

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 311

For Determination of Bargaining
Representatives for Employees of

MILWAUKEE AUDITORIUM BOARD

Case I
No. 9239 ME-126
Decision No. 6543

DIRECTION OF ELECTION

The above named Petitioner having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to the Wisconsin Statutes, among certain employees of the above named Municipal Employer; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, on September 5, 1963 by Chairman Morris Slavney; 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, pursuant to Section 111.70 of the Wisconsin Statutes, within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all operating engineers employed by the Milwaukee Auditorium Board, excluding department heads, supervisors and all other employees, who were employed by the Municipal Employer on November 5, 1963, except such employees as may prior to the election quit their employment or be discharged for cause, for

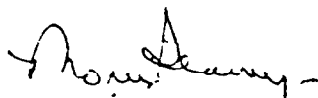
No. 6543

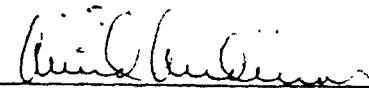
the purpose of determining whether or not the desired number of employees desire to be represented by International Union of Operating Engineers, Local No. 311; for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at
the City of Madison, Wisconsin, this
5th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Union petitioned the Board to conduct an election to determine what, if any, representation the operating engineers employed by the Employer desired, pursuant to Section 111.05 of the Wisconsin Employment Peace Act. At the hearing the Employer, by its Counsel, contended that the Employer was a political subdivision of the state within the meaning of Section 111.70 and that therefore any election by the one operating engineer in its employ should be held pursuant to that subsection.

The Employer operates an auditorium and arena for the purpose of providing facilities for public meetings, conventions, expositions, and other purposes of a public nature for which its buildings are suitable. The Employer is in the nature of a joint Employer having two distinct and separate parts. The first is a private corporation and the second is the City of Milwaukee. This form of organization permitted the Employer to acquire some of the necessary capital for the construction of the auditorium. However, the arena was constructed entirely from public funds. The city owns the land and buildings of the Employer and controls the operation of the Employer by virtue of the fact that a majority of the board of trustees of the Employer are city officials. In recent years, the city has acquired portions of the stock of the corporation.

However, not all of the corporation stock of the Employer has been transferred to the city since in such event the corporation would be dissolved and the board of trustees would consist of the city officials exclusively.

The Board has held that the fact that a corporation is authorized to disburse public moneys in performing a public purpose and furthermore that it is, by virtue of its organization and statutory limitations, substantially controlled by the State, is not determinative of the question whether such corporation is a state agency or political subdivision of the state.^{1/} In this same case, the Board looked to the particular language used in the Statute creating the Employer in determining whether such Employer should be deemed a political subdivision of the state. Section 43.44 Wisconsin Statutes provides in part:

"(1) Any city of the first class may establish and maintain public auditoriums and music halls; and may establish, maintain and operate the same jointly, share and share alike, by agreement between the common council of such city and any private corporation duly organized for that purpose.

(2) Such private corporation shall execute to the city a bond, in a sum determined and with sureties, approved by said common council, conditioned that the said corporation will furnish its share of money as the same shall be required for the purposes specified in subsection (1).

* * *

(5) Whenever the city shall have acquired all the stock of such corporation, the said corporation shall ipso facto be dissolved and the title to all its property of whatsoever nature, shall vest in said city; thereupon the auditorium board provided for in section 43.45 shall consist of only the ex officio members specified in said section.

* * *

(7) Any such city may build additions to such auditoriums and for the purposes of any such addition, by action of the common council, issue revenue bonds under the provisions of section 66.51 payable exclusively from income and revenues of any such addition and of any auditorium to which it is added which said auditoriums and additions thereto for such purpose are declared a

public utility. Said private corporation shall not be required to contribute to any such addition. Any such addition shall be subject in all other respects to the provisions of sections 43.44 to 43.48."

The statutory language recognizes that a portion of the Employer's operation will be carried on by a private corporation operating jointly with the city. Part of the funds necessary to build the auditorium were furnished by the corporation. The corporation elects five members to the eleven member board of trustees which is charged by statute with full and complete control of the Employer. The statute further recognizes that stock in the corporation may be transferred to the city and that the corporation may assume a secondary role in furnishing capital for new buildings for the Employer. Nevertheless, the corporation retains its corporate entity, elects the members of the board of trustees that it is entitled to elect, and shares in the operation of the Employer, share and share alike, until such time as all of the stock of the corporation is transferred to the city. Such being the case, the Employer must be deemed a joint operation between a private corporation and a municipality.

The Petitioner herein petitioned the Board to conduct a representation election in a bargaining unit consisting of one operating engineer employed by the Milwaukee Auditorium Board pursuant to 111.05 of the Wisconsin Statutes. The Employer contends that the election should be conducted pursuant to 111.70 (4) (d) of the Wisconsin Statutes since it is a municipal employer and not a private employer subject to the provisions of the Wisconsin Employment Peace Act.

Employees of private employers have greater rights than employees of municipal employers. Section 111.04 grants employees in private industry the right to "engage in collective bargaining through representatives of their own choosing, and to engage in lawful concerted activities, such as strikes, picketing, and

bargaining, or other mutual aid or protection", which refers to lawful concerted activities, such as strikes, picketing and boycotts, labor unions traditionally use to induce employers to accede to their demands. Section 111.70 (a) while granting the right to representation in collective bargaining, omits the right to engage in concerted activities. Section 111.70 (1) prohibits strikes by municipal employees and, in its stead, in Sections 111.70 (e) through (g) establishes fact finding procedures for the resolution of disputes. The question here before the Board is not merely an administration matter as to which section of the statutes shall be cited when the Board directs its election, but is determinative of the right of the employee involved to engage in certain concerted activity. The representative of the Petitioning Union indicated his awareness of the basic issue when he stated on the record he sought in this proceeding the right to strike. The Milwaukee Auditorium Board operates the Milwaukee Arena and Auditorium. The operation is controlled by a private corporation established by the Wisconsin Statutes and by representatives of the City of Milwaukee. The private corporation was formed to acquire some of the necessary capital, for the construction of the auditorium. However the latter building, the Arena is constructed entirely from municipal funds. The City of Milwaukee has title to the land and buildings and controls the operation by virtue of the fact that a majority of the board of trustees are city officials. Furthermore in recent years the City of Milwaukee has been acquiring portions of the stock of the corporation and eventually all the corporate stock will be transferred to the City of Milwaukee. It appears to the Board that the City of Milwaukee is the senior partner in this organization having the greater control and having made the greater financial contribution and therefore any employees employed by the Milwaukee Auditorium Board are to be deemed

municipal employees. Therefore the election shall be conducted pursuant to 111.70 (4) (d) of the Wisconsin Statutes.

Dated at Madison, Wisconsin this 5th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner