

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

TIMOTHY P. MIRKES

Involving Certain Employes of

CITY OF APPLETON

Case 364

No. 51468 ME-3425

Decision No. 28200-A

Appearances:

Mr. Timothy P. Mirkes, W2543 Pioneer Court, Appleton, Wisconsin 54915, on his own behalf.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms. Marianne Goldstein Robbins, P.O. Box 12993, 1555 North River Center Drive, Suite 202, Milwaukee, Wisconsin 53212, for Teamsters Local Union No. 563.

Mr. David F. Bill, Director of Personnel, 100 North Appleton Street, Appleton, Wisconsin 54911, for the City of Appleton.

FINDINGS OF FACT, CONCLUSION OF LAW
AND CERTIFICATION OF REPRESENTATIVE

FINDINGS OF FACT

1. Timothy P. Mirkes, herein Mirkes, is a municipal employe of the City of Appleton represented by Teamsters Local Union No. 563 for the purposes of collective bargaining. Mirkes' address is W2543 Pioneer Court, Appleton, Wisconsin 54915.

2. The City of Appleton, herein the City, is a municipal employer having its principal offices at 100 North Appleton Street, Appleton, Wisconsin 54911.

3. Teamsters Local Union No. 563, herein Teamsters, is a labor organization functioning as the collective bargaining representative of certain employes of the City in a bargaining unit consisting of all Environmentalists I and II employed by the City's Health

Department.

4. On August 30, 1994, Mirkes filed a Petition for Election with the Wisconsin Employment Relations Commission seeking an election to determine whether the employees in his bargaining unit wished to continue to be represented for the purposes of collective bargaining by Teamsters. The Petition indicated that the unit consisted of three employees and one vacant position. The Petition was not accompanied by any document(s) reflecting that any unit employees other than Mirkes sought an election.

By letter dated September 7, 1994, the Commission asked the City to provide a list of the names of the employees in the bargaining unit so that the Commission could determine whether the requisite thirty percent or more of the unit employees supported the petition.

By letter dated September 19, 1994, the City responded to the Commission's September 7, 1994 letter with a list consisting of Mirkes and two other employees.

By letter dated October 3, 1994, the Commission advised Mirkes, Teamsters and the City that the petition was supported by a sufficient showing of interest and would be processed. The Commission also enclosed a Stipulation for Election form and a three name Eligibility List for circulation among the parties for their use if they could agree that an election was appropriate and that the three names on the Eligibility List were the eligible employee voters.

5. The Stipulation for Election form states in pertinent part:

4. The individuals listed on the Eligibility List, attached hereto and made a part hereof, constitute all of the employees in the above agreed to collective bargaining unit who are eligible to participate in the election, unless any of those employees quit or are discharged for cause prior to the election. Unless mutually agreed otherwise, any new employees hired in positions in the above-described bargaining unit prior to the date on which the Commission issues the Direction of Election in this matter will be eligible to vote.

On October 3, 1994, the City hired a new Environmentalist I, bringing the total number of employees in the unit to four. On October 7, 1994, Teamsters signed the Stipulation for Election which was accompanied by the three name Eligibility List. On October 11, 1994, Mirkes and the City did the same and the Stipulation and Eligibility List were received in the Commission's offices on October 12, 1994. Also on October 11, 1994, Mirkes called the Commission's offices and indicated that the fourth employee had been added to the unit.

6. On October 17, 1994, a Direction of Election was issued by the Commission which stated in pertinent part:

DIRECTION OF ELECTION

Timothy P. Mirkes, the City of Appleton, and Teamsters Local Union No. 563 having filed a stipulation with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election among certain employes of the above named Municipal Employer, pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act; 1/

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission in the collective bargaining unit consisting of all environmentalists I and II employed by the City of Appleton Health Department, excluding supervisory, managerial, confidential, craft, clerical and executive employes and registered nurses, who were employed on October 17, 1994, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employes desire to be represented by Teamsters Local Union No. 563 for the purposes of collective bargaining with the Municipal Employer named above, or whether such employes desire not to be so represented by said labor organization.

1/ The instant proceeding was initiated by a petition filed by Timothy P. Mirkes. However, prior to a hearing by the Commission, the parties executed a Stipulation for Election.

7. Ballots were mailed to the three employes on the Eligibility List which accompanied the parties' Stipulation and to the fourth newly hired employe. A dispute then arose as to whether the ballot of the newly hired employe should be counted. All four employes timely returned their ballots to the Commission.

8. By letter dated December 6, 1994, the Commission advised the parties that only the ballots of the three employes on the Eligibility List would be counted. On December 9, 1994, those

three ballots were counted.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

Pursuant to the terms of the Stipulation for Election, the ballot cast by the employe hired October 3, 1994, will not be counted as said employe's name was not on the Eligibility List.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

CERTIFICATION OF REPRESENTATIVE 1/

Pursuant to a Direction of Election previously issued by it in the above entitled matter, the Wisconsin Employment Relations Commission on December 9, 1994, conducted an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, to determine whether employes of the above Municipal Employer, in the collective bargaining unit set forth in the Commission's Direction, desired to be represented by the above named Labor Organization for the purposes of collective bargaining with the Municipal Employer.

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(FOOTNOTE 1 CONTINUED ON PAGE 5)

(FOOTNOTE 1 CONTINUED FROM PAGE 4)

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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. 227.57 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.

The result of the election was as follows:

- | | | |
|----|------------------------------------------------|---|
| 1. | Total number eligible to vote | 3 |
| 2. | Total Ballots cast | 3 |
| 3. | Total ballots challenged | 0 |
| 4. | Total valid ballots counted | 3 |
| 5. | Ballots cast for Teamsters Local Union No. 563 | 2 |
| 6. | Ballots cast for no representation | 1 |

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Sec. 111.70(4)(d)3 of the Municipal Employment Relations Act:

IT IS HEREBY CERTIFIED that Teamsters Local Union No. 563 has been selected by the required number of eligible employes of the City of Appleton who voted at said election in the collective bargaining unit consisting of all Environmentalists I and II employed by the City of Appleton Health Department excluding supervisory, managerial, confidential, craft, clerical, and executive employes and registered nurses, as their representative; and that pursuant to the provisions of Sec. 111.70 of the Municipal Employment Relations Act, said labor organization is the exclusive collective bargaining representative of all such employes for the purposes of collective bargaining with the above named Municipal Employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin,
this 1st day of February, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

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

CITY OF APPLETON

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW
AND CERTIFICATION OF REPRESENTATIVE

The Findings set forth the nature of this dispute. Ultimately, we are persuaded the dispute most appropriately is resolved by the specific language of the Stipulation to which the parties agreed. Simply put, the fourth employe had been hired prior to execution of the Stipulation and the parties did not include the fourth employe's name on the Eligibility List. Pursuant to the first sentence of paragraph 4 of the Stipulation:

The individuals listed on the Eligibility List attached hereto and made a part thereof, constitute all of the employes in the above agreed to collective bargaining unit who are eligible to participate in the election ...

As the Direction of Election was pursuant to the Stipulation, the fourth employe was not eligible to vote and her ballot cannot be counted. 2/

Dated at Madison, Wisconsin, this 1st day of February, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

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

- 2/ The Stipulation's reference to "new employes" applies to employes hired after the Stipulation is executed and thus is inapplicable to the fourth employe herein.