

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
SHAWANO COUNTY HIGHWAY EMPLOYEES
UNION, LOCAL 1520, AFSCME, AFL-CIO
Involving Employees of
SHAWANO COUNTY, WISCONSIN,
Employed in the HIGHWAY DEPARTMENT

Case II
No. 9061 FF-12
Decision No. 6388

Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John Lawton for the
Petitioner.

Mr. Michael G. Eberlein, District Attorney, for the Municipal
Employer.

FINDINGS OF FACT, CONCLUSION OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION
AND ORDER APPOINTING FACT FINDER

Shawano County Highway Employees Union, Local 1520, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Board to initiate fact finding pursuant to Section 111.70 of the Wisconsin Statutes on behalf of certain employees of Shawano County and the Board having conducted a hearing on such petition at the Shawano County Court House, Shawano, Wisconsin on April 3, 1963, Commissioner Arvid Anderson being present; and the Board having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusion of Law, Certification and Order Appointing Fact Finder;

FINDINGS OF FACT

1. That Shawano County Highway Employees Union, Local 1520, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization whose business representative, Robert W.

No. 6388

Swanson, resides at 129 North Meade Street, Appleton, Wisconsin.

2. That the County of Shawano, hereinafter referred to as the Municipal Employer, is a County located in the State of Wisconsin having its offices at the County Court House, Shawano, Wisconsin.

3. That on September 10, 1962 following an election conducted pursuant to Section 111.70, Wisconsin Statutes, the Wisconsin Employment Relations Board certified the Petitioner as the exclusive bargaining representative for all employees employed by the Municipal Employer in its Highway Department, excluding supervisory and office personnel.

4. That commencing in October 1962 the Petitioner and the Municipal Employer, the latter being represented by the Advisory Committee of its County Board, engaged in a number of collective conferences regarding wages, hours and conditions of employment of said Highway Department employees; that following several meetings the parties remained in deadlock with respect to the following demands of the Petitioner:

- (a) a reduction of the work week to a uniform schedule of 45 hours;
- (b) payment of 50% of health insurance premium by the Municipal Employer;
- (c) a grievance and arbitration procedure; and
- (d) a reduction of any agreement to writing.

5. That on October 31, 1962 the Municipal Employer by its County Board, adopted a local ordinance, identified as Ordinance No. 31, wherein it established a procedure for the presentation, consideration and determination of employee requests relating to wages, hours and conditions of employment of employees of the Municipal Employer, and further establishing the bargaining

procedure to be followed by an Advisory Committee as the representative of the Municipal Employer.

6. That also on October 31, 1962 the Municipal Employer, by its County Board, adopted Ordinance No. 32, providing for the establishment of a County Fact Finding Commission, consisting of three members, who were not affiliated with any county or municipal employer, to be appointed by the County Board Chairman, who also at present is the Chairman of the Advisory Committee of the County Board and subject to the confirmation of the County Board at a per diem compensation not to exceed \$12; that said County Fact Finding Commission was created for the purpose of establishing a local forum where petitions to initiate fact finding pursuant to Section 111.70, Wisconsin Statutes, could be processed, from the filing of the petition, through the investigation, the certification of the results thereof, and the appointment of a fact finder, as well as rules governing the procedure of the County Fact Finding Commission and fact finders appointed thereby; that said Ordinance further provides that the funds for the transaction of the business of the County Fact Finding Commission, its quarters, office supplies, postage and stenographic services shall be provided by the Municipal Employer or paid for out of funds furnished by the Municipal Employer; that the Ordinance authorizes the County Fact Finding Commission to select a panel of persons residing in Shawano County, who are not affiliated with any municipal employer or municipal employe organization, to serve as fact finders at a per diem compensation of \$9 and ordinary expenses incurred for travel, meals, room and other necessary expenses.

7. That since the members of the County Fact Finding Commission are unilaterally appointed by the County Board Chairman, who as Chairman of the Advisory Committee is the chief representative and spokesman for the Municipal Employer, especially in its conferences and negotiations with the Petitioner, as the bargaining representatives of the Municipal Employer's Highway Department

employees, the members of the County Fact Finding Commission cannot conduct their function in the manner contemplated by Section 111.70 of the Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact, the Board makes the following

CONCLUSION OF LAW

1. That Ordinance No. 32, adopted by Shawano County on October 31, 1962, pertaining to fact finding proceedings in municipal employment relations, is not in substantial compliance with subchapter IV of Chapter 111, Wisconsin Statutes.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Board makes and issues the following

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding required in Section 111.70 (4) of the Wisconsin Statutes in respect to the negotiation between the Shawano County Highway Employees Union, Local 1520, AFSCME, AFL-CIO, and Shawano County have been met.

IT IS ORDERED that fact finding be initiated for the purpose of recommending a solution to the dispute existing between the Petitioner and Shawano County.

NOW, THEREFORE, the Wisconsin Employment Relations Board does appoint Mr. Emmert L. Wingert, Madison, Wisconsin as the fact finder to proceed forthwith in the matter pursuant to Section 111.70 (4) (g) of the Wisconsin Statutes.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of June, 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

In the Matter of the Petition of
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MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW, CERTIFICATION OF RESULTS OF
INVESTIGATION AND ORDER APPOINTING FACT FINDER

Counsel for the Petitioner contends that the Ordinance establishing the County Fact Finding Commission is not in compliance with Section 111.70, Wisconsin Statutes, since the personnel thereon are selected unilaterally by representatives of the

Municipal Employer, and that therefore the neutrality contemplated in Section 111.70 does not exist since the control of the Commission and its procedures lie in the hands of the Municipal Employer. Petitioner's Counsel further contends that under such circumstances it would be difficult for the County Fact Finding Commission to make a determination finding the Municipal Employer, which agency was responsible for their appointment, was not bargaining in good faith, one of the conditions which could lead to fact finding.

While Section 111.70 (4) (m) provides that the Wisconsin Employment Relations Board shall not initiate fact finding in cases where a municipal employer, through ordinance or otherwise, has established fact finding procedures substantially in compliance with the statute, we are certain that such provision does not permit the Municipal Employer to control fact finding procedures by unilaterally designating the fact finding commission, either to conduct a fact finding investigation and/or to appoint the fact finder. In an opinion in this regard our Attorney General has stated in part as follows ^{1/}:

"2. Whether the local 'fact-finding procedure' may include the steps preliminary to the fact-finding is questionable. Unless the local procedures established by the employer under sec. 111.70 (4) (m) are agreed upon between employer and employees, the agency charged with determining whether fact-finding should take place would be one of the parties to the dispute, or an agency designated by it.

"It seems unlikely that the legislature intended that one party to the dispute, or an agency representing it, should determine whether the conditions precedent to fact-finding exist as enumerated in sec. 111.70 (4) (e).

"One of the reasons for designation of the board to determine whether such conditions exist is to insure that the decision shall not rest with either of the parties to the dispute.

"Leaving open the question whether a local plan might in any circumstance, substitute a local agency for

the Wisconsin Employment Relations Board to determine whether the conditions to initiate fact-finding have been met, it seems clear the procedures would not be 'substantially' in compliance with the state plan if they left any determination to one of the parties to the dispute, particularly when one of the questions is whether that party failed to bargain in good faith.

"3. Designation of the board to make the preliminary investigation also evidences a legislative intent that the determination whether fact-finding should ensue should be based on a uniformly applied state-wide standard rather than upon varying local practices. The statutory standards enumerated in sec. 111.70 (4) (3) are of a specialized nature dealt with frequently by the board, but more rarely by local agencies."

While the Attorney General's Opinion is primarily directed to the matter of investigation as to whether conditions appropriate for fact finding exist, we are satisfied that the same test of neutrality should apply to the agency appointing the fact finder. The Legislature's approval of the fact finding procedure is premised, in our view, on the idea that the recommendations of the fact finder, if well reasoned, may be accepted by the parties or at least form the basis for a solution to their dispute.

If fact finding commissions, and the fact finders appointed by them, lack neutrality it is unrealistic to expect that there will be any reasonable chance that the fact finders' recommendations will have any beneficial effect on the resolution of the dispute. Thus the fact finding procedure rather than serving as a means for the solution of the municipal employer-employee disputes could become a device for defeating the purpose of the statute to encourage the resolution of employer-employee differences by collective conferences and negotiations. Our experience with collective bargaining procedures convinces us that the neutrality of the fact finder just as the neutrality of a mediator or arbitrator is critical as to whether such services can be useful in resolving employee disputes.

In reaching the conclusion that Ordinance No. 32 is not in

substantial compliance with the statute, we wish to make it clear that we are not opposed to the appointment of fact finders by agencies other than the Wisconsin Employment Relations Board, if said appointments are not in any way controlled by representatives of either party to the dispute. The League of Wisconsin Municipalities has proposed a procedure for its members whereby the representatives of both the municipal employer and the municipal employees attempt to mutually agree on the selection of a third impartial person to act as chairman of a three-member fact finding panel and that, if said representatives are unable to agree on the third party, said third party shall be named by the American Arbitration Association. This procedure for the selection of a third party, in our opinion, meets the neutrality requirement and therefore is acceptable.

It is interesting to note that Ordinance No. 32 establishes \$9 as the per diem rate to be paid to any fact finder appointed by the County Fact Finding Commission. The Board's rules provide a fee of \$150 per day for hearing and \$100 per day in preparation. The Board's schedule was adopted from a minimum bar schedule for two reasons. The Board desires to attract qualified and experienced individuals to serve as fact finders and is determined to appoint men of experience, judgment and knowledge of labor relations. We also believe that fact finding fees should not be so nominal as to encourage the frivolous use of the procedure on the petition of either party to the proceeding. We are of the opinion that the Board's fee schedule encourages the parties to municipal employer-employee disputes to resolve their differences in collective conferences and negotiations.

The Board concludes that Ordinance No. 32 of the Municipal Employer is not in substantial compliance with Section 111.70, Wisconsin Statutes, and therefore the Board shall appoint the

fact finder and does hereby appoint Mr. Emmert L. Wingert of Madison, Wisconsin, a former Justice of the Wisconsin Supreme Court, to serve as a fact finder in this dispute.

Dated at Madison, Wisconsin this 11th day of June, 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