

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
COUNCIL #10
Involving Certain Employees of
SCHOOL DISTRICT OF CUDAHY

Case 36
No. 35292 ME-2467
Decision No. 23093

Appearances:

Mr. Gordon E. McQuillen, Attorney, 950 S. Midvale Blvd., Madison, Wisconsin, 53711, appearing on behalf of Council 10.
Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, 207 East Michigan Street, Milwaukee, Wisconsin 53202, appearing on behalf of District Council 48, AFSCME, AFL-CIO.
Mulcahy & Wherry, S.C., by Mr. Robert W. Mulcahy, 815 E. Mason Street, Milwaukee, Wisconsin 53202-4080 appearing on behalf of the School District of Cudahy.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION OF ELECTION

Council #10, having on July 1 and July 5, 1985, 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 unit consisting of all regular full-time and regular part-time clerical employees of the District to determine whether said employees desire to be represented for the purpose of collective bargaining by Council #10; and hearing having been held on August 30, 1985, in Cudahy, Wisconsin, before Examiner Mary Jo Schiavoni; and at the outset of the hearing, District Council 48 and its Local No. 742 having been permitted to intervene in the matter on the basis that they are currently recognized as the bargaining representative of the above-referred to affected employees; and briefing having been completed on October 28, 1985; and the Commission having reviewed the record in the matter and having concluded that it desired to adduce additional evidence concerning the existence and nature of support staff employee participation in Council #10 activities; and by agreement of all parties, the Commission having adduced said additional evidence by telephone and follow-up Commission letter summarizing same dated December 2, 1985; and the Commission, having considered the evidence and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Council #10 is an organization with a mailing address of 4620 West North Avenue, Milwaukee, Wisconsin 53208.

2. That City of Cudahy Employees, Local No. 742, chartered by the American Federation of State, County and Municipal Employees, AFL-CIO, and affiliated with Milwaukee District Council 48, hereinafter referred to as AFSCME, is a labor organization with a mailing address of 3427 W. St. Paul Avenue, Milwaukee, Wisconsin 53208.

3. That the School District of Cudahy, hereinafter referred to as the District, is a municipal employer maintaining its principal offices at 3744 E. Ramsey Avenue, Cudahy, Wisconsin 53110.

4. That on July 1 and again on July 5, 1985, Council #10 filed a petition for an election in a claimed appropriate unit of the District's employees consisting of all regular full-time and regular part-time clerical employees of the board excluding supervisory, confidential, executive, and managerial employees; that AFSCME, as the current representative of that bargaining unit, was given notice of the petition and permitted to intervene in the proceeding; that all three parties agree that the bargaining unit described above is an appropriate unit; but that AFSCME, contrary to Council #10, argues that the petition should be dismissed because it was not timely filed, because Council #10 is not a labor organization, and/or because Council #10 has a conflict of interest that precludes

it from serving as representative of the unit in question; and that AFSCME further argues that if an election is conducted "Council #10" is an improperly misleading name which should, to be included on the ballot, make reference to the Wisconsin Education Association Council; that the District and Council #10 argue that the petition is timely and the District argues that whatever ruling is made concerning a Council #10 conflict of interest should be equally applied to AFSCME.

