City of  
Madison, Wisconsin this 23rd day of November, 1983.

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.

(See Footnote 1 continued on Page 6)

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 DISMISSING PETITION FOR ELECTION

The PSEU election petition raises two potential issues for determination: Was the election petition timely filed? If so, does that petition seek an election in an appropriate bargaining unit? Significant questions exist regarding the appropriateness of the bargaining unit sought by the PSEU since that unit is not "a presumptively appropriate petitioned unit of 'all blue collar employees, all clerical, or all professionals' employed by a given municipal employer." 2/ However, for reasons to be addressed below, it is not necessary to address these questions since the PSEU's petition cannot be considered timely.

Under well established Commission policy, election petitions which would otherwise be barred by an existing contract can be timely filed within a sixty day window period. This window period has been described by the Commission thus:

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. 3/

This window period was established by the Commission to balance the potentially conflicting purposes of encouraging the stability of existing collective bargaining relationships, and of recognizing employee freedom of choice. In this case the 60 day period is triggered by the July 15 date set forth in each collective bargaining agreement covering the City Hall and Park Police employees. AFSCME's June 28, 1983 notice to the City Council regarding commencement of negotiations is irrelevant to the establishment of the 60 day period. To conclude otherwise would mean, as the PSEU has pointed out, that the 60 day window period would be impossible to precisely determine with the result that the employee freedom of choice sought to be furthered by the 60 day period could be frustrated.

Analysis of the timeliness issue does not end here however. The 60 day window period dates back to the Commission's decision in Wauwatosa Board of Education. In that case, the Commission stated: "where the petition is filed by an employee or employees seeking to terminate the representative status of the incumbent labor organization, the petitioning employee or employees must administratively demonstrate to this agency at the time of filing that at least 30 percent of the employees in the requested bargaining unit desire to terminate the representative status of the union." (emphasis added) 4/ In the present matter the PSEU filed its original election petition on July 14, 1983 within the 60 day window period. That petition was not, however, accompanied by any showing of interest other than the PSEU's uncorroborated assertion that it enjoyed the support of virtually all of the employees in the petitioned for unit. The showing of interest was subsequently supplied by the PSEU on August 12, 1983 in an amendment to its election petition. In its post hearing brief, AFSCME challenged this belated showing of interest. Under the quoted language from Wauwatosa, the PSEU's showing of interest cannot be considered timely, since it did not accompany the original petition, and since the amended petition filed by the PSEU was not filed within the 60 day window period. Because it was not filed within the relevant 60 day window period, the PSEU petition is barred by the existing contracts covering the City Hall and Park Police Employees sought to be placed into a single bargaining unit by the PSEU.

This conclusion may bar a petition which arguably could have included an appropriate showing of interest. However, any other conclusion would subject the

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2/ City of Madison (Water Utility) 19584 (5/82) at 11.

3/ Douglas County (Highway Department), 20608 (5/83) at 5.

4/ Wauwatosa Board of Education 8300-A (2/68) at 14.

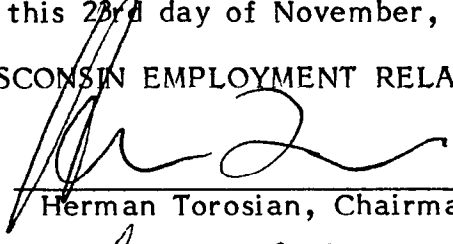
Commission to fruitless colateral litigation on whether a petitioner did, or did not, have the appropriate showing of interest during the 60 day period. In addition, any other conclusion could destroy the 60 day window period since an election petition could be filed within the period to preclude its operation while the petitioner sought the showing of interest necessary for an election after that period had run. Such a result undermines the purposes of the 60 day window period by allowing a petitioner to seek support during the period of time reserved for collective bargaining between the employer and the existing bargaining representative. Such a result undermines the stability of existing collective bargaining relationships.


In sum, the PSEU election petition cannot be considered timely even though the original petition was filed within the 60 day window period, because the showing of interest which must accompany such petitions was not filed until after that 60 day period had run. Accordingly, the PSEU election petition has been dismissed.


Dated at Madison, Wisconsin this 28<sup>th</sup> day of November, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner