

M 523.2

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of	:	Case I
INTERNATIONAL UNION OF OPERATING ENGINEERS	:	No. 8610 ME-12
LOCAL NO. 319, ALMA, WISCONSIN	:	Decision No. 6031
	:	
For Determination of Bargaining	:	
Representatives for Employes of	:	
BUFFALO COUNTY	:	

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Appearances:

Mr. Philip Kingsland, International Representative, for the Petitioner.  
Mr. George Lewis for the Wisconsin Council of State, County and Municipal Workers  
Mr. Patrick H. Motley, District Attorney for the Employer.

DIRECTION OF ELECTION

The above named Petitioner having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of the above named Municipal Employer; and a hearing on such petition having been conducted at Alma, Wisconsin, on May 28, 1962, by Arvid Anderson, Commissioner; and during the course of the hearing the Wisconsin Council of State, County and Municipal Workers intervened herein and requested to be placed upon the ballot; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer named above;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employes of Buffalo County working for the Buffalo County Highway Department, excluding supervisors, who were employed by the Employer on June 15, 1962, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by The International Union of Operating Engineers, Local 319, by the Wisconsin Council of State, County and Municipal Workers, or by neither, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

(SEAL)

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of June, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slawney /s/  
 Morris Slawney, Chairman

J. E. Fitzgibbon /s/  
 J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/  
 Arvid Anderson, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

Case I INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 319, AIMA, WISCONSIN  
No. 8610 ME-12  
Decision No. 6031 BUFFALO COUNTY

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The District Attorney of Buffalo County on behalf of the Employer objected to the jurisdiction of the Board on the ground that notice of the hearing in the above entitled matter had not been served on the Chairman of the County Board, or the County Clerk as representative of the Employer of Buffalo County. The Board's notice of hearing had been served upon the Buffalo County Highway Committee. The Buffalo County Highway Committee consists of three persons who are all members of the Buffalo County Board. The members of the Buffalo County Highway Committee were present at the Board's hearing as was the Highway Commissioner. The Buffalo County Highway Committee is a statutory committee of the County Board organized pursuant to Section 83.015 of the Wisconsin Statutes. The Highway Commissioner pursuant to Section 83.01 of the Wisconsin Statutes is elected by the County Board and charged with responsibility of administering the Buffalo County Highway Department. The Highway Commissioner hires the employes of the Buffalo County Highway Department and fixes their schedule of employment and also has authority to recommend the disciplining, promotion and transfer of such employes. The employes are in fact paid by Buffalo County. As a practical matter the Buffalo County Highway Committee makes all of the essential decisions with respect to the wages, hours and conditions of employment of the employes of the Buffalo County Highway Department subject to the budgetary approval of the County Board. Pursuant to Section 59.15 (2)(d) the Buffalo Highway County Committee is included in that category of governmental agencies which has power to enter into contracts of employment for periods up to two years.

The Board's hearing in this matter is not an adversary proceeding; but is an administrative inquiry for the purpose of determining whether a question of representation exists and for the further purpose of gathering the essential facts regarding the appropriate collective bargaining unit and the eligibility of voters in order to facilitate the conduct of a representation election.

The County Highway Committee, the Highway Commissioner and the District Attorney cooperated fully with the Board in furnishing all of the information necessary for the purpose of determining the appropriate collective bargaining unit, the eligibility of the employes to vote in the representation election and further furnished information as to the appropriate day of the week and time and place that a vote could be held.

We have, therefore, concluded that any failure of service of proper notice upon the Chairman of the County Board, or the County Clerk has not prejudiced the legal rights of Buffalo County as the employer in this matter. We can find no useful purpose that would be served by the sending of an additional notice of hearing to the Chairman of the County Board or County Clerk and the rescheduling of a hearing in the instant matter, since all of the representatives who would be expected to be present at such hearing were, in fact, present at the May 28th hearing and did fully and ably represent Buffalo County, namely, the Highway Commissioner, the Buffalo County Highway Committee, and the District Attorney. The District Attorney is also the Corporation Counsel for Buffalo County as well as the Buffalo County Highway Committee.

The District Attorney for Buffalo County also objected to the Board's Direction of Election on the grounds that no rules of procedure had been adopted for the administration of Section 111.70, and therefore that the statute was inoperative because the rules had not been adopted. Apparently the District Attorney was referring to the fact that the new rules prepared by the Board for the administration of Sec. 111.70 have not as yet become effective. The Board rejects this position for the reason that

the enactment of Section 111.70 provided that the proceedings in representation cases shall be held in accordance with Sections 111.02 (6) and 111.05 insofar as applicable. The Board's rules for the administration of the cited sections have been in existence since 1939. The Board has followed these rules in determining to direct the election in this matter. Until the new rules become effective the Board shall continue to process cases arising pursuant to Sec. 111.70 in accordance with the rules presently in existence. Accordingly we are therefore issuing our Direction of Election in the instant matter.

Dated at the City of Madison, Wisconsin, This 15th day of June, 1962.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/  
Morris Slavney, Chairman

J. E. Fitzgibbon /s/  
J. E. Fitzgibbon, Commissioner

Arvid Anderson /s/  
Arvid Anderson, Commissioner