

STATE OF WISCONSIN

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the matter of the Petition of :

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WISCONSIN PROFESSIONAL POLICE : Case 112

ASSOCIATION/LAW ENFORCEMENT : No. 49194 ME-3320

EMPLOYEE RELATIONS DIVISION : Decision No. 27799

:

Involving Certain Employees of :

:

CITY OF БЕЛОIT (POLICE DEPARTMENT) :

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Appearances:

Cullen, Weston, Pines & Bach, 20 North Carroll Street, Madison, Wisconsin 53703, by Mr. Gordon E. McQuillen, and Mr. James Kluss, Administrator, 7 North Pickney (Suite 200), Madison, Wisconsin 53703, appearing on behalf of WPPA/LEER.

Mr. Allan M. Tollefson, Personnel Director, 100 State Street, Beloit, Wisconsin 53511, appearing on behalf of the City of Beloit.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 N. Rivercenter Drive, Milwaukee, Wisconsin 53546, by Ms. Naomi Eisman and Ms. Penni Secore, Business Agent, 2214 Center Avenue, Janesville, Wisconsin 53546, appearing on behalf of Teamsters Local Union 579.

ORDER GRANTING MOTION TO HOLD ELECTION
IN ABEYANCE PENDING RESOLUTION OF COMPLAINT

On May 4, 1993, WPPA/LEER filed a petition with the Wisconsin Employment Relations Commission (Commission) seeking an election to determine whether certain employees of the Police Department of the City of Beloit (City) in an existing unit represented by Teamsters Local Union 579 (Local 579) wished to be represented for the purposes of collective bargaining by WPPA/LEER. Shortly thereafter, the Commission determined administratively that the petition was supported by a sufficient showing of interest.

On May 14, 1993 and July 6, 1993, Local 579 filed separate complaints with the Commission alleging that the City committed prohibited practices. Copies of those complaints are attached as Appendices A and B at the end of the memorandum accompanying this decision.

On July 10, 1993, Local 579 filed a motion with the Commission requesting that the election petition filed by WPPA/LEER be held in abeyance pending resolution of those complaints filed by Local 579. On July 15, 1993, the City filed a written statement concerning the nature, status and merits of those complaints, but taking a neutral position with regard to the petition and stating no position with regard to the instant motion. On August 12, 1993, WPPA/LEER filed written argument in opposition to the motion. On August 31, 1993, Local 579 filed a letter responding to WPPA/LEER's written argument. On September 10, 1993, Local 579 withdrew the complaint filed May 14, 1993 (Appendix A).

The Commission has considered the matter and is satisfied that Local 579's motion should be granted as to the remaining complaint.

Accordingly, the Commission issues the following

ORDER

1. Local 579's motion to hold the election in abeyance pending resolution of the abovenoted complaint is granted.

2. Hearing on the complaint and the election petition will be conducted by Commissioners Torosian and Strycker on September 27, 1993.

Given under our hands and seal at the City of Madison, Wisconsin this 13th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate.

CITY OF БЕЛОIT (POLICE DEPARTMENT)

MEMORANDUM ACCOMPANYING ORDER GRANTING MOTION TO HOLD
ELECTION IN ABEYANCE PENDING RESOLUTION OF COMPLAINT

POSITIONS OF THE PARTIES

Local 579 argues that, under longstanding Commission policy, the pendency of its complaints blocks processing of LAW's election petition, citing, Platteville Schools, Dec. No. 21645-A (WERC, 6/84) and Coronet Printing Co., Dec. No. 6799 (WERB, 7/64). Local 579 asserts that the Commission's policy calls for blocking election processing where, as here, a pending complaint alleges employer conduct which could coerce employes to vote one way or another or where resolution of the complaint would potentially change the make-up of the bargaining unit.

Local 579 asserts that the City's alleged hiring of non-bargaining unit reserve officers to act as bailiffs is related to the conduct of the election in the same way as the allegation that the employer in Platteville Schools had allegedly unlawfully threatened to subcontract work then being done by employes in the proposed bargaining unit in that case. Local 579 reasons that if bailiffs' work in Beloit is bargaining unit work, then there is additional bargaining unit work and potentially additional employes eligible to vote in the election.

The City has taken no position concerning the petition or the motion to hold it in abeyance. However, prior to Local 579's submission of the above arguments, the City Personnel Director did submit the following information "since the complaints appear to be an issue in the election petition . . .":

With regard to Police Reserves acting as "Bailiffs" in the new Municipal court, Police Reserves are not acting in any capacity in the court. Discussions were held with the Reserves (although the term "bailiff" was never used), but in the end the Court decided against the use of Reserves. This complaint appears to be without basis.

WPPA/LEER responds that it has "no reason to doubt that the City of Beloit has taken the actions referred to" in the City's letter quoted above, such that the complaint is now moot, should be dismissed, and the election processed promptly. WPPA/LEER notes, however, that because WPPA/LEER is not a party to the complaint proceeding, it is not in a position to move for dismissal of the complaint. Therefore, the election petition should be processed without delay even in the absence of an order dismissing the complaint. WPPA/LEER urges the Commission to conclude that the Platteville Schools rationale for refusing to process an election petition pending resolution of a complaint is not applicable in this case because the City of Beloit has apparently rescinded the policy complained of in the complaint. Local 579 disagrees that its complaint protesting the arbitrary change in Police Department General Order AD0500 is moot. In this regard, Local 579 notes that the complaint alleges that it was unlawful for the Department to advise the reserve officers that they would be paid to act as bailiffs, such that whether or not the Department has actually paid any of them to act as bailiffs is not determinative of the vitality of that complaint.

DISCUSSION

Internal agency inquiries as to the status of (but not as to the nature of any conciliation discussions concerning) the remaining complaint at issue reveal that as of September 10, 1993, the complaint remained pending and that the Commission conciliator was awaiting word as to a settlement proposal.

Given the pending status and the absence of a hearing-based or stipulation-based evidentiary record, we cannot conclude herein that the complaint is moot.

In School District of Platteville, Dec. No. 21645-A, (WERC, 6/84) we set forth the following as to the circumstances in which a complaint will "block" the processing of an election petition:

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. 2/ Where it has been discussed in Commission cases, the purposes ascribed to the policy have been twofold: (1) insuring that the election environment is free of any coercive effects of alleged unfair labor practices before employe preferences are tested through the election process 3/; and (2) avoiding the known risk that a second election and perhaps a second election hearing could become necessary depending on the outcome in the related complaint proceeding and in the first election. 4/

2/ Compare Coronet Printing Co., 6799 (7/64) and Cedar Lakes Home for the Aged, [9770 (6/70)], supra, with Morris Resnick, Inc., 343 (1/42); Evangelical Deaconness Society, 472 (2/43); S and R Cheese Co., 1338 (6/47); Sheboygan Dairyman's Assn., 1482 (11/47) and 1482-A (12/47); St. Francis Hospital, 4737 (4/58); and Kress Packing Co., Inc., 5581 (8/60).

3/ See, e.g., Evangelical Deaconness Society, supra, at pp 3-4. ("Until such unfair labor practice or practices and the effect have been completely eradicated, the freedom of choice essential to the employes' uncoerced expression of their desire for a continuance of or a change in bargaining agent, is not possible.")

4/ Thus, in Cedar Lake Home, supra, it was stated at p. 4, "Part of the justification for subjecting the Petitioner to lengthy delay . . . is to avoid the necessity and expense of conducting multiple hearings involving the same issues and conducting more than one election." The Association's emphasis on statements in that decision, to the effect that the complaint filing alone ought not delay a related election, overlooks the fact that the case was decided in a context wherein the union was willing to waive the effect of the alleged unfair labor practice on the election outcome and it was the employer who was objecting that employe free choice would nonetheless remain intolerably affected until the complaint allegations were fully heard and decided. The decision, however, held that given the Union's waiver, the filing of the complaint,

per se, would not warrant delaying the election.

In our view, that policy remains a viable means of pursuing those objectives and one that is consistent with the underlying purposes of MERA.

Moreover, that policy appears entirely applicable to the circumstances at issue herein. It constitutes an appropriate basis for denying both the request to unconditionally proceed with the election and the alternative request to unconditionally proceed to fully hear the representation issues before holding that matter in abeyance. For, the instant complaint involves an allegedly unlawful threat to subcontract work being performed by employes within the bargaining unit as to which the election was being sought. (Footnote omitted.) Absent a waiver of the effects of the complaint on the election, the resolution of the merits of the complaint could obviously affect the viability of the results of any election conducted before the complaint is heard and any violations cited therein remedied. Moreover, it is by no means certain that our granting the Association's alternative request for unconditional conduct of the representation hearing would produce a record that deals with all or only issues that would need to be decided once the complaint proceeding was fully resolved.

Platteville Schools, supra at pp. 3-4.

Here, as in Platteville Schools, supra, and as in our more recent Menominee County (Human Services Department) Dec. No. 26236 (WERC, 11/89), we are persuaded that if the allegations of unlawful conduct set forth in Local 579's attached complaint (Appendix B) turn out to be meritorious, the viability of the results of an election conducted during the pendency of the complaint could be affected. Therefore, we have granted Local 579's motion.

However, we are persuaded that it is appropriate to promptly conduct any hearing necessary to the ultimate processing of the election petition as well as hearing on the remaining complaint. Such hearing(s) will be conducted by Commissioners Torosian and Strycker on September 27, 1993, commencing at 9:00 a.m. in Beloit City Hall.

Dated at Madison, Wisconsin 13th day of September, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

Chairman A. Henry Hempe did not participate.