5. That Council #10 is an organization which exists for the purpose of providing a governance structure through which the WEAC/NEA-affiliated local education associations in seven Milwaukee suburban school districts including the Cudahy District may cooperatively provide services for their members; that Council #10 is governed exclusively by WEAC/NEA-affiliated local education associations; that in furtherance of its above-noted purpose, Council #10 provides collective bargaining, grievance processing and other services to the local associations comprising it when and to the extent requested by said associations, but the respective local association (rather than Council #10) is the named exclusive representative of each of the professional education units in the above-noted seven districts; that Council #10 has a close working relationship with the Wisconsin Education Association Council (herein WEAC), receives funds from WEAC, and is entitled to at least one representative on the WEAC Board of Directors, but denies that it is formally affiliated with WEAC, per se; that in additional furtherance of its above-noted purpose, Council #10 accepts as Council #10 members (and receives dues from) individuals employed in support staff positions in the seven school districts noted above, has obtained exclusive representative status in a number of bargaining units of such employees including an existing unit of Cudahy District paraprofessional personnel, and provides collective bargaining and grievance processing services to the employees in said units as their named exclusive representative; that the support staff units so represented by Council #10 are not presently affiliated with WEAC and Council #10 states that it has no plans to seek WEAC affiliation of such units in the future; that support staff employees in units represented by Council #10 who are members of Council #10 do not vote on the Council #10 dues they are charged or on any other Council #10 policies; but that those employees do select their own steward and bargaining team and vote on whether to ratify contracts brought back to them by their bargaining team; that the bargaining team for each such unit (consisting exclusively of employees from the particular unit involved) decides what to propose to management in negotiations (with advice and assistance from Council #10 Executive Director Gibson), participates with Gibson in negotiation meetings with employer representatives, decides what changes in position to make during negotiations, and decides whether to reach an overall tentative agreement (subject to full membership ratification) or to proceed with statutory interest arbitration (the costs of which are paid by Council #10); that the Council #10 members in each support staff bargaining unit select their leaders and conduct their meetings and business in a manner determined by them; that there are no formal constitutions or by-laws governing the internal processes of any of those units; that support staff employees also participate in Council #10 grievance processing and bargainer-training activities; that from the foregoing it follows that Council #10 is an employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours and conditions of employment.

6. That AFSCME and the District have been parties to a series of collective bargaining agreements covering the employees in the petitioned-for unit, the most recent agreement extending from January 1, 1984, through December 31, 1985, and that said agreement contains the following provisions:

Article II

Agreement

Section 3

This Agreement shall remain in full force and effect from and after the first day of January, 1984, and shall terminate on the thirty-first day of December, 1985.

Article III
Negotiations

Section 2

The parties shall mutually agree on a date between September 1 and September 15 of each applicable year to meet for the purpose of exchanging proposals for the modification or amendment of the Agreement.

and that when refiled on July 5, 1985, the instant petition was filed within the 60-day period prior to the date reflected in the collective bargaining agreement for the commencement of negotiations on a successor agreement.

7. That AFSCME is currently the certified exclusive bargaining representative for three of the District's bargaining units, i.e., a unit of custodial employees, another unit of part-time cleaning persons and cafeteria employees, and the disputed unit of clericals involved herein.

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

CONCLUSIONS OF LAW

1. That Council #10 is a labor organization within the meaning of Sec. 111.70(1)(h), Stats.

2. That Council #10 is a proper party petitioner for the election requested in the instant petition and a proper candidate for inclusion on the ballot in the election directed herein.

3. That City of Cudahy Employees, Local No. 742, chartered by the American Federation of State, County and Municipal Employees, AFL-CIO, and affiliated with Milwaukee District Council 48, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., a proper party intervenor in this proceeding, and a proper candidate for inclusion on the ballot in the election directed herein.

4. That the petition refiled on July 5, 1985 was timely filed.

5. That all regular full-time and regular part-time clerical employees of the District but excluding supervisory, confidential, executive and managerial employees is an appropriate unit for collective bargaining.

6. That a question of representation, within the meaning of Sec. 111.70(4)(d), Stats., presently exists within the collective bargaining unit set forth in Conclusion of Law 5.

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 clerical employees employed by the District but

excluding supervisory, confidential, executive, and managerial employees, who were employed by the School District of Cudahy on December 5, 1985, 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 Council #10 or by District Council 48 and its Local No. 742, AFSCME, AFL-CIO or neither of said organizations for the purpose of collective bargaining with the School District of Cudahy on wages, hours and conditions of employment.

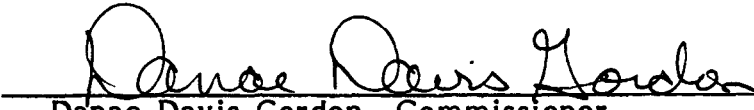
Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of December, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

SCHOOL DISTRICT OF CUDAHY

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

AFSCME seeks dismissal of Council #10's petition for an election in the clerical unit of the District's employees currently represented by AFSCME. The pertinent facts are set forth in the Findings of Fact and need not be repeated here. The issues raised by AFSCME are summarized in Finding 4.

POSITIONS OF THE PARTIES:

AFSCME argues that Council #10's request for an election should be denied for several reasons. AFSCME contends that Council #10 is not a labor organization within the meaning of Sec. 111.70(1)(h) of MERA. It notes that Council #10's constitution limits Council #10's constituent organizations to Wisconsin Education Association affiliates and that the testimony shows that none of Council #10's support staff units are affiliated with WEAC. From this AFSCME would have the Commission conclude that Council #10 is not an "employee organization in which employees participate". AFSCME also notes that by reason of the controlling role of the seven local teacher associations in Council #10's affairs and Council #10's receipt of monies from WEAC, Council #10 will inherently be more interested in protecting the interests of the professional teaching unit personnel than the interests of the clerical employees in its dealings with the District. From that AFSCME would have the Commission conclude that Council #10 could not exist for the requisite purpose of "engaging in collective bargaining with municipal employers . . . " on behalf of a clerical unit of District employees. In any event, AFSCME asserts that Council #10's relationship with WEAC is such that it should be precluded from seeking to represent the clerical unit or at least required to include a reference to WEAC somewhere in the name under which its candidacy is offered on the ballot regarding such a unit. AFSCME also argues that the Commission's decision in City of Milwaukee, Dec. No. 8622 (WERC, 7/68) warrants the conclusion that the instant petition should be dismissed as untimely filed.

Council #10 asserts that the petition is proper and timely. Citing Village of Grafton, Dec. No. 12718 (WERC, 5/74), Council #10 asserts that "labor organization" status is not required for a candidate to be a proper party petitioner in a representation election and to be included on the ballot. In any event, Council #10 argues, the record clearly establishes that Council #10 is a "labor organization". Council #10 further argues that the record shows Council #10 is not, itself, affiliated with WEAC, such that WEAC is neither a party to this proceeding nor appropriately named on the ballot. Rather, Council #10 asserts, the school district personnel bargaining units which it represents are not affiliated with the Wisconsin Education Association Council. Even if they were, Council #10 argues that Sec. 111.70(4)(d)2. of MERA precludes the Commission from barring Council #10's participation in the election on AFSCME's conflict of interest theory, and the statute leaves the ultimate determination to the eligible voters in the election. Regarding timeliness of the petition, Council #10 asserts that the July 5, 1985 filing date falls within the "window period" established by the Commission, citing, City of Green Bay (City Hall), Dec. No. 21210 (WERC, 11/83). Finally, Council #10 requests the Commission award costs and fees against AFSCME because AFSCME's arguments advanced herein were frivolous in nature.

The District takes the position that the instant petition is timely filed and that there is no contract bar affecting it. With respect to the conflict of interest issue, the District asserts that any ruling affecting Council #10 would be equally applicable to AFSCME which is seeking herein to continue to represent more than one unit of employees of a single employer.

DISCUSSION:

Council #10's claimed status as a "labor organization" 1/ has been disputed by AFSCME herein, and we find it appropriate to resolve that dispute. 2/

The evidence adduced at the hearing held on August 30, 1985, revealed that, in addition to its activities with regard to and involving members of its constituent local education associations affiliated with WEAC and NEA, Council #10: accepts memberships and dues from employees in staff support units in the districts in which it represents teacher bargaining units; that it has obtained exclusive representative status in several support staff units; that it provides collective bargaining and contract administration services to those support staff units; but that the support staff units and the employees in them have no role in the governance of Council #10 and no vote in Council #10 policymaking or in the selection of Council #10's leaders or Council #10's representatives to the WEAC Board of Directors.

The Commission sought and received additional record evidence concerning the nature of the support staff employees' participation in Council #10 activities. That evidence establishes that support staff employees are permitted to and do in fact participate in various ways in Council #10's activities relating to collective bargaining and contract administration for their unit, as noted in Finding of Fact 5, above. While support staff employees do not have a vote regarding the leadership, dues structure or other policies of Council #10 (despite having twice rejected Council #10 offered opportunities to seek a formal means of input into such matters), the evidence is more than sufficient to warrant the conclusion that with regard to support staff employees, Council #10 is not only an "employee organization" which exists for the requisite "purpose" set forth in Sec. 111.70(1)(h), Stats., but also that it is one "in which employees participate" within the meaning of that statutory definition of "labor organization". Hence, we have concluded that, in the context of the instant election proceeding, Council #10 is a labor organization.

With regard to AFSCME's contention that Council #10 should be foreclosed from seeking to represent the instant unit on grounds of conflict of interest, we share Council #10's view that Sec. 111.70(4)(d), Stats., leaves such matters to the ultimate selection of representative by the eligible voters in the election rather than to the Commission. That Section provides, "Nothing in this Section shall be construed as prohibiting two or more collective bargaining units from bargaining collectively through the same representatives." We have therefore concluded that neither Council #10 nor AFSCME are foreclosed from seeking to represent the instant unit by reason of their representation of one or more other units of District employees or by their representation of other units of non-District employees.

1/ Section 111.70(1)(h), Stats., defines "labor organization" as follows:

(h) "Labor organization" means any employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment.

2/ As Council #10 points out, "labor organization" status is not a necessary prerequisite to petitioning for and serving in exclusive representative status for a bargaining unit under MERA. See, Manitowoc County, Dec. No. 10866 (WERC, 3/72) (dicta) (Because Section 111.70(2) guarantees employees the right to engage in collective bargaining through "representatives of their own choosing", an individual as well as a labor organization can petition for and obtain exclusive representative status). While much of MERA thus refers only to a "representative", a representative's labor organization status may be essential as regards certain matters under MERA. For example, the Sec. 111.70(1)(f), Stats., definition of a fair share agreement begins as follows: "an agreement between a municipal employer and a labor organization under which"

We find no merit in the contention that Council #10's petition should be dismissed as untimely. While it was originally filed two days prior to the 60 day "window period" preceding the September 1 date specified for potential opening of successor contract negotiations, it was refiled on July 5, within that "window period". Hence, it was timely filed under existing Commission case law principles.

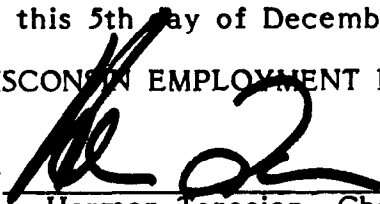
While "Council #10" was previously known as WEAC Council #10, the record establishes that it has formally adopted the "Council #10" name and has appeared on the ballot as such in connection with several other representation proceedings. While the record reveals a close working relationship between Council #10 and WEAC, we do not find it necessary or appropriate on the facts of this case to require that Council #10 appear on the ballot in such a way as to indicate a formal affiliation with WEAC.

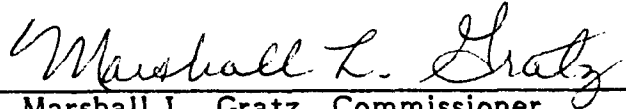
Accordingly, we have directed an election as more fully set forth in the Direction, above. Council #10's request for attorneys' fees and costs in the instant dispute is denied.

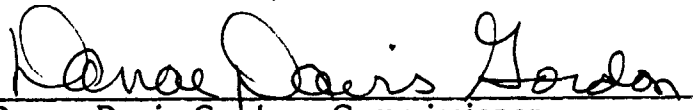
Dated at Madison, Wisconsin this 5th day of December, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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