

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND MUNICIPAL  
EMPLOYEES, AFSCME, AFL-CIO

Involving Employes of

APPLETON WATER COMMISSION

Case I  
No. 8650 ME-30  
Decision No. 6075

Appearances:

Mr. Robert W. Swanson, Representative for the Petitioner.

Mr. Fredrick E. Froehlich, City Attorney, and  
Mr. R. D. DeLand, Chairman, for the Municipal 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 the City Hall, Appleton, Wisconsin, on June 5, 1962, Chairman Morris Slavney being present; and the Board having considered the evidence and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and representation for certain employes of the Municipal Employer;

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 separate department consisting of all employes of the Appleton Water Commission employed in its water filtration and water treatment plant, excluding plant foreman and superintendent, who were employed by said Municipal Employer on August 2, 1962, except such employes as may prior to the election quit their employment or be discharged for cause, for the purposes of determining whether or not a majority of such employes desire to constitute themselves a separate collective bargaining unit and whether or not a majority of such employes desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, 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 2nd  
day of August, 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

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APPLETON WATER COMMISSION

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Appleton Water Commission operates the Appleton Water Department and employs employees in the water filtration and water treatment plant, in the distribution department and in the office. It employs a superintendent who is responsible for the operation of the department. In the plant it employs a plant foreman, four lead operators, four junior operators, one relief operator and one maintenance man. In the distribution department, the Municipal Employer employs a distribution foreman, two assistant foremen, three meter readers, a meter repairman, and four maintenance men. Office employees consist of an office manager, a bookkeeper, an accountant, a head billing clerk, an assistant billing clerk, and a clerk typist.

The Union seeks a unit consisting of all employees in the plant, excluding all other employees and supervisors. The Municipal Employer contends that the unit appropriate for the purposes of collective bargaining should consist of all employees in all departments excluding supervisors.

Section 111.70 (4) (d) of the Wisconsin Statutes provides that proceedings in representation cases involving employees shall be conducted and determined in accordance with Sections 111.02 (6) and 111.05 of the Wisconsin Employment Peace Act insofar as applicable, with the exception concerning craft employees.

Section 111.02 (6) of the Wisconsin Employment Peace Act defines the term "collective bargaining unit" as "all of the employees of one employer, except that where a majority of such employees 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 employees not constituting all of the employees of the employer the Board has no power to determine what constitutes an appropriate collective bargaining unit.<sup>1/</sup> The Board determines whether the group of employees set out as being an appropriate unit, does in fact constitute a separate craft, division, department, or plant of the employer. Employees 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.<sup>2/</sup>

<sup>1/</sup> Gimbel Bros. Dec. No. 251, 6/41; Beaumont Hotel Dec. No. 3630, 11/53. Dodge County Wisconsin Dec. No. 6067, 7/27/62 .

<sup>2/</sup> Normington Laundry, Dec. No. 3864, 12/54.

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. 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.

The water plant, the distribution department, and the office are physically separated from each other and there is separate supervision for the plant, the distribution department, and the office. All of the employes employed in the plant, with the exception of the maintenance man, perform their duties in the plant. The maintenance man spends approximately 25 per cent of his time maintaining equipment in the distribution department. However, 75 per cent of his time is spent maintaining equipment in the plant. With the exception of the maintenance man, plant employes perform duties distinct and separate from any of the duties performed by other employes of the Water Commission. Since the maintenance man in the plant spends only one-quarter of his time maintaining equipment in the distribution department and the remainder of his time working in the plant, we conclude him to be a plant employe and the mere fact that he does work one-quarter of his time in the distribution department does not affect the physical separation of the plant and distribution departments. We conclude that the plant employes constitute a separate department and they may constitute a separate appropriate collective bargaining unit, if they so desire.

In the past, in administering Section 111.05 of the Wisconsin Employment Peace Act, when questions arose as to the determination of a bargaining unit among employes in a single craft, division, department or plant, the employes involved first cast a ballot which concerned itself only with the question as to the establishment of the separate bargaining unit. Usually at the same time the employes involved cast an additional ballot concerning the selection of their bargaining representative. It has been our experience that in the vast majority of instances where the employes voted for the separate unit, they also selected the petitioning union, which originally sought a separate unit vote, as their bargaining representative. The conduct of the balloting to determine both the bargaining unit and the bargaining agent was confusing, costly, and time-consuming. We now feel it practical and expeditious in all respects to change our procedure with regard to the matter and we shall, when practical, eliminate the separate balloting on the unit question. This would apply, in municipal employment, to the establishment of units on the basis of separate division, department, or plant and not to crafts since a craft is established as a separate unit by the statute. Where the Board should find that a group of employes constitutes a separate division, department, or plant, the Board, where practical, shall eliminate the ballot on the unit question. In these cases the one ballot shall be worded to permit the employes involved to indicate their choice as to the selection or rejection of their bargaining representative. If a majority of the employes in the separate division, department, or plant vote for the organization which desires the separate unit, said group of employes shall constitute a separate collective bargaining unit. If the majority of employes fail to vote for that organization then the employes will be deemed to have rejected the separate collective bargaining unit.

We have found herein that the plant employes constitute a separate department. If a majority of the employes in the plant select the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as their bargaining representative, plant employes shall constitute a separate collective bargaining unit. If a majority of employes fail to vote in favor of said organization, then they will also be deemed to have rejected the separate collective bargaining unit.

Dated at Madison, Wisconsin, this 2nd day of August, 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