

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 JOHN SOBEK :
 :
 Involving Certain Employes of : Case 227
 : No. 37551 ME-2623
 : Decision No. 24212
 MILWAUKEE COUNTY (HOUSE OF :
 CORRECTION-SHERIFF'S :
 DEPARTMENT) :
 :

Appearances:

- Mr. John Sobek, 3616 South 17th Street, Milwaukee, Wisconsin 53221 on his own behalf.
- Mr. Patrick J. Foster, Director of Labor Relations, Milwaukee County Courthouse, 907 North 10th Street, Milwaukee, Wisconsin 53233 on behalf of Milwaukee County.
- Podell, Ugent & Cross, S.C., by Mr. Alvin R. Ugent, 207 East Michigan Street, Suite 315, Milwaukee, Wisconsin 53202, for the Intervenor, Milwaukee District Council 48, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION FOR ELECTION

John Sobek, an individual, having on September 8, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employes of Milwaukee County to determine whether said employes desire to be represented by another labor organization for purposes of collective bargaining; and hearing in the matter having been conducted on October 22, 1986, in Milwaukee, Wisconsin, before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and at the outset of the hearing, Milwaukee District Council 48, AFSCME, AFL-CIO, having been permitted to intervene in the matter, on the basis of its status as the current certified collective bargaining representative of some of the employes who are the subject of the instant petition; and the parties having waived the filing of briefs in this matter; and the Commission, having reviewed the entire record and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That John Sobek, the Petitioner herein, is and has been an employe of the Milwaukee County House of Correction in the classification of Correction Officer for the past six and one half years.
2. That Milwaukee County, hereinafter referred to as the County, is a municipal employer, having its offices at the Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, Wisconsin 53233; that among its various functions, the County operates a House of Correction located at 8885 South 68th Street, Franklin, Wisconsin 53132 and a Sheriff's Department; and that the House of Correction is established pursuant to Sections 56.16 through 56.20, Stats., and constitutes a separate County department unto itself.
3. That Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization having its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208; and that at all times relevant herein, AFSCME has been, and is, the certified exclusive collective bargaining representative of approximately 6,000 employes of the County, including, since 1965, employes occupying the classifications of Correction Officer I and Correction Officer Sergeant II employed at the House of Correction.

4. That Milwaukee Deputy Sheriff's Association is currently the collective bargaining representative for certain employes of the County's Sheriff's Department, including Deputy I, Deputy II and Deputy Sheriff Sergeant; and that said labor organization failed to appear at the hearing or in any way to indicate an interest in representing the employes which are the subject of the instant dispute.

5. That in his petition initiating this matter, Petitioner Sobek requested that the Commission conduct an election among the employes in a proposed bargaining unit combining certain House of Correction Department employes with the existing Sheriff's deputies unit; that the claimed appropriate bargaining unit identified in the petition is: Correction Officer I, Correction Officer Sergeant II, Deputy I, Deputy II, Deputy Sheriff Sergeant, but excluding Correction Officer Captain III, Correction Officer Cook I, II and III, and Correction Officer Maintenance; that at hearing on said matter, Petitioner Sobek clearly stated that he did not seek establishment of a separate unit of Correction Officers and that he sought, instead, to cause the Correction Officer I and Correction Officer Sergeant II classifications to be removed from the AFSCME bargaining unit referred to in Finding of Fact 3, above, and included instead in the existing unit represented by the Milwaukee Deputy Sheriff's Association referred to in Finding of Fact 4 above.

6. That the showing of interest accompanying the instant petition does not constitute a 30 percent showing of interest among the employes in the proposed combined/expanded bargaining unit claimed appropriate in the petition and noted in Finding of Fact 5, above.

7. That Milwaukee Deputy Sheriff's Association has not been shown to have expressed an interest in representing the employes employed in the Correction Officer I and Correction Officer Sergeant II classifications.

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

CONCLUSIONS OF LAW

1. That Petitioner Sobek is neither the municipal employer of, nor the recognized or certified collective bargaining representative for the Correction Officer I's, and Correction Officer Sergeant II's; and that, therefore, Petitioner Sobek lacks standing to pursue a petition that would, by means of a unit clarification order, include said classifications in the unit represented by Milwaukee Deputy Sheriff's Association (referred to in Finding of Fact 4) without a vote among the employes in any voting group.

2. That the petition does not give rise to a question of representation among the entirety of the proposed combined/expanded bargaining unit because neither Petitioner Sobek nor any labor organization has been shown to have expressed an interest in being the representative of that unit, and the showing of interest accompanying the instant petition did not constitute at least 30 percent of the employes in the combined bargaining unit.

3. That the petition does not give rise to a question of representation in a voting group consisting of the Correction Officer I and Correction Officer Sergeant II classifications because neither the Petitioner nor any labor organization has been shown to have expressed an interest in representing that group as a separate collective bargaining unit, and the Milwaukee Deputy Sheriff's Association has not been shown to have expressed any interest in expanding its existing bargaining unit to include said additional classifications.

NOW, THEREFORE, it is

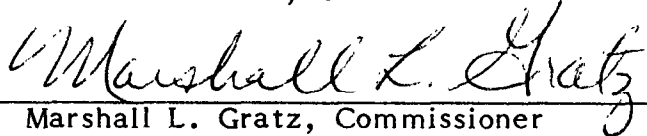
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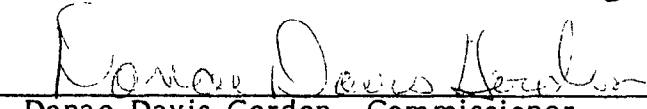
That the instant petition shall be, and hereby is, dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of January, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 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.

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.

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

(Footnote 1 continued on Page 4)

(Footnote 1 continued)

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.

MILWAUKEE COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

The instant petition was filed as an election petition by John Sobek, an individual employe of the County. The request set forth on the face of the petition is noted in Finding of Fact 5. At hearing, Petitioner Sobek stated that he was not seeking to establish a separate unit of Correction Officers I and Correction Officers Sergeant II, but rather that he sought to move those classifications (all holders of which are employed exclusively at the House of Correction) from the AFSCME unit noted in Finding of Fact 3 to the Milwaukee Deputy Sheriff's Association unit noted in Finding of Fact 4.

The County stated that it took no position for or against Sobek's request. However, the County would strongly oppose any outcome herein that would result in creation of an additional bargaining unit of County employes. The County also moved for dismissal of the petition on the basis of the Commission's conclusion in Dec. No. 19753-A (WERC, 1983) *aff'd*, Case No. 609-864 (CirCt Milw., 12-28-83), that a proposed bargaining unit combining Correction Officer and Sheriff's Deputy classifications did not constitute an appropriate unit. The County objected to reconsideration of any of the findings and conclusions entered in that decision unless the instant record establishes materially changed circumstances since that time.

AFSCME was permitted to intervene on the basis of its status as current representative of the Correction Officer positions in question. AFSCME argued that the petition should be dismissed on several grounds and joined with the County in moving for dismissal on the ground that the matters raised by the petition were previously decided in Dec. No. 19753-A (WERC, 1983).

Petitioner contended that the House of Correction employes employed in the Correction Officer I and Correction Officer Sergeant II classifications are law enforcement employes such that they should be represented in the same unit with other law enforcement employes.

DISCUSSION:

Petitioner Sobek made it clear that his objective was to move the Correction Officer I's and Correction Officer II's out of the AFSCME bargaining unit and into the Milwaukee Deputy Sheriff's Association bargaining unit, and that he was not seeking to create or represent a separate bargaining unit consisting only of the Correction Officer I's and Correction Officer Sergeant II's.

It is less clear to us whether Petitioner Sobek expects the Commission to fulfill his ultimate objective by unit clarification order (i.e., without a vote in any voting group), or by directing an election among the employes in a voting group consisting of the Correction Officer I and Correction Officer Sergeant II classifications or among all of the employes in the combined bargaining unit he is seeking to create.

For the reasons noted in our Conclusions of Law, however, none of those means is available to Petitioner Sobek in the context of the instant proceeding.

If Petitioner Sobek seeks his objective by means of a unit clarification order, his petition is improper and dismissed on the grounds that Petitioner Sobek lacks standing to file a petition that would clarify bargaining units of which he is neither the municipal employer nor the recognized or certified representative. The Commission has a longstanding policy of not entertaining unit clarification petitions filed by individual employes. 2/

2/ City of Green Bay, Dec. No. 12682 (WERC, 5/74), Milwaukee County, Dec. No. 23957 (WERC, 9/86).

If Petitioner Sobek seeks his objective by means of a self-determination vote among the employes in Correction Officer I and Correction Officer Sergeant II classifications, his petition fails because there has been no showing that the Milwaukee Deputy Sheriff's Association has any interest in representing those additional classifications of employes. We find no justification for considering whether to disturb two existing units where, as here, neither the labor organizations nor the municipal employer has requested that we do so, and there is no evidence that the representative of the unit sought to be expanded has any interest in representing the additional classifications of employes.

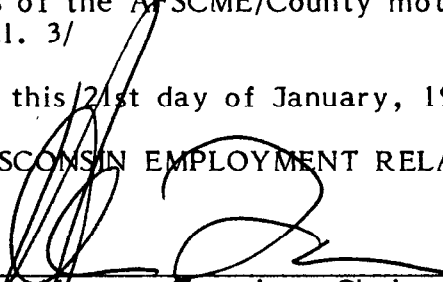
If Petitioner Sobek seeks his objective by means of an election among the entirety of the expanded bargaining unit, his petition fails and is dismissed because neither Petitioner Sobek nor any labor organization has been shown to have expressed an interest in being the representative of that unit. If Petitioner Sobek were seeking to become the representative of the combined unit himself, his petition would fail and be dismissed because the showing of interest accompanying the instant petition did not constitute at least 30 percent of the approximately 513 employes in the combined bargaining unit.

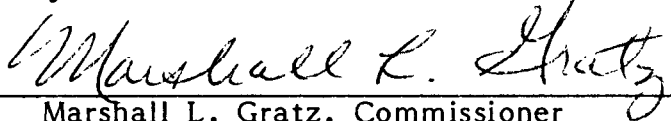
We have dismissed the petition for the foregoing reasons and therefore need not and do not address the merits of the AFSCME/County motion to dismiss or any other possible ground for dismissal. 3/

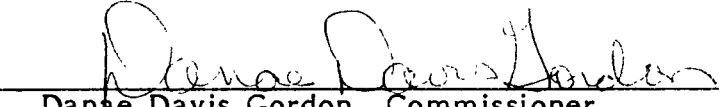
Dated at Madison, Wisconsin this 21st day of January, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner