

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
FOND DU LAC SCHOOL DISTRICT :
SECRETARIAL/CLERICAL EMPLOYEES :
LOCAL 1366-H, AFSCME, : Case XXII
AFL-CIO, WISCONSIN : No. 25610 ME-1789
COUNCIL #40 : Decision No. 17638-A

Involving Certain Employees of :
FOND DU LAC SCHOOL DISTRICT :
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In the Matter of the Petition of :
WISCONSIN EDUCATION :
ASSOCIATION COUNCIL : Case XXX
Involving Certain Employees of : No. 33118 ME-2340
FOND DU LAC SCHOOL DISTRICT : Decision No. 21767
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Appearances:

- Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of AFSCME.
- Mr. Elwood H. Bilse, Director of Personnel, Fond du Lac School District, 72 South Portland Street, Fond du Lac, Wisconsin 54935, appearing on behalf of the District.
- Mr. Gordon E. McQuillen, Attorney, Wisconsin Education Association Council, Post Office Box 8003, Madison, Wisconsin 53709-8003, appearing on behalf of the WEAC.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DIRECTION OF ELECTION

The Fond du Lac School District Secretarial/Clerical Employees Local 1366-H, AFSCME, AFL-CIO, Wisconsin Council #40 (hereafter AFSCME) having filed a petition with the Wisconsin Employment Relations Commission in Case XXII No. 25610 ME-1789 on March 14, 1984 requesting that the Commission clarify its certified bargaining unit 1/ to include one Head Secretary and one Secretary III employed by Fond du Lac School District (hereafter District) in its Recreation Department; the Wisconsin Education Association Council (hereafter WEAC) having filed with the Wisconsin Employment Relations Commission a petition in Case XXX No. 33118 ME-2340 on March 16, 1984, requesting that an election be conducted pursuant to Section 111.70 of the Municipal Employment Relations Act, among the following District employees:

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- 1/ After an election conducted by it, the Commission, on April 23, 1980, certified Wisconsin Council #40, AFSCME, AFL-CIO as the exclusive representative of the employees in the following stipulated appropriate unit:

all regular full-time and regular part-time secretarial/clerkal employees of the Fond du Lac School District, excluding managerial, supervisory, confidential and temporary employees. 17638 (4/80).

Thereafter, the District and AFSCME and its above-captioned local union entered into a series of collective bargaining agreements, the most recent of which is in effect from July 1, 1983 through June 30, 1984.

All regular full-time and regular part-time secretary/clerical employees referred to in the election on April 2, 1980, as certified by the Wisconsin Employment Relations Commission. Case XXII No. 25610;

WEAC having requested by its letter dated April 19, 1984 that the Commission proceed to an election without holding a hearing, vote the incumbents of the Head Secretary and Secretary III under challenge and hold AFSCME's unit clarification petition in abeyance; the Commission having denied WEAC's requests of April 19, 1984 by Chairman Torosian's letter dated April 26, 1984; the hearing of these cases having been conducted at Fond du Lac, Wisconsin on May 11, 1984 before Sharon A. Gallagher, Examiner; during the course of the hearing the parties having stipulated to an appropriate unit description with the status of the Head Secretary, Ms. McKibbin, being the only remaining issue between the parties herein; and WEAC having orally renewed its requests of April 19, 1984 during the course of the hearing and AFSCME and the District having been given full opportunity to respond on the record to said oral requests; a transcript of said proceedings having been prepared and received on May 16, 1984; WEAC having filed this Motion for Expedited Election on May 15, 1984 (containing its arguments), wherein WEAC requested, inter alia, that the Commission conduct an election pursuant to WEAC's petition without first issuing a decision on the voting eligibility issue; and AFSCME having filed a written opposition to WEAC's motion dated May 17, 1984 (containing its arguments); and the Commission having considered the arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That Fond du Lac School District Secretarial/Clerical Employees Local 1366-H, AFSCME, AFL-CIO, Wisconsin Council #40, hereafter AFSCME, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin 53719.
2. That Wisconsin Education Association Council, hereafter WEAC, is a labor organization with offices located at P.O. Box 8003, Madison, Wisconsin 53709-8003.
3. That Fond du Lac School District, hereafter District, is a municipal employer and maintains its principal offices at 72 South Portland Street, Fond du Lac, Wisconsin 54935.
4. That AFSCME has at all times material herein been the certified exclusive bargaining representative of a collective bargaining unit consisting of all regular full-time and regular part-time secretarial/clerical employees of the Fond du Lac School District, excluding managerial, supervisory, confidential and temporary employees, pursuant to Commission Case XXII No. 25610, Decision No. 17638 (4/80); and that the most recent collective bargaining agreement covering said unit will expire on June 30, 1984.
5. That on March 14, 1984 AFSCME filed a unit clarification petition requesting that the Wisconsin Employment Relations Commission clarify its certified collective bargaining unit, which consists of some fifty (50) employees, to include one Head Secretary and one Secretary III employed by the District in its Recreation Department, both positions having heretofore been treated by the parties as non-unit positions.
6. That on March 16, 1984, WEAC filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted pursuant to Section 111.70 of the Municipal Employment Relations Act among all regular full-time and regular part-time secretarial/clerical employees of the District referred to in the election on April 2, 1980, as certified by the Wisconsin Employment Relations Commission, 17638 (4/80).
7. That by letter dated April 19, 1984, WEAC requested that the Commission proceed to an election without holding a hearing and without rendering a decision on the employee unit status issues raised in AFSCME's unit clarification petition on the ground, inter alia, that since those disputed issues involved less than 4% of the potential eligibles in the unit, the challenged ballot procedure could and should be utilized to resolve the dispute if necessary.

8. That by letter dated April 26, 1984 Chairman Torosian, on behalf of the Commission, denied WEAC's requests of April 19, 1984, stating, inter alia, that although the Commission generally prefers to proceed to an election and resolve eligibility disputes through the challenged ballot procedure where a small percentage of the possible unit positions are in question, a party is entitled to a hearing to resolve disputed matters.

9. That on May 11, 1984 a hearing on both petitions was conducted; that during the course of the hearing the parties stipulated that the Secretary III position be included in the unit and they stipulated that the unit description as stated in Finding 4 was an appropriate unit with the exception that the Recreation Department Head Secretary position (currently occupied by Ms. McKibbon) remained in dispute; that during the course of the hearing, WEAC again requested that the Commission conduct an immediate election; that the parties were given full opportunity to state their positions concerning WEAC's oral request; and that WEAC agreed to put its request for an expedited election in writing for the Commission's consideration.

10. That on May 15, 1984 WEAC filed a Motion for Expedited Election (containing its position and arguments), requesting that the Commission conduct an immediate election on its petition and allow Ms. McKibbon to vote under the challenged ballot procedure and hold AFSCME's unit clarification petition in abeyance; that on May 18, 1984 AFSCME filed a written response to WEAC's motion (containing AFSCME's position and arguments), opposing WEAC's requests; and the District took no position on WEAC's motion.

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

CONCLUSIONS OF LAW

1. That the bargaining unit consisting of all regular full-time and regular part-time secretarial/clerical employees of the Fond du Lac School District, but excluding managerial, supervisory, confidential and temporary employees, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the incumbent of the position, Recreational Department Secretary III is a "municipal employee" within the meaning of Section 111.70(1)(b) and is eligible to vote in the election directed herein.

3. That it will effectuate the purposes and policies of Municipal Employment Relations Act to conduct an election herein with the Recreation Department Head Secretary being eligible to vote therein under the challenged ballot procedure.

4. That a question of representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the municipal employees in the collective bargaining unit set forth in Conclusion of Law 1, supra.

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

DIRECTION OF ELECTION 2/

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time secretarial/clerical employees of the Fond du Lac School District, but excluding managerial, supervisory, confidential and temporary employees, who were employed by the Fond du Lac School District on June 8, 1984,

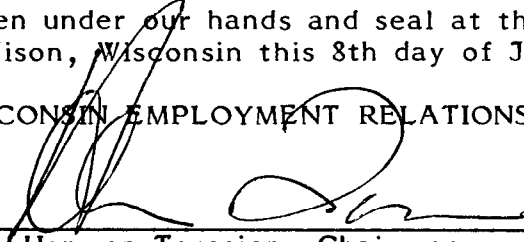
2/ Given our decision herein, Case XXII ME-1789 (the unit clarification proceeding), will be held in abeyance after receipt of the parties' briefs.

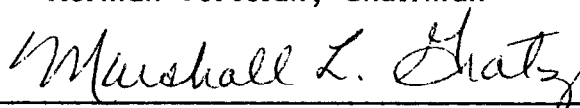
except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes desire to be represented by Wisconsin Education Association Council or by Fond du Lac School District Secretarial/Clerical Employees Local 1366-H, AFSCME, AFL-CIO, Wisconsin Council #40, or by neither of said organizations, for the purpose of collective bargaining with the Fond du Lac School District on wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 8th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DIRECTION OF ELECTION

We have decided to direct the election in this matter without awaiting the parties' briefs and our decision as to the one eligibility matter remaining in dispute in the context of some fifty potential voters. 3/

We reach that result on the basis that the processing of this election case has reached a point where:

- the taking of evidence at hearing has been completed;
- there is no dispute as to appropriate unit or existence of a question of representation; and
- there remains no dispute that would affect the propriety of directing an election in the agreed-upon unit.

Rather, the only issue remaining in dispute is the status, and hence the eligibility to vote, of a small percentage of the combined total of the proposed eligibles.

It is our view that the underlying purposes of MERA will ordinarily be best served by issuance of a direction of election forthwith when the record developed at the representation hearing reveals that there remains no significant issue that would affect the propriety of directing an election in the agreed-upon unit. Henceforth, we intend to entertain requests for such pre-decision directions of election where the foregoing conditions prevail. 4/ Where, as here, there are no strong countervailing considerations to proceeding forthwith with a pre-decision direction of election, we will issue such directions.

If the occupants of the disputed positions cast ballots, those ballots can be challenged and separated from the rest of the ballots when the latter group is counted. If the outcome of the vote could be affected by the challenged ballots, the status of the disputed positions can thereafter be decided. On the other hand, if a disposition of the disputed positions is not necessary to the outcome of the vote, the results of the election can be certified without the delay inherent in the briefing and decision processes, and if a dispute arises thereafter as to the status of the disputed position(s), that matter can be subsequently decided.

3/ Because our approach here differs from the Commission's responses to similar requests in the past (upon which prior practice the reference to a right to a pre-direction decision on all issues in Chairman Torosian's initial letter response dated April 26, 1984 was based), it was appropriate that all parties were provided the opportunity to be heard and to submit written arguments concerning WEAC's request for this departure from existing Commission practice.

4/ While a similar approach will--as Chairman Torosian stated in his April 26 letter--be preferable where it is clear there are no significant issues remaining even before the hearing has been convened or before the taking of evidence has been completed, it appears from our Rules and Statute that an objecting party has a right to a hearing prior to a direction of election or other Commission action on the petition except in emergency circumstances not present, for example, in the instant situation. Specifically, Commission Rule ERB 11.07 authorizes the Commission, "after the close of the hearing" to direct an election "forthwith" where no issue exists as to appropriate unit or as to the existence of a question of representation. However, the Sec. 111.70(4)(d)(5), Stats. authorizes the Commission to "act upon the petition forthwith" only "where it appears by the petition that a situation exists requiring prompt action so as to prevent or terminate an emergency."

This approach, when imposed after the taking of evidence at hearing is completed, is consistent with our Rules and Statute (see note 3 above), and it does no violence to fair play or due process. For, in the posture we now find the instant case, the only issue is whether a majority of employees in the agreed-upon bargaining unit favor representation by AFSCME, by WEAC or by no representative. The eligibility issue remaining in dispute is so minor relative to the number of undisputed eligibles that the vote of the occupant of the disputed position is unlikely to affect the election outcome. If and when it becomes clear that the election results cannot be certified without counting the vote of the occupant of the disputed position, AFSCME's right to a decision based on the evidence already taken (and the written arguments hereafter to be submitted) will be intact, and the Commission will proceed to decision in the matter.

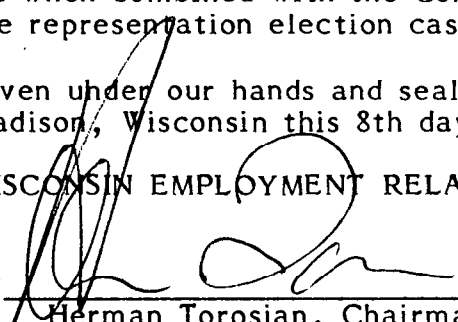
The potential short and long term advantages to the employees, the parties and the Commission of such an approach (including net savings in time and resources) outweigh the increased potential that some ballots may ultimately have to be opened in circumstances that reduce their secrecy.

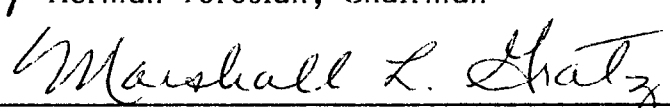
Of course, the objectives of such an approach can only be fully achieved with the cooperation of the parties and when combined with the Commission's continuing efforts to streamline and expedite representation election case processing.

Given under our hands and seal at the City of
Madison, Wisconsin this 8th day of June, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner