

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
THE INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 139,
Involving Certain Employees of
TOWN OF MERCER

Case 4
No. 34747 ME-2439
Decision No. 22826-D

Appearances:

Mr. George M. Blauvelt, Attorney at Law, P. O. Box Q, Mercer,
Wisconsin 54547, appearing on behalf of the Town.
Mr. Edward L. Guthman, Business Representative, Operating Engineers Local
No. 139, AFL-CIO, 1007 Tower Avenue, Superior, Wisconsin 54880,
appearing on behalf of the Union.

ORDER ADOPTING IN PART AND MODIFYING
IN PART EXAMINER'S PROPOSED FINDINGS
OF FACT, CONCLUSIONS OF LAW AND ORDER

Pursuant to an August 9, 1985 Direction of Election issued by it, the Wisconsin Employment Relations Commission conducted an election on September 13, 1985 among certain employees of the Town of Mercer who were eligible to vote as of August 9, 1985 to determine whether said employees desired to be represented for the purposes of collective bargaining by the International Union of Operating Engineers, Local 139; and the Commission's agent conducting said election having challenged the ballots of seven employees; and the tally sheet executed by the Commission's agent having reflected the following results:

1. Eligible to vote	2
2. Ballots cast	9
3. Ballots challenged	7
4. Ballots cast for Operating Engineers Local Union No. 139, AFL-CIO	0
5. Ballots cast for no representation	2

and Local 139 having timely filed objections to the conduct of election alleging the Town had threatened employees with retaliation if they supported Local 139; and Examiner Jane B. Buffett, a member of the Commission's staff, having been assigned to the matter for the purpose of issuing Proposed Findings of Fact, Conclusions of Law and Order pursuant to Sec. 227.09(2), Stats. as to the challenged ballots and the objections to the conduct of election; and Examiner Buffett having on May 16, 1986 issued her Proposed Findings, Conclusions, and Order wherein she sustained the seven challenged ballots concluding the prospective voters were all ineligible to vote in the September 13, 1985 election, and wherein she upheld certain of Local 139's objections to the conduct of election and concluded that the results of the September 13, 1985 election should be set aside and a new election directed upon the request of Local 139 at such time as the employees could make a free and untrammelled choice as to representation; and no objections to the Examiner's Proposed decision having been filed; and the Commission having reviewed the Examiner's decision and the record and concluded that her Proposed Findings, Conclusions and Order should be adopted in part and modified in part;

NOW, THEREFORE, it is

ORDERED 1/

A. That Examiner's Proposed Findings of Fact 1-10 are hereby adopted.

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.

B. That Examiner's Proposed Finding of Fact 11 is hereby set aside.

C. That Examiner's Proposed Finding of Fact 12 is hereby renumbered and adopted as Finding of Fact. 11.

D. That Examiner's Proposed Conclusion of Law 1 is modified to read:

1. That as of August 9, 1985, the seven challenged voters noted in Finding of Fact 4 were temporary employees not included in the bargaining unit description set forth in Finding of Fact 3 and therefore were not eligible to vote in the election conducted on September 13, 1985.

E. That Examiner's Proposed Conclusion of Law 2 is hereby set aside.

F. That Examiner's Proposed Conclusion of Law 3 is hereby renumbered and adopted as Conclusion of Law 2.

G. That Examiner's Proposed Order is hereby modified to read:

ORDER

IT IS ORDERED that the seven challenged ballots shall remain sealed.

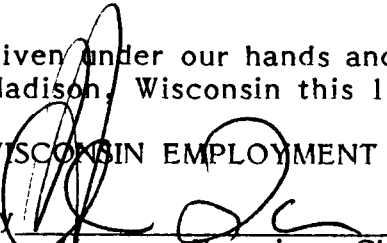
IT IS ORDERED that the election heretofore conducted among employees of the Town of Mercer on September 13, 1985, be, and the same hereby is, set aside.

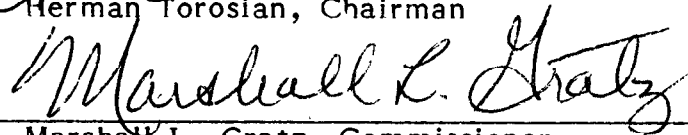
IT IS FURTHER ORDERED that a new election by secret ballot be conducted, upon request to the Commission by the Union, at such time as the Commission is satisfied that a free and untrammelled election can be conducted, among all employees of the Town of Mercer in the bargaining unit described in Finding of Fact 3 above, on an eligibility date to be subsequently set by the Commission, except such employees as may, prior to the election, quit their employment or be discharged for cause, to determine whether a majority of such employees desire to be represented by the International Union of Operating Engineers, Local 139, for the purpose of collective bargaining on wages, hours, and conditions of employment.

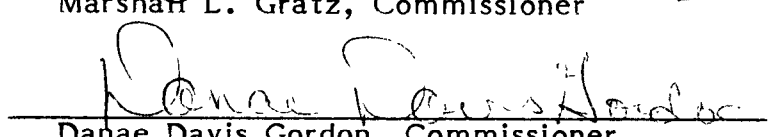
Given under our hands and seal at the City of
Madison, Wisconsin this 15th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

(Footnote 1 continued)

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.

(Footnote 1 continued on Page 3)

(Footnote 1 continued)

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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

TOWN OF MERCER

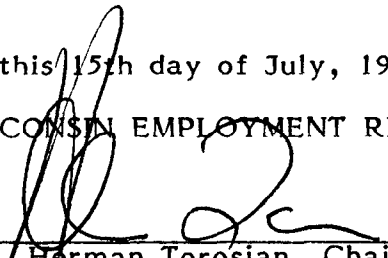
MEMORANDUM ACCOMPANYING
ORDER ADOPTING IN PART AND MODIFYING
IN PART EXAMINER'S PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW AND ORDER

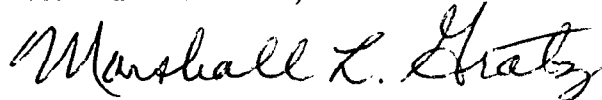
As our Order reflects, we have by in large adopted the Examiner's proposed decision. Our deletion of Proposed Finding 11 and Conclusion of Law 2 and our modification of Proposed Conclusion of Law 1 reflect our view that: (1) the eligibility of the seven challenged voters is determined by their status as of the August 9, 1985 eligibility date established in our Direction of Election; (2) the determination that the seven challenged voters were temporary employees on August 9, 1985 is more properly a Conclusion of Law than a Finding of Fact; and (3) that the eligibility of employees Bock and Thompson to vote in the new election will be determined by their status or that of their replacements, if any, as of the eligibility date established in the new Direction of Election. We have also modified the Examiner's Proposed Order to add the appropriate disposition of the challenged ballots.

Dated at Madison, Wisconsin this 15th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman



Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner