

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WISCONSIN PROFESSIONAL POLICE
ASSOCIATION, LAW ENFORCEMENT
EMPLOYEE RELATIONS DIVISION

Involving Certain Employees of
MARINETTE COUNTY (SHERIFF'S
DEPARTMENT

Case 63
No. 33130 ME-2342
Decision No. 22102

Appearances:

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

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, having on March 22, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate bargaining unit consisting of all regular full-time and regular part-time employees of the Marinette County Sheriff's Department, excluding supervisory, confidential and managerial personnel, to determine whether said employees desire to be represented for the purpose of collective bargaining by said Association; and after several attempts to voluntarily resolve the matter, a hearing having been held on July 12, 1984, in Marinette, Wisconsin, before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and at the outset of the hearing, Wisconsin Council 40, AFSCME, AFL-CIO (herein AFSCME) having been permitted to intervene in the matter; and a stenographic transcript of the proceedings having been prepared; and the parties having filed briefs by September 11, 1984; and the Examiner having, on his own motion, inquired in writing of Counsel for Complainants in the prohibited practice proceeding whether they waived any effects on the instant election of the conduct alleged in a pending prohibited practice complaint filed by them; and on September 27, 1984, Counsel for AFSCME having filed a written objection concerning said inquiry letter; and on October 8, 1984, said Complainant's Counsel having advised the Examiner in writing that said Complainants waived any such effects; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Marinette County, hereinafter referred to as the County, is a municipal employer maintaining its principal offices at the Marinette County Courthouse, Marinette, Wisconsin; and, that the County, among its various governmental functions, operates a Sheriff's Department.
2. That Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, hereinafter referred to as the Association, is a labor organization and has its offices located at 9730 West Bluemound Road, Wauwatosa, Wisconsin; and that on March 22, 1984, the Association filed the instant petition.
3. That Wisconsin Council 40, AFSCME, AFL-CIO, hereafter referred to as AFSCME, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin; that one of its affiliated Locals is the Marinette County Sheriff's Department

Employees Union, Local 1752B, AFSCME, AFL-CIO, referred to herein as Local 1752B; that Local 1752B is a labor organization maintaining its offices in c/o Richard Lepkowski, Secretary, Route 4, Box 283A, Crivitz, Wisconsin; that Local 1752B is the voluntarily recognized bargaining representative of a bargaining unit consisting of all regular full-time and regular part-time employees of the Marinette County Sheriff's Department, but excluding the sheriff, chief deputy, captain and lieutenant; and, that Cindy Fenton and Georgia Johnson are staff representatives of AFSCME who have, at various times, been responsible for servicing Local 1752B.

4. That at the onset of the hearing in the instant matter the County, the Association and AFSCME, stipulated to the following unit description:

all regular full-time and regular part-time law enforcement personnel with the power of arrest of the Marinette County Sheriff's Department, excluding supervisory, managerial, executive and confidential employees;

and, that at the onset of the hearing said parties stipulated to the following eligibility list:

Phyllis Blair	Dep. Sher.	Deputy
Earl Wagner	Dep. Sher.	Deputy
James Kanikula	Dep. Sher.	Deputy
Walter Brzoza Jr.	Dep. Sher.	Deputy
George Zablocki	Dep. Sher.	Sgt.
Frederick Carl	Dep. Sher.	Deputy
James Jerue	Dep. Sher.	Sgt.
Richard Lepkowski	Dep. Sher.	Sgt.
Darwin Brown	Dep. Sher.	Deputy
Donald Wahl	Dep. Sher.	Sgt.
Michael Waugus	Dep. Sher.	Deputy
Terry L. Zimmerman	Dep. Sher.	Deputy
Stephen Bouche	Dep. Sher.	Deputy
Michael Kessler	Dep. Sher.	Sgt.
James Allard	Dep. Sher.	Deputy
Todd Dinse	Dep. Sher.	Deputy
Edward Hoffman	Dep. Sher.	Deputy
Jerome Prefountain	Dep. Sher.	Deputy
Mike R. Yoder	Dep. Sher.	Deputy
James Briggs	Dep. Sher.	Deputy
Steven Dufek	Dep. Sher.	Deputy
Stanley Wontor	Dep. Sher.	Deputy
Peter Sanfilippo (New Hire)		Deputy
George Severson	Dep. Sher.	Deputy
Craig Bates	Dep. Sher.	Sgt.

5. That AFSCME, contrary to the Association, contends that the instant petition is blocked by both the petition for interest arbitration filed on April 18, 1983 and a complaint of prohibited practice filed with the Commission on May 22, 1984, and further contends that the instant petition is not timely filed since negotiations have been opened for the 1984 and 1985 calendar years; and, that the County takes no position on the issues raised by AFSCME.

6. That on April 18, 1983, Fenton on behalf of the Local 1752B filed with the Commission a petition for final and binding arbitration pursuant to Sec. 111.77, Stats.; that on July 29, 1983, the Commission ordered that final and binding arbitration be initiated; that on November 16, 1983, hearing on the impasse existing between the County and AFSCME was held before the interest Arbitrator; that as of July 12, 1984, no decision had been rendered in said matter; that the matter before the interest Arbitrator involved final offers both of which were for a collective bargaining agreement for the period January 1, 1983, through December 31, 1983; and, that on September 25, 1984, the award was issued in said interest arbitration.

7. That on June 29, 1983, Fenton sent the following letter to the Marinette County Board of Supervisors:

Dear County Board Members:

Pursuant to the current labor agreement, Local 1752B,
Marinette County Sheriff's Department Employees is hereby

giving notice to the Employer of its desire to amend and otherwise revise the current labor agreement 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.;

that on June 30, 1984, Johnson sent the following letter to the Marinette County Board of Supervisory:

Dear Board Members:

Consistent with the July 1 opening date provisions of the previous labor agreement (now in MED/ARB), the Local is herewith giving notice to the Employer of its desire to amend and otherwise revise the previous labor agreement, such revisions to become effective 1-01-85.

The Union will seek to amend and otherwise revise the agreement concerning wages, hours, fringe benefits and other conditions of employment. It would be the Union's intent to submit a detailed list of proposals at our first meeting regarding this successor agreement.

It is the Union's understanding that the parties are mutually agreeable to deferring commencement of such negotiations until an award has been rendered in the Pending MED/ARB (as we did for 1984) and/or until the WERC decides the pending election case involving this Unit.

If the Union's understanding is incorrect, please so notify me promptly.;

that the County has not responded to said two (2) letters; and, that there is no petition for interest arbitration, involving either the 1984 or 1985 contract years, filed with the Commission.

8. That on June 11, 1984, Terry Zimmerman, Walter Brzoza, Richard Lepkowski, and Local 1752B filed a complaint with the Commission alleging that AFSCME had committed prohibited practices within the meaning of Sec. 111.70(3)(b) of the Municipal Employment Relations Act; that said complaint alleges AFSCME has been acting as the Complainant's representative for the purposes of collective bargaining with the County; that the Association is not a named participant in said complaint; and, that in response to a Commission inquiry, Counsel for the Complainants in said proceeding expressly waived any effects of the complained of conduct on the outcome of the instant election.

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

CONCLUSIONS OF LAW

1. That the election petition filed herein is timely.

2. That all regular full-time and regular part-time law enforcement personnel with the power of arrest of the Marinette County Sheriff's Department, excluding supervisory, managerial, executive and confidential employees, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

3. In the instant circumstances, neither the prohibited practice complaint described in Finding 8, nor the petition for Sec. 111.77, Stats., interest arbitration described in Finding 6, nor the notices of intent to propose collective bargaining agreement amendments described in Finding 7 constitutes a bar either to further processing of the instant election petition or to the conduct of the election requested therein.

4. That a question of representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, presently exists within the collective bargaining unit set forth in Conclusion of Law 2.

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

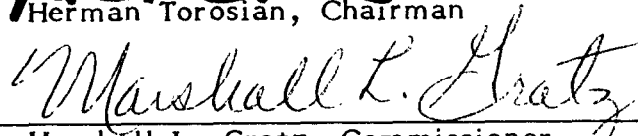
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time law enforcement personnel with the power of arrest employed by the Marinette County Sheriff's Department, excluding supervisory, managerial, executive and confidential employees, who were employed by Marinette County on July 12, 1984, except such employees as may prior to the election quit their employment or be discharged, for cause, for the purpose of determining whether a majority of said employees desire to be represented by the Wisconsin Professional Police Association, Law Enforcement Employees Relations Division or by the Marinette County Sheriff's Department Employees Union, Local 1752B, AFSCME, AFL-CIO, or by neither of said organizations, for the purpose of collective bargaining with Marinette County on wages, hours and conditions of employment.

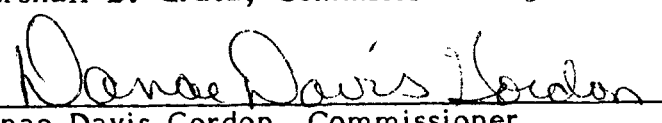
Given under our hands and seal at the City of
Madison, Wisconsin this 12th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MARINETTE COUNTY (SHERIFF'S DEPARTMENT)

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

The parties at the hearing on July 12, 1984, stipulated to the description of the bargaining unit and the list of eligible voters. At issue in the instant proceeding are the effects on the timeliness and ripeness of the petition of the prohibited practice complaint, the Sec. 111.77 petition, and the notices of the Union's intent to propose contract amendment, noted in Findings 8, 6 and 7, respectively.

POSITIONS OF THE PARTIES

AFSCME (i.e. Wisconsin Council 40, see Finding 3) argues that the election petition filed by the Association is blocked for the following reasons. First, AFSCME points out that a petition for interest arbitration has been filed, an arbitrator has been selected, and a hearing has been held. AFSCME contends that since no arbitration award had been rendered, as of the time of the representation hearing, the election petition should not be processed and it should be dismissed as untimely filed. Citing Dunn County, 1/ and City of Prescott (Police Department). 2/ Second, AFSCME points out that three of the eligible voters herein and Local 1752B have filed a complaint of prohibited practice with the Commission against AFSCME. AFSCME asserts it is not willing to waive the effects of this charge and therefore the complaint makes it inappropriate to process the petition or to conduct the election requested therein. Citing several National Labor Relations Board Decisions. Third, and finally, AFSCME contends the instant petition is blocked by negotiations. Here AFSCME points out that negotiations for the 1984 and 1985 calendar years have been opened; that the election petition should have been filed within the months of May or June in either 1983 or 1984; and that a filing of the petition on March 22, 1984, renders it untimely. Citing Douglas County (Highway Department). 3/ AFSCME acknowledges that the Commission directed an election in such circumstances in Oconto County (Sheriff's Department), 4/ but urges the Commission to modify the rule developed in that decision so as to establish a new window period for timely petition filing in such circumstances commencing with the issuance of the Arbitrator's award in the pending interest arbitration proceeding.

The Association contends the instant petition is timely filed, since it was filed after the time frame covered by the final offers in an interest arbitration proceeding, even though the decision has not been issued. The Association also argues the prohibited practice complaint against AFSCME should not block an election. The alternative would allow minority fractions to frustrate and delay any election petition. Finally, the Association claims there is sufficient evidence to demonstrate a question of representation exists and that an election should be ordered forthwith.

The County, stipulated to the unit description and eligibility list and took no position on the disputed issues noted above.

DISCUSSION

This case, like Oconto County, supra, which involved similar circumstances, calls for an application of the Commission's case law principles developed to "balance the interest of establishing stable bargaining relationships

1/ Dunn County, Dec. No. 17861, (WERC, 6/80).

2/ City of Prescott (Police Department), Dec. No. 18741, (WERC, 6/81).

3/ Douglas County (Highway Department), Dec. No. 20608, (WERC, 5/83).

4/ Oconto County (Sheriff's Department), Dec. No. 21847, (WERC, 7/84).

with the rights of employees to change or eliminate an existing bargaining relationship." 5/

In Oconto County, we reaffirmed the general rule that the Commission will not process an election petition where such a petition is filed on a date subsequent to the filing of a petition for statutory final and binding interest arbitration, but we qualified that rule as follows:

In so holding we expressly qualify the broadly stated principles in Dunn County, supra, and City of Prescott, supra to the extent that we will entertain an election petition where the collective bargaining agreement pending before an arbitrator in an interest arbitration proceeding has already expired irrespective of the final offer selected by the arbitrator. . . . 6/

AFSCME argues herein that the conduct of an election prior to the issuance of a long-awaited interest arbitration award unfairly subjects the incumbent organization to the frustrations of bargaining unit employees about delays inherent in the statutory impasse resolution processes and often not within the incumbent organization's control. AFSCME proposes, instead, that the pendency of an interest arbitration proceeding should render untimely the filing of any decertification petition until the 60 day period following ultimate issuance of the award in the matter.

We do not find AFSCME's arguments in those respects sufficient to alter our above-quoted policy adopted in Oconto County, insofar as it relates to timeliness of a decertification petition and our willingness to "entertain an election petition" in such circumstances. However, by so concluding, we are not deciding whether or in what circumstances we will delay the actual conduct of the directed election until the issuance of a pending interest arbitration award. 7/ Such a decision has become unnecessary in the instant case because the interest award in question has been issued, 8/ albeit after completion of the hearing and arguments in this case.

We also reject AFSCME's assertion that the instant petition is rendered untimely by the fact that it was not filed during the 60 day periods prior to July 1 of 1983 or 1984. We were faced with a parallel assertion in Oconto County and found it unpersuasive there, as well. There was no collective bargaining agreement in existence when the Association filed its petition herein on March 22, 1984. Given that fact, the Wauwatosa timeliness doctrine 9/ applied in the Douglas County case cited by the Union is not applicable herein. That conclusion is not affected either by the July 1 deadlines in the expired 1982 agreement and in the expired anticipated 1983 agreement or by the transmittal of intent-to-bargain notices in advance of July 1 of 1983 and 1984.

