

In the Matter of the Petition  
TERRY SCHRAM  
Involving Certain Employees of  
CITY OF PLYMOUTH (UTILITY  
COMMISSION)

Case 25  
No. 33563 ME-2371  
Decision No. 22075

Mulcahy and Wherry, Attorneys at Law, 607 Plaza Eight, Suite 610, P.O. Box 1287, Sheboygan, Wisconsin 53082-1287, by Mr. Jon E. Anderson, appearing on behalf of the City of Plymouth (Utility Commission).

Ms. Helen Isferding, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2323 North 29th Street, Sheboygan, Wisconsin 53081, appearing on behalf of the City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO.

Mr. Terry Schram, Petitioner, Route 3, Hancol Road, Plymouth, Wisconsin 53073, appearing both on behalf of himself and the Plymouth Utilities Union.

Terry Schram, an employee of the City of Plymouth (Utility Commission), on July 5, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Plymouth (Utility Commission) to determine whether said employees desire to continue to be represented for purposes of collective bargaining by the City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO; and thereafter hearing in the matter having been held in abeyance pending efforts to reach a stipulation; and hearing in the matter having been conducted on September 11, 1984 at Plymouth, Wisconsin before Douglas V. Knudson, a member of the Commission's staff, during the course of which the City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO was permitted to intervene on the basis of being the current representative of the employees covered by the petition; and a transcript of the proceedings having been prepared; and a post-hearing brief having been received from the City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO, on September 27, 1984; and the other parties having waived the opportunity to file post-hearing briefs; and the Commission, having considered the evidence and arguments and being fully advised in the premises, makes and issues the following

1. That Terry Schram, hereinafter referred to as Schram, is an individual residing at Route 3, Hancol Road, Plymouth, Wisconsin 53073 and is an employee of the City of Plymouth (Utility Commission).

2. That City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization and has its offices at 2323 North 29th Street, Sheboygan, Wisconsin 53081.

3. That the City of Plymouth (Utility Commission), hereinafter referred to as the City, is a municipal employer and has its offices at 12 South Milwaukee Street, Plymouth, Wisconsin 53073.

4. That AFSCME and the City are presently parties to a collective bargaining agreement containing the following relevant provisions:

The Employer recognizes the Union as the exclusive bargaining agent for all regular full-time and regular part-time

Employees of the Plymouth Utilities Commission but excluding Utility Manager. Commissioners, elected officials, and supervisors as defined in the act, as certified by the Wisconsin Employment Relations Commission pursuant to an election conducted December 6, 1967.

. . .

#### ARTICLE XXX DURATION

This Agreement shall be effective as of January 1, 1983, and shall remain in full force and effect up to and including December 31, 1984. It shall continue in full force and effect thereafter until such time that either party desires to open, amend or otherwise change this Agreement.

5. That Schram, who is employed in the bargaining unit described above, on July 5, 1984, filed a petition with the Wisconsin Employment Relations Commission initiating the instant proceeding, wherein he requested an election among the employees in said bargaining unit to determine whether said employees desire to continue to be represented by AFSCME for purposes of collective bargaining with the City; and that said petition was accompanied by a sufficient showing of interest.

6. That on August 20, 1984, the Commission received a document which contained the following statement:

We the undersigned would like to add a third ballot to the election.

PLYMOUTH UTILITIES UNION

(Self represented)

that, following such typed verbage, appeared the signatures of ten (10) employees of the City; and that said signatures represented one-third of the employees in the bargaining unit.

7. That hearing on said petition was held on September 11, 1984 at which time the parties stipulated to the following description of the bargaining unit in this matter:

all regular full-time and regular part-time employees of the Plymouth Utility Commission, excluding the utility manager, commissioners, elected officials and supervisors.

8. That, AFSCME contends that the Plymouth Utilities Union does not exist at present as a labor organization and that an unfulfilled intent to form a labor organization fails to qualify the Plymouth Utilities Union to appear on the ballot in an election as an existing labor organization; that AFSCME further argues that the attempt to place the Plymouth Utilities Union on the ballot was untimely, since a proper motion to amend the original petition for election was not filed prior to September 1, 1984, and therefore, the attempt to amend the petition at the hearing was outside the sixty (60) day window period established by the Commission in prior decisions; and, that the City asserts that the Plymouth Utilities Union qualifies as a labor organization.

9. That in August 1984 certain bargaining unit employees met and decided to form a union for the purpose of representing the bargaining unit employees in collective bargaining with the City and to request the addition of the name of another labor organization to the ballot, and, those employees also selected the Plymouth Utilities Union as a name for such labor organization; that the employees have not taken any further actions, such as electing offices or adopting bylaws, to formalize the existence of the Plymouth Utilities Union as a labor organization; that ten (10) of the thirty (30) eligible voters signed the petition requesting that the Plymouth Utilities Union be placed on the ballot in any election directed herein, which petition was received by the Commission on August 20, 1984; and, that Schram testified that the Plymouth Utilities Union was not in existence at the time of the hearing herein, but that the Plymouth Utilities Union does seek to represent the employees in the existing bargaining unit.

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

CONCLUSIONS OF LAW

1. That a question of representation, within the meaning of Section 111.70(4)(d) of MERA, currently exists among the employees of the City of Plymouth (Utility Commission) employed in the following described appropriate collective bargaining unit:

all regular full-time and regular part-time employees of the Plymouth Utility Commission, excluding the utility manager, commissioners, elected officials and supervisors.

2. That request for placement of the Plymouth Utilities Union on the ballot was timely filed.

3. That the group of employees of the City of Plymouth (Utility Commission), who executed a showing of interest in support of the petition to have the name of the Plymouth Utilities Union placed on the ballot in the instant proceeding, constitutes a labor organization within the meaning of Sec. 111.70(1)(h) of MERA and therefore the Plymouth Utilities Union has the right, within the meaning of Sec. 111.70(4)(d)3 of MERA to be placed on the ballot in the election directed herein.

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

DIRECTION OF ELECTION

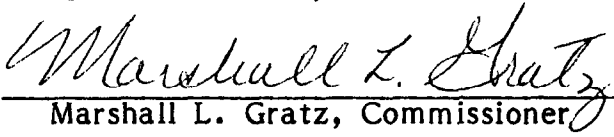
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Plymouth Utility Commission, excluding the utility manager, commissioners, elected officials and supervisors, who were employed by the City of Plymouth (Utility Commission) on November 2, 1984, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether said employees desire to be represented by the City of Plymouth Employees Local 1749-B, AFSCME, AFL-CIO, or by the Plymouth Utilities Union, or by neither of said organizations, for the purposes of collective bargaining with the City of Plymouth (Utility Commission) on wages, hours and conditions of employment.

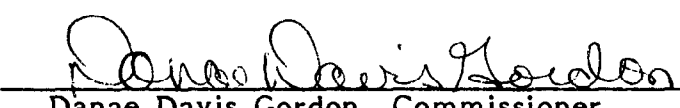
Given under our hands and seal at the City of  
Madison, Wisconsin this 2nd day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

CITY OF PLYMOUTH (UTILITY COMMISSION)

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

TIMELINESS

AFSCME, citing the Commission's decision in the City of Antigo, 1/ contends that the Plymouth Utilities Union does not exist as a labor organization at present and, therefore, said organization is not qualified to appear on the ballot in this proceeding. AFSCME further argues that the attempt to amend the petition and to place the Plymouth Utilities Union on the ballot was untimely since a proper motion to amend the petition for election was not filed prior to September 1, 1984, such that the attempt to amend the petition was outside the sixty (60) day window period established by the Commission in prior cases.

AFSCME's position assumes two things: 1) that the timely period for the filing of an election petition in the instant case is sixty days prior to September 1, 1984, and 2) that a motion to amend a petition or add a party to the ballot must be made during the timely period for filing an election petition.

As to the former, AFSCME's timeliness position assumes a contractual reopener date of September 1, 1984. However, there is no reopener date set forth in the parties' collective bargaining agreement, and, therefore, the Wauwatosa rule 2/ establishing the sixty day period prior to the reopening date in the parties' collective bargaining agreement as the timely period for filing of an election petition does not apply.

More importantly, however, in cases such as this where the instant motion is made at the hearing, the critical timeliness issue is whether a valid initial petition for election was timely filed. If a timely filed petition raises a question of representation, then no valid policy reason would exist for denying a request to add a party to the ballot, at least where as here, the request is made before or at the representation hearing and is supported by a sufficient showing of interest. Here the timeliness of Schram's petition is undisputed. Therefore, the instant request to add a party to the ballot will not be denied on the basis of timeliness.

PLYMOUTH UTILITIES UNION'S ALLEGED  
STATUS AS A LABOR ORGANIZATION

The Commission has held as follows with respect to the nature and purpose of a "labor organization":

It is significant to note that the legislature did not see fit to impose any formal requirements on a labor organization, such as a requirement that it have a constitution or by-laws, or that it admit employees to formal membership, or that it charge employees dues. The only requirement set out, other than the requirement that the organization have the appropriate intent is that employees participate; there is no requirement that the nature of the participation be any more formal than that desired by the employees themselves. 3/

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1/ Dec. No. 20170 (WERC, 12/82).

2/ Wauwatosa Board of Education, Dec. No. 8300-A (WERC, 2/68), as modified by City of Milwaukee, Dec. No. 8622 (WERC, 7/68); City of Brillion Police Department, Dec. No. 18945 (WERC, 9/81).

3/ City of Cudahy, Dec. No. 19507 (WERC, 3/82).

On August 20, 1984, the Commission received a document which read as follows:

We the undersigned would like to add a third ballot to the election.

PLYMOUTH UTILITIES UNION

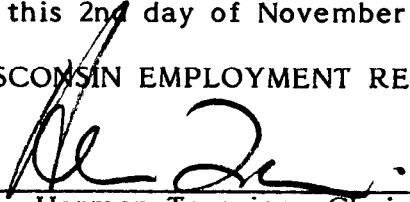
(Self-represented)

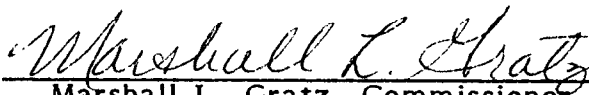
Said document was signed by ten (10) of the thirty (30) eligible voters in this proceeding. At the hearing in the instant matter, Schram's testimony made it clear that the intent of the document submitted to the Commission on August 20, 1984 was to place the name of the Plymouth Utilities Union on the ballot in an election. Although Schram testified that the Plymouth Utilities Union was not in existence at the time of the hearing herein, he further testified that the employees had met and had decided to form a union for the purpose of representing the bargaining unit employees in collective bargaining with the City, if the Plymouth Utilities Union was selected as their bargaining representative by the employees in an election. Schram also testified that the Plymouth Utilities Union claims to represent employees of the City. The meeting of the employees and the claim of representation further distinguish the instant matter from the City of Antigo decision previously cited. Thus, the Commission is satisfied that the Plymouth Utilities Union meets the statutory definition of a labor organization found in 111.70(1)(h) by seeking to act as the exclusive bargaining representative for the employees in the bargaining unit at issue herein and by the participation of the employees at a meeting during which they decided to form a union. Accordingly, the Commission is placing the name of the Plymouth Utilities Union on the ballot to allow the employees to have the opportunity to decide for themselves whether they desire to be represented by AFSCME, by the Plymouth Utilities Union, or by neither of said organizations.

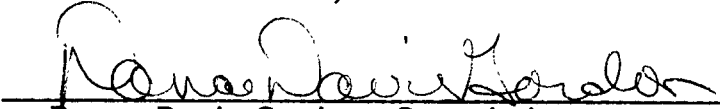
Dated at Madison, Wisconsin this 2nd day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner