

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the matter of the Petition of	:	
	:	
DODGE COUNTY EMPLOYEES, LOCAL 1323,	:	Case I
AFSCME, AFL-CIO	:	No. 8665 ME-36
	:	Decision No. 6067
Involving Employees of	:	
	:	
DODGE COUNTY WISCONSIN	:	
	:	
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Appearances:

Mr. George E. Lewis, for Local 1323, Dodge County Employees, AFSCME, AFL-CIO,
for the Petitioner.
Mr. F. R. Schwertfeger, Corporation Counsel, 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 employees of the above named Municipal Employer; and a hearing on such petition having been conducted at the Dodge County Courthouse, Dulaneau, Wisconsin, on June 18, 1962, by Arvid Anderson, Commissioner; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees 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 employees of Dodge County employed at the Dodge County Hospital, excluding the redeptionist-bookkeepers, building maintenance engineer, farm manager, registered nurse, visiting physician, psychiatrist, trustees, assistant superintendent, and superintendent, who were employed by the Employer on July 27, 1962, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether or not a majority of such employees desire to be represented by Dodge County Employees Local 1323, American Federation of State, County and Municipal Employees, AFL-CIO, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours, and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 27th
day of July, 1962.

(SEAL)

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

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

Case I DODGE COUNTY EMPLOYEES, LOCAL 1323, AFSCME, AFL-CIO
No. 8665 ME-36 Involving Employees of
Decision No. 6067 DODGE COUNTY WISCONSIN

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In its petition the petitioner requested the Board to conduct an election pursuant to Section 111.70, Wis. Stats. among all regular full-time and regular part-time employes employed at the Dodge County Hospital and Farm, except craft and supervisory employes. At the outset of the hearing the Municipal Employer contended that the following categories of employes should be excluded from the unit: superintendent, assistant superintendent, receptionist-bookkeepers, trustees, physician, psychiatrist, building maintenance engineer, maintenance men, firemen, registered nurse, occupational therapist, cooks, baker, farm manager, and laundry employes, on the basis that the receptionist-bookkeepers were confidential, that the physician, the psychiatrist, the registered nurse, and the occupational therapist were professionals and the cooks, bakers and laundry employes were employed in separate departments, and that the other employes were supervisors.

During the course of the hearing the parties stipulated to exclude from the unit, the superintendent, the assistant superintendent, the receptionist-bookkeepers, the trustees, the physician, the psychiatrist, the registered nurse, and the farm manager as being supervisors. The parties agreed to include as eligibles the maintenance men and the firemen. Issues remain as to the supervisory status of the building maintenance engineer and as to the professional status of the occupational therapist. The building maintenance engineer receives a monthly salary of \$390.00. He directly supervises three other regular employes, two of whom are employed within the category of Maintenance I at \$285.00 per month and one employed as a night fireman at \$240.00 per month. The building maintenance engineer also supervises patients who do part-time maintenance work, including painting and cleaning. He has a separate office and spends approximately 50% of his time performing electrical, plumbing, and other skilled maintenance work. The petitioner claims that the building maintenance engineer should be included within the bargaining unit as a working foreman. Its position is based upon the nature of his duties and the small number of persons whom he supervises. The Board has decided that the building maintenance engineer should be excluded as a supervisory employe. Our conclusion is influenced by the fact that he receives a salary more than \$100. per month higher than the employes whom he supervises and is the second highest paid employe at the institution. While it is true that he supervises only a few regular employes, it should be recognized that there are only two other supervisory employes in the employ of the Municipal Employer, namely the superintendent and the assistant superintendent. It is for these reasons that we have concluded that the building maintenance engineer spends a substantial amount of time in a supervisory capacity and therefore should be excluded from the bargaining unit.

The other employe in question is employed as an occupational therapist, with a monthly salary of \$285.00. Counsel for Dodge County believes that said employe should be excluded from the bargaining unit on the ground that he is a professional employe. However the record establishes that the duties of the occupational therapist are primarily in the nature of recreational therapy and that the position does not require extended professional or medical training. The present occupational therapist is a high school graduate who has completed a three months course in occupational therapy at Mendota State Hospital. His salary indicates that he is paid only slightly more than that of a ward attendant. We have, therefore, concluded that, while the occupational therapist's duties are of considerable importance, they are not of such a professional nature as to fall within the statutory exclusion of a craft employe^{1/} and we have, therefore included him in the bargaining unit.

^{1/} Winnebago County Hospital and Pleasant Acres Home, Dec. 6043, 7/62

The Municipal Employer proposed that the election be directed in such a manner as to show separately the wishes of the cooks, baker, laundry employes, and attendants as to the determination of the collective bargaining unit.

The Wisconsin Employment Relations Board has been processing representation proceedings, pursuant to Sec. 111.05 of the Wisconsin Employment Peace Act since May, 1939. Such proceedings have as their ultimate purpose the determination of the bargaining representative for the employes of the employer involved. Until February, 1962 such proceedings involved only employes of non-municipal employers. However, in February, 1962 the legislature enacted Subchapter IV of Chapter 111, which entrusted the Board with the administration of the Sec. 111.70, dealing with labor relations in municipal employment, including the conduct of proceedings having as their ultimate purpose the determination of bargaining representatives of municipal employers. Since this new legislation affects employes, employers, and their representatives, who up to this time, at least, have had little opportunity to become acquainted with the operations of the Wisconsin Employment Peace Act, as it pertains to representation proceedings, and in order to assist the representatives of both municipal employes and municipal employers with the principles established by the Board in representation proceedings generally, we herein shall review principals dealing with the establishment of collective bargaining units. We shall not in this memorandum attempt to review and deal with all the principles established. We shall confine our discussion to those issues in municipal employer cases presently pending before the Board.

Section 111.70 (4) (d) states as follows:

"Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employes of the employer, either the union or the municipality may petition the board to conduct an election among said employes to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employes in a craft unit except on separate petition initiating representation proceedings in such craft unit."

Section 111.02 (6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as "all of the employes of one employer, except that where a majority of such employes in a single craft, division, department or plant shall have voted by secret ballot... to constitute such group a separate bargaining unit, they shall be so considered..."

Section 111.05 establishes the procedure for, and the effect of, elections to determine the exclusive bargaining representatives and the bargaining unit.

In non-municipal employment whenever a petition for an election is filed with the Board and where, in that petition, the petitioner requests an election among certain employes not constituting all of the employes of the employer the Board has no power to determine what constitutes an appropriate collective bargaining unit.^{2/} The Board determines whether the group of employes set out as being an appropriate unit, does in fact constitute a separate craft, division, department, or plant of the employer. Employes involved, if they do constitute a separate craft, division, department, or plant of the employer, are then given the opportunity to decide for themselves whether they desire to constitute a separate bargaining unit.^{3/}

Whenever a petition for an election is filed with the Board, and in that petition the petitioner requests an election to be conducted among certain employes, and where those employes do not constitute all of the employes of the employer, the Board must, if an issue is raised during the proceeding, determine whether or not such group of employes constitute a separate craft, division, department, or plant.

^{2/} Gimbel Bros., Dec. No. 251, 6/41; Beaumont Hotel, Dec. No. 3630, 11/53

^{3/} Normington Laundry, Dec. No. 3864, 12/54

The Board's action with regard to the establishment of the bargaining unit is limited to determining whether or not a separate craft, department, division, or plant exists and if so, the employes, by their vote, determine the bargaining unit.

In cases involving municipal employes presently pending before the Board and in cases which will be filed with the Board, the Board is and will be confronted with various problems concerning departmental and divisional bargaining units. As early as June, 1941 the Board stated its position with regard to the determination of departmental units in Gimbel Bros. In that decision the Board stated:

"It does not seem to us that in order to constitute a group of employes a separate department or division, that there necessarily must be a physical separation or that the employer must have set up in his business separate divisions or department as such. The aim of the legislature, we feel, was to enable employes having similar problems and working under similar conditions which problems and conditions differed from other employes of the employer, to bargain collectively as a separate collective bargaining unit. There must, however, be something more than a arbitrary division - either an actual physical separation of some difference in working conditions what will divide the employes into natural groups."

Where a group of employes is functioning distinct and separate from other employes and where such employes are neither craft nor professional but who may be identified with traditional trades and wherein a group distinct from other employes and who, as a result, have common special interests, the Board will find that a separate department or division exists and will permit the employes therein to determine for themselves as to whether to decide to establish a separate bargaining unit.

The record herein does not establish that the cooks and bakers in the employe of the municipal employer herein have the training and experience necessary to consider them as "craft" employes nor, although they are identified with traditional trades, are in such a group separate and distinct from other employes since they are under common supervision with other employes of the municipal employer and the laundry employes and attendants are not employed in such a separate department so as to be given the opportunity to determine for themselves as to whether they desire to constitute a separate unit since they too are under common supervision with other employes. While the nature of the duties of cooks, bakers, and laundry employes may differ somewhat from the duties of the other employes, the character of their duties and common supervision are not such as to permit their separation from the other employes since they have a common interest with the other employes in a closely integrated operation, we therefore conclude that the cooks, bakers, and laundry employes should be included in the same collective bargaining unit with the other employes of the municipal employer.

Dated at the City of Madison, Wisconsin, this 27th day of July, 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