There remains AFSCME's contention that the pendency of the complaint of prohibited practice noted in Finding of Fact 8 makes inappropriate any processing of the instant election petition until the allegations in said complaint have been

5/ Id. at 8.

6/ Id.

7/ As it turned out in the Oconto County case, above, the interest arbitration award was issued prior to the date on which the election was held, though in our decision we did not expressly condition the conduct of the election on the issuance of the award or on any other condition precedent.

8/ The award in Case LVI was issued on September 25, 1984.

9/ See, 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).

fully adjudicated. In Platteville Schools 10/ we recently had occasion to note that the following remains a viable rule consistent with the underlying purposes of MERA:

The Commission has long adhered to the policy of refusing to proceed with the processing of an election petition during the pendency of a related unfair labor practice/prohibited practice complaint absent an express waiver by the complainant of the effects of the alleged unlawful conduct on the outcome of the election. 11/

The National Labor Relations Board's practice relied upon by AFSCME herein was considered in the Platteville Schools case and rejected as a basis for modifying the above-quoted policy. 12/ Here, the attorney of record for the Complainants in the complaint proceeding (Linda S. Vanden Heuvel of Milwaukee), in response to the Commission's written inquiry, expressly waived the effects of the alleged unlawful conduct on the outcome of the election. Thus, if for no other reason, the pendency of the complaint proceeding does not block the instant election proceeding because of the Complainant's waiver noted above. AFSCME's unwillingness, as Respondent in the complaint proceeding, to waive the effects of the complaint on the election 13/ does not suffice as a basis on which to hold the election proceeding in abeyance pending the full adjudication of the complaint. 14/

By letter received September 25, 1984, AFSCME had, inter alia, objected to consideration of the Complainant's waiver noted above on the grounds that (1) the Complainant's position in that regard was solicited by Examiner Bielarczyk on his own motion; (2) it was so solicited on September 20, 1984 after the instant proceeding had been fully heard and argued; and (3) to give it any consideration denies AFSCME its due process rights of "cross-examination, confrontation, etc." since the instant matter was noticed as a Class 1 and hence a "contested" case within the meaning of Ch. 227, Stats.

We find that objection to be without merit. It is the Commission's long-standing practice to administratively inquire of Complainants as to their willingness to waive the effects of their complaints on representation petitions filed with the Commission. While it is normal and preferable that such be undertaken earlier in the process than occurred herein, we do not find it a violation of due process for us to consider the Complainant's response (i.e., waiver) as we have done above. The decision whether to treat a complaint as blocking is an administrative one for the Commission. Obtaining the waiver is the Commission's means of determining whether or not the Commission should interpose an administrative bar to proceeding with processing of the election petition. AFSCME has been notified that the waiver was sought and was copied with Complainant Counsel's response dated October 8, 1984. It has therefore received all of the process that is due in the circumstances. In our view, AFSCME has no right to cross-examine or confront the Complainants or their counsel as regards the contents of their Counsel's response. We therefore find it proper to consider the Complainant's response waiving the effects of the complaint on the instant election.

10/ Platteville Schools, Dec. No. 21645-A, (WERC, 6/84).

11/ Id.

12/ Id. at 5.

13/ In his brief at p. 3, Attorney Graylow states "The Charge specifically names AFSCME as a Respondent and alleges, unlawful conduct. AFSCME is not willing to and does not waive the effects of this Charge. . . ."

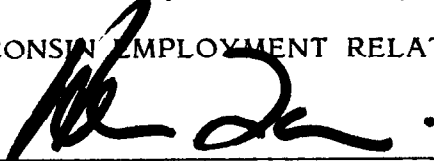
14/ E.g., Cedar Lake Home for the Aged, Dec. No. 9770 (WERC, 6/70) at p. 5 and cases cited therein. See also, Platteville Schools, supra at N.4.

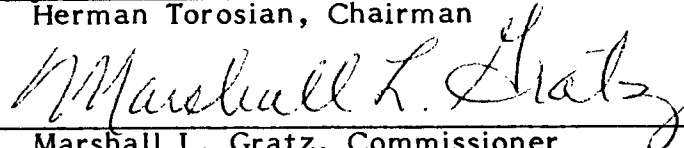
For the foregoing reasons, we have concluded that the petition has been timely filed; that there presently exists a question of representation; and that it is appropriate to unconditionally direct an election forthwith.


Dated at Madison, Wisconsin this 12th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner