

On the evening of March 28, 1963 after the close of the balloting, and during the counting of the ballots, issues arose with respect to the statutory requirement to establish a separate collective bargaining unit and with respect to the validity of one ballot. On April 5, 1963, and prior to any further action by the Board, the parties were afforded the opportunity to present any evidence and argument they desired with respect to the issues at a hearing conducted by the Board at the City Hall, Milwaukee, Wisconsin, Chairman Morris Slavney and Commissioner Arvid Anderson being present; and the Board having considered the evidence and arguments and briefs of Counsel and being fully advised in the premises concludes that Section 111.05 (2) of the Wisconsin Employment Peace Act requires that a majority of the eligible employes, rather than a majority of those employes voting, must vote in favor of the proposition to establish a separate bargaining unit. The Board also concludes that the one ballot which was in issue as to validity is a valid ballot and is to be included in the final results of the election.

Therefore, the final result of the election was as follows:

- 1. Eligible to vote. 348
- 2. Total ballots cast. 289
- 3. Total ballots void. 3
- 4. Total valid ballots counted 286
- 5. Total ballots cast for The City of Milwaukee
Garbage Collection Laborers Independent
Local Union 175
- 6. Total ballots cast for Milwaukee District
Council 48 (and its appropriate Locals) AFSCME. 102
- 7. Total ballots cast for neither of said
organizations 9

NOW, THEREFORE, by virtue of and pursuant to the power vested in the Wisconsin Employment Relations Board by Section 111.70 of the Wisconsin Statutes;

IT IS HEREBY CERTIFIED that all regular employes having the classification of garbage collection laborers in the Collection Division of the Bureau of Garbage Collection and Disposal in the Department of Public Works of the City of Milwaukee, excluding all other employes, confidential employes, supervisors and executives, constitute an appropriate collective bargaining unit.

IT IS FURTHER CERTIFIED that The City of Milwaukee Garbage Collection Laborers Independent Local Union has been selected by a majority of the eligible employes in the collective bargaining unit above noted as their collective bargaining representative; and that pursuant to the provisions of Section 111.70 of the Wisconsin Statutes, The City of Milwaukee Garbage Collection Laborers Independent Local Union is the exclusive collective bargaining representative for all such employes for the purposes of conferences and negotiations with the City of Milwaukee 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
30th day of April, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

S E A L

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

Arvid Anderson /s/
Arvid Anderson, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of	:	
	:	
THE CITY OF MILWAUKEE GARBAGE	:	
COLLECTION LABORERS INDEPENDENT	:	
LOCAL UNION	:	
	:	
Involving Employes of	:	Case XVIII
	:	No. 9093 ME-102
CITY OF MILWAUKEE, Employed in the	:	Decision No. 6253-B
COLLECTION DIVISION of the BUREAU	:	
OF GARBAGE COLLECTION AND DISPOSAL	:	
in the DEPARTMENT OF PUBLIC WORKS	:	
	:	
	:	

MEMORANDUM ACCOMPANYING CERTIFICATION OF REPRESENTATIVES

On January 18, 1963 the Board directed elections to be conducted among various voting groups in the Department of Public Works of the City of Milwaukee. Included in Voting Group No. 8, which consisted generally of employes employed in the over-all Department of Public Works and excluded employes in seven other voting groups who were to determine for themselves whether or not they desired to establish separate bargaining units, were employes employed as garbage collection laborers in the Collection Division of the Bureau of Garbage Collection and Disposal of the Department of Public Works. Following the issuance of the Direction, and on March 15, 1963, the City of Milwaukee Garbage Collection Laborers Independent Local Union, hereinafter referred to as the Independent, filed a petition with the Board requesting that the Board conduct an election among all garbage collection laborers in the Collection Division of the Bureau of Garbage Collection and Disposal to determine the bargaining representative of such garbage collection laborers in a separate unit. After hearing, and on March 19, 1963, the Board issued a Direction of Election wherein it directed that an election

be conducted among said garbage collection laborers for the purpose of determining whether a majority of such employes desired to be represented by the Independent or Milwaukee District Council 48 (and its appropriate Locals), American Federation of State, County and Municipal Employees, hereinafter referred to as District Council 48, or by neither of said organizations. In a Memorandum Accompanying said Direction, the Board indicated that by the election directed by the Board the garbage collection laborers, being employed in a separate division of the Municipal Employer, were given the opportunity to determine for themselves, not only their collective bargaining representative, but also whether or not they desired to constitute themselves as a separate collective bargaining unit. The Board stated that:

"If a majority of employes select the Independent Union they will be considered to have established themselves as a separate bargaining unit. If a majority do not so choose then the results of the balloting in this voting group shall be included in the results of the balloting in Voting Group No. 8 which generally consists of employes in the Department of Public Works."

On March 27 and 28, 1963 the Board conducted elections among employes in the various voting groups in the Department of Public Works, among them including garbage collection laborers which had been designated by the Board as Voting Group No. 9. Prior to the opening of the ballot boxes on the evening of March 28, 1963 the Chairman of the Board who was present stated that if the intent of the voter could not be ascertained from the markings on any ballot that the ballot would be declared void by the Board. There were 348 eligible employes in the voting group. Of 289 ballots cast, 174 employes cast ballots in favor of the Independent, 102 cast ballots in favor of District Council 48, and 9 cast ballots indicating that they desired neither of said organizations to represent them. The observers for the two labor organizations and the Municipal Employer agreed that three of the 289 ballots were

void for the reason that the individuals voting on said ballots placed marks on the ballots in such a manner so that the intent of the voter was confusing and therefore could not be determined. An issue arose as to whether or not a fourth ballot should be declared void. Said ballot contained an "X" in the square indicating a choice for the Independent while the word "NO" was written in the box where normally the person voting would indicate a choice for District Council 48. Following the counting of the ballots in Voting Group No. 9, and when it appeared to the Independent that the above noted ballot affected the results of the vote, the Independent claimed that said ballot should not be voided contending that the ballot clearly indicated that the voter intended to select the Independent as his bargaining agent by placing "X" in the square indicating his choice for the Independent and that he emphasized such choice by writing the word "NO" in the square under District Council 48. Representatives of District Council 48 contended otherwise claiming that the ballot should be voided for the reason that the intent of the voter was not clear. A preliminary tally sheet was prepared and signed by the parties and at that time Chairman Slavney and Commissioner Anderson, who were both present, orally advised the parties that the Board would take oral argument at a later date with respect to the issue as to whether or not the ballot in question should be voided. On April 1, 1963 the Board set the matter for hearing at Milwaukee, Wisconsin and on April 5 the parties were given an opportunity to present any evidence and argument they desired with respect to the matter. Subsequently, counsel for both labor organizations filed briefs in the matter.

The result of the balloting in Voting Group No. 9 raised two issues for the Board's determination: one dealing with the requirement of affirmative votes to establish a separate bargaining

unit, and the other, depending on the determination of the first issue, whether or not the "X" and "NO" ballot should be voided. There is no question that a majority of the employes of the garbage collection laborers voting in Group No. 9 voted in favor of the Independent as their bargaining representative. 174 employes voted in favor of the Independent while a total of 111 voted either for representation by District Council 48 or no representation at all. However, without determining the "X" and "NO" ballot, exactly one-half of the 348 eligible employes in the unit voted for the Independent. Pursuant to Section 111.70, elections in municipal employment are conducted in accordance with Section 111.02 (6) and Section 111.05 of the Wisconsin Employment Peace Act. Section 111.02 (6) defines a collective bargaining unit as "all of the employes of one employer except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in Section 111.05 (2) to constitute such group a separate bargaining unit they shall be so considered...." In its Direction the Board recognized that the garbage collection laborers were employed in the Garbage Collection Division which constituted a separate division of the Municipal Employer, and thereby the employes in the Garbage Collection Division were given an opportunity to determine for themselves whether they desired to constitute themselves a separate collective bargaining unit and this opportunity was given to them in the manner in which the election was directed -- that is to say, since the Independent desired to represent the garbage collection laborers in a separate bargaining unit and District Council 48 desired said employes to be in an over-all Department of Public Works unit, the Board in its Direction provided that if the required number of employes voted to be represented by the Independent they would, by so voting, constitute themselves a separate bargaining unit.

In interpreting Section 111.06 (2) the Board has previously stated that in order to establish a separate unit a majority of the employes eligible in the unit must vote in favor of the proposition.^{1/} The result being that a mere majority of those voting may not constitute a majority of those eligible. Counsel for the Independent would have the Board overrule its policy with regard to the "majority of those eligible" rule and permit the establishment of a separate bargaining unit if the proposition received affirmation by a majority of only those voting. District Council 48 opposes this view.

The statutory language clearly establishes the requirement to be a majority of those employes eligible to vote rather than a majority of those voting. It is significant to note that a separate bargaining unit can only be established "by a majority of such employes engaged in a single craft, division, department or plant....". The language in Section 111.05 expressly imposes a less stringent majority for the selection of the bargaining representative, for that language reads as follows:

"Representatives chosen for the purposes of collective bargaining by a majority of the employes voting in a collective bargaining unit...."

Had the Legislature intended that a majority of the employes voting in a separate division could establish a single bargaining unit it could very well have substituted the word "voting" for the word "engaged" in Section 111.02 (6). If that were the case, there would have been no question that only a majority of those voting could establish a separate bargaining unit. We conclude that the statutory language is clear and that in order to establish a separate bargaining unit a majority of the employes eligible in the division herein must vote in favor of the proposition. Having made this determination we are not confronted with the determination of the validity of the "X" and "NO" ballot.

^{1/} Normington Laundry, Dec. No. 3864, 1/55

At the hearing counsel for District Council 48 conceded that the intent of the voter was clear to indicate his choice to be for the Independent, however, that the ballot should be declared void because the placing of the word "NO" in the ballot destroyed the secrecy of the ballot for it could very well have constituted a "signal to someone that he so voted". Counsel for the Independent contends otherwise while the representatives of the Municipal Employer took no position with regard to the matter.

If such an arrangement had been made between the voter and any observer at the polls such an arrangement remains a secret between the voter and the observer. No one has come forth to establish the identity of the voter. To conclude that the marking of a ballot in any way other than the normal fashion, in the absence of proof of the identity of the voter or of proof of an intention to reveal his identity, voids the ballot merely on the implication that such marking reveals the identity of the voter would cause many ballots to be declared void. We must recognize that employes who vote in such elections cannot be expected to exercise the same prudence and discretion in marking their ballots as would counsel who attack or support the validity of the ballot in question. To apply such a test would deprive a number of employes in this state of the right to express their choice. As long as the Board can determine the clear and unequivocal intent of the voter by the manner in which he has marked his ballot and as long as the identity of the voter is not disclosed by markings on the ballot to anyone who may examine the ballot, then this Board will not declare such ballot void. We are not convinced that the word "NO" written in the square reserved to indicate a choice for District Council 48 identified the employe marking the ballot. We therefore declare that the ballot is valid and should be counted. The inclusion of this ballot among those ballots of

employees voting in favor of the Independent as the bargaining representative results in a majority of the employes eligible to vote in the Garbage Collection Division favoring the Independent as their bargaining representative and, therefore, the Board is certifying the Independent as the collective bargaining representative of the garbage collection laborers in a separate bargaining unit consisting only of employes in the Garbage Collection Division.

Dated at Madison, Wisconsin this 30th day of April, 1963.

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