

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**MILWAUKEE POLICE ASSOCIATION,
IUPA, AFL-CIO**

Involving Certain Employees of
CITY OF MILWAUKEE

Case 512
No. 64085
ME-4005

Decision No. 31251

Appearances:

Thomas J. Beamish, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, on behalf of the City of Milwaukee.

John F. Fuchs, Fuchs, Snow & DeStefanis, S.C., Attorneys at Law, 620 North Mayfair Road, Milwaukee, Wisconsin 53226, on behalf of the Milwaukee Police Association, IUPA, AFL-CIO.

Jeffrey Sweetland, Hawks & Ehlke, S.C., Attorneys at Law, 700 West Michigan, Suite 500, P. O. Box 442, Milwaukee, Wisconsin 53201-0442, on behalf of the Association of Law Enforcement Allied Services Personnel (ALEASP).

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DENYING MOTION TO DISMISS AND DIRECTING ELECTION**

On October 13, 2004, the Milwaukee Police Association, International Union of Police Associations, AFL-CIO, (MPA) filed a petition and showing of interest with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the City of Milwaukee currently represented for the purposes of collective bargaining by the Association of Law Enforcement Allied Services Personnel (ALEASP) wish to be so represented by the MPA.

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On November 4, 2004, the Commission advised the parties that the showing of interest accompanying the petition was sufficient and asked whether there were any issues that needed to be resolved before an election was conducted.

On December 17, 2004, the City filed a motion to dismiss the petition as untimely filed because an extension of the parties' 2001-2002 contract was in effect when the petition was filed.

The parties stipulated to the operative facts and thereafter filed written argument in support of and in opposition to the motion until February 3, 2005.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The City of Milwaukee, herein the City, is a municipal employer.
2. The Milwaukee Police Association, International Union of Police Associations, AFL-CIO, herein the MPA, is a labor organization.
3. The Association of Law Enforcement Allied Services Personnel, herein ALEASP, is a labor organization serving as the collective bargaining representative of certain employees of the City Police Department.
4. The 2001-2002 contract between the City and ALEASP expired by its terms on January 1, 2003. On February 28, 2003, the City and ALEASP signed a Memorandum of Understanding which indefinitely extended the terms of the 2001-2002 contract from January 1, 2003 until such time as either party decided to terminate the extension by giving 14 days notice. As of October 13, 2004, neither party had provided termination notice, no agreement had been reached on a successor contract and no interest arbitration petition had been filed.

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

CONCLUSIONS OF LAW

1. The February 28, 2003 Memorandum of Understanding does not serve as a contract bar and the October 13, 2004 petition for election is timely filed.
2. A question concerning representation within the meaning of Sec. 111.70(4)(d), Stats. exists within the existing ALEASP bargaining unit of all Police Aides employed in the Police Department of the City of Milwaukee, excluding all other employees, managerial, supervisory and confidential employees.

Based on the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issue the following

ORDER

1. The motion to dismiss is denied.

2. An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days of the date of this Order among all employees in the bargaining unit set forth in Conclusion of Law 2 who were employed on February 23, 2005, except such employees who subsequently quit their employment or are discharged for cause prior to the election for the purpose of determining whether a majority of the employees voting wish to be represented by the Milwaukee Police Association, International Union of Police Associations, AFL-CIO, or by the Association of Law Enforcement Allied Services Personnel, Local 218, International Association of Police Associations, AFL-CIO or by neither of said labor organizations for the purposes of collective bargaining with the City of Milwaukee.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of February, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

CITY OF MILWAUKEE

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DENYING MOTION TO DISMISS AND DIRECTING ELECTION**

At the time the election petition was filed, ALEASP and the City were parties to agreement that indefinitely extended the terms of the 2001-2002 contract. In the presence of that extension agreement, the City argues that the election petition could only be timely if filed in 2002 during the 60 days prior to the reopening date in the 2001-2002 contract.

In DUNN COUNTY, DEC. NO. 17861 (WERC, 6/80), the Commission recited the law applicable to the facts before us as follows:

It has been a long standing policy of the Commission that where there exists a collective bargaining agreement a petition requesting an election among the employees covered by said agreement must be filed within the 60 day period prior to the date reflected in said agreement for the commencement of negotiations on a succeeding agreement. 1/ The Commission has set forth the following rationale regarding the underlying purpose of such a doctrine:

The contract bar policy was established by the Commission for the purpose of encouraging stability in an established bargaining relationship by postponing, but not preventing elections for the purpose of changing or eliminating the bargaining representative during the term of the existing collective bargaining agreement. 2/

However, in recognition of the rights of employes to change or eliminate an existing bargaining representative, said incumbent representative is not absolutely insulated from possible ouster once negotiations for a successor agreement extends beyond the normal expiration date of the existing agreement. We have held that an indefinite extension of the terms of a collective bargaining agreement, cannot, in and of itself, constitute a bar to a petition for an election filed after the regular term of the agreement has expired. 3/

1/ *CITY OF MILWAUKEE (8622) 7/68; CITY OF KENOSHA (16278) 3/78.*

2/ *DURAND UNIFIED SCHOOLS (13552) 4/75.*

3/ *LACROSSE COUNTY (12931) 8/74; CITY OF GREEN BAY (16399) 6/78.*

As reflected in DUNN COUNTY, the Commission has long and consistently held that an indefinite extension of an expired agreement does not bar an election petition filed after the initial agreement has expired by its terms. As the Commission noted, a contrary conclusion would inappropriately insulate the incumbent union from possible ouster when employees seek to exercise their statutory right under Secs. 111.70 (2) and (4)(d) 5, Stats. to select their collective bargaining representative.

Therefore, we have denied the City's motion to dismiss and directed an election.

Dated at Madison, Wisconsin, this 23rd day of February, 2005.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

