

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 WISCONSIN PROFESSIONAL POLICE :
 ASSOCIATION, LAW ENFORCEMENT :
 EMPLOYEE RELATIONS DIVISION : Case 63
 : No. 33130 ME-2342
 : Decision No. 22102-B
 :
 Involving Certain Employes of :
 :
 MARINETTE COUNTY :
 (SHERIFF'S DEPARTMENT) :
 :

Appearances:

Mr. Patrick J. Coraggio, Collective Bargaining Consultant, Wisconsin Professional Police Association, 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226, appearing on behalf of W.P.P.A.
 Lawton and Cates, by Mr. Richard V. Graylow, 110 East Main Street, Madison, Wisconsin 53703-3354, appearing on behalf of AFSCME.
Mr. James E. Murphy, Marinette County Corporation Counsel, Marinette County Courthouse, 1926 Hall Avenue, Marinette, Wisconsin 54143, appearing on behalf of the County.

ORDER DISMISSING OBJECTION TO ELECTION

Following a July 12, 1984 hearing in the matter, the Wisconsin Employment Relations Commission having, on November 12, 1984, issued Findings of Fact, Conclusions of Law and Direction of Election in the above matter wherein it directed that an election be held within 45 days to determine whether a majority of the employes in a Marinette County Sheriff's Department bargaining unit desired to be represented by the Wisconsin Professional Police Association, Law Enforcement Employee Relations Division (hereinafter, the Association) or by the Marinette County Sheriff's Department Employees Union, Local 1725-B, AFSCME, AFL-CIO, (hereinafter, AFSCME) or by neither of said organizations for the purposes of collective bargaining with Marinette County on wages, hours and conditions of employment; and an election having been scheduled for December 26, 1984; and Local 1725-B, AFSCME having, at approximately 3:00 p.m. on Friday, December 21, 1984, hand delivered to the Commission's Office a Motion to Indefinitely Suspend Election, asserting that there exists a contract between Local 1725-B and Marinette County which would bar the election; and the Commission having considered the matter and issued an Order Denying the Motion; and the election having been held on December 26, 1984 in which the Association was chosen as exclusive bargaining representative; and Local 1725-B, AFSCME, having filed an Objection to Election on December 28, 1984, again asserting that a contract bar existed; and the Commission having considered the matter and being satisfied that the Objection to Election should be dismissed;

NOW, THEREFORE, it is

ORDERED

That the Objection to Election is hereby dismissed, such that the results of the December 26, 1984, election are now ripe for certification.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian, Chairman

Marshall L. Gratz
Marshall L. Gratz, Commissioner

Danae Davis Gordon
Danae Davis Gordon, Commissioner

MARINETTE COUNTY (SHERIFF'S DEPARTMENT)

MEMORANDUM ACCOMPANYING ORDER
DISMISSING OBJECTION TO ELECTION

BACKGROUND

The detailed factual background to this situation is as stated in the Findings of Fact in the Direction of Election already issued in this matter, 1/ and incorporated by reference herein. In summary, AFSCME had represented law enforcement employees in the County's Sheriff's Department for some years. On April 18, 1983, AFSCME filed a petition for final and binding arbitration of a successor labor agreement for the 1983 calendar year pursuant to Sec. 111.77, Stats. The hearing before the interest arbitrator was held on November 16, 1983. On March 22, 1984, prior to issuance of any arbitration award, the Association filed an election petition, supported by at least a 30% showing of interest, requesting that an election be held to allow the employees to determine if they wished to be represented by AFSCME or the Association. A hearing on the matter was held on July 12, 1984, at which point no decision had yet been rendered by the arbitrator. The arbitrator's award was issued on September 25, 1984. The Commission issued its Findings of Fact, Conclusions of Law and Direction of Election on November 12, 1984. Among other things, the Commission concluded that the election petition was timely filed, and that, in the particular circumstances, neither a prohibited practice complaint pending against AFSCME, nor AFSCME's interest arbitration petition filed in April of 1983, nor AFSCME's notices of intent to propose collective bargaining agreement amendments constituted a bar either to further processing of the instant election petition or to the conduct of the requested election. The Commission directed that an election be held for the purpose of determining whether a majority of the employees desired to be represented by AFSCME or the Association or by neither of said organizations.

With all three parties' agreement, the election was set for December 26, 1984. On December 21, 1984, AFSCME filed a Motion to Indefinitely Suspend Election, asserting that there existed a contract between AFSCME and the County which would bar an election. After consideration, the Commission concluded the motion should be denied. That conclusion was telephonically communicated to AFSCME and the Association on December 21, 1984, followed by a written order denying the motion issued December 21, 1984 (but mailed to the parties on December 28, 1984.) 2/ The election was held on December 26, 1984, with the Association winning the election 19 to 0. 3/

On December 28, 1984, AFSCME filed a written Objection to Election, asserting that the election should have been barred because, prior to the vote, AFSCME and the County had negotiated a collective bargaining agreement covering, at minimum, the 1984 calendar year. AFSCME alternatively asserted that the Petition for Election was not filed in a timely manner. AFSCME moved that the results of the election be voided and that no certification be issued.

In response to a letter from the Commission's General Counsel, all three parties waived any right to a hearing on the matter. The General Counsel also established a briefing schedule on the matter, but the parties chose not to submit written arguments. The Commission also informed the parties of its intent to take official notice of the contents of its file in the matter pursuant to Sec. 227.08(3), Stats., and the parties filed no objections. Finally, in response to a list of five questions from the General Counsel, AFSCME and the County supplied certain factual information to the Commission on February 4, 1985. They stated that AFSCME and the County began bargaining their 1984 labor agreement shortly after September 25, 1984, and that a tentative agreement was reached

1/ Marinette County (Sheriff's Department), Dec. No. 22102 (WERC, 11/84).

2/ Decision No. 22102-A.

3/ See the Certification of Results of Election, Decision No. 22102-(C), also issued today.

sometime in late September of 1984, with the County's Corporation Counsel and at least two elected local officers from AFSCME present. They further stated that the Union membership ratified the tentative agreement in October 1984, and that the County ratified on or about November 15, 1984, and that all the terms and provisions of the contract have been honored by the parties from the date of ratification through and including the present time. The Association did not contest any of foregoing facts.

DISCUSSION

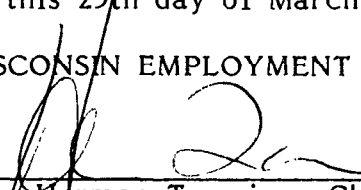
For the reasons stated in our prior decision in this matter (Dec. No. 22102), we remain satisfied that the Association's petition was timely filed and we again reject AFSCME's assertion that the petition was untimely filed.

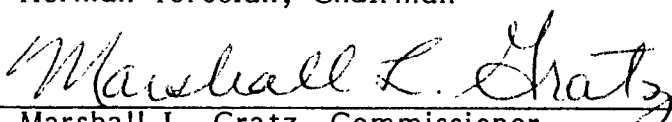
We also reject AFSCME's argument that the Commission's contract bar policy should apply in this instance to prohibit the conducting of an election in 1984 or thereafter. The arbitrator's award was issued on September 25, 1984, and AFSCME states that sometime between then and the end of September, 1984, it and the County met and reached tentative agreement on a successor agreement. The instant petition for election had been filed and heard well before either of those occurrences. In these circumstances, we conclude that the contract relied upon by AFSCME did not and does not bar or void the results of this election.

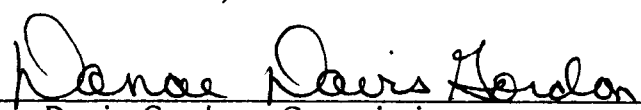
Dated at Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner