

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of  
GREEN BAY MUNICIPAL EMPLOYEES  
UNION LOCAL 1672, AFSCME, AFL-CIO  
Involving Employees of  
CITY OF GREEN BAY, Employed in the  
PARK AND RECREATION DEPARTMENT

Case V  
No. 9183 ME-109

Decision No. 6558

In the Matter of the Petition of  
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UNION LOCAL 1672, AFSCME, AFL-CIO  
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Case VI  
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Appearances:

Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson,  
for the Union.

Mr. Richard Greenwood, Assistant City Attorney, for the  
Employer.

Goldberg, Breviant & Uelmen, Attorneys at Law, by Mr. Roger  
Walsh, for the Intervenor.

DIRECTION OF ELECTION

Green Bay Municipal Employees Union Local 1672, AFSCME, AFL-CIO, 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 said petition having been conducted at Green Bay, Wisconsin on July 17, 1963, by Examiner Robert M. McCormick; and during the course of the hearing, Drivers, Warehouse and Dairy Employees Union Local 75, IET moved to intervene in the proceeding claiming to be the recognized bargaining

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representative of certain employes in a proposed bargaining unit pursuant to the terms of a collective bargaining agreement existing between it and the Municipal Employer, and such motion having been granted during the course of the hearing; and the Board having considered the evidence and being satisfied that a question has arisen concerning 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 collective bargaining unit consisting of all regular full time and regular seasonal employes in the employ of the Park and Recreation Department of the City of Green Bay, excluding temporary seasonal, supervisory and office clerical employes, who were employed by the Municipal Employer on November 20, 1963, except such employes 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 employes desire to be represented by Drivers, Warehouse and Dairy Employees Union Local 75, IBT; by Green Bay Municipal Employees Union Local 1672, AFSCME, AFL-CIO; or by neither, 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 20th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney  
Morris Slavney, Chairman

Arvid Anderson  
Arvid Anderson, Commissioner

Zel S. Rice II  
Zel S. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Local 1672 filed two petitions involving employees employed in the Park and Recreation Department of the City of Green Bay. In one petition it requested that an election be conducted among all the employees of the Park and Recreation Department excluding maintenance carpenters, maintenance carpenters helpers, office and supervisory employees. In its second petition it desired an election to be conducted in a separate craft unit consisting of the maintenance carpenter and maintenance carpenter helper.

At the outset of the hearing, after being permitted to intervene on the basis that it is a party to a presently existing collective bargaining agreement with the Municipal Employer covering certain employees covered by the petitions, the Teamsters contended that the petitions should be dismissed for the reason that said collective bargaining agreement was a bar to a present

election. Issues also arose with respect to the appropriateness of the units and further that if an election be held that the results thereof not be permitted to affect the negotiations leading up to a possible agreement for the year 1964 and as to the eligibility of various employes to participate in any election directed by the Board.

#### CONTRACT BAR ISSUE

The Teamsters and the Municipal Employer were parties to a collective bargaining agreement effective January 1, 1963 and continuing in full force and effect until at least December 31, 1963. Said agreement covers the wages, hours and working conditions of the various employes employed in the Park and Recreation Department. The petitions herein were filed in May 1963. The Teamsters contend that they are untimely since the collective bargaining agreement had seven months of its term left to run.

Local 1672 argues that the Board should process the petitions and direct elections pursuant thereto despite the existence of the collective bargaining agreement since the agreement provides that it may be reopened for negotiations on a new agreement as soon as June 1, 1963.

In entertaining petitions for elections conducted among employes of private employers under the Wisconsin Employment Peace Act the Board balances the right of employes to choose and change collective bargaining representatives with the interest of preserving the stability of the collective bargaining relationship as reflected in the collective bargaining agreement. Generally, in private employment where a collective bargaining agreement exists, the Board will entertain election petitions only toward the end of a collective bargaining agreement, and usually the directions are not issued more than 60 days prior to the termination of the agreement. The Board is of the opinion that the tests which it applies

to when elections can be conducted in private employment cannot be controlling in public employment for the following reasons. Municipal employers by law are required to establish a date prior to the expiration of any particular year for the adoption of its budget. Many municipalities have adopted ordinances establishing dates for the initiation of salary and wage negotiations months in advance of the new fiscal year. In the Board's experience in mediation and fact finding cases in public employment it has observed that it is common practice for labor organizations and municipal employers to commence their conferences and negotiations with respect to wages, hours and conditions of employment far in advance of the commencement of the new fiscal year. It may be in some instances that the collective bargaining relationship between a municipal employer and the union representing its employees are not reflected in a collective bargaining agreement but in an ordinance or resolution adopted by the municipality. We therefore do not adopt the so-called "contract bar" rule with respect to petitions for elections among municipal employees. This does not mean that the Board will at any time automatically entertain petitions for elections among municipal employees. In determining whether petitions are timely filed, in order to effectuate the policies of Section 111.70 we shall examine the various ordinances in existence as to the period of initiating conferences and negotiations with respect to wages, hours and working conditions; the budgetary deadline; the collective bargaining history, if any; the lapse of time from a previously conducted Board election, if any; and other factors which affect the stability of the relationship between the municipal employees, their bargaining agent, and their employer. In the event the Board conducts an election during the term of an ordinance or a collective bargaining agreement and the employees select a representative other than the one previously

recognized in the ordinance or agreement, the representative so selected normally will be obligated to enforce and administer the substantive provisions therein inuring to the benefit of the employees covered by the ordinance or agreement. Any provision which runs to the benefit of the former bargaining agent normally will be considered extinguished and unenforceable.

#### EFFECT OF ELECTION

The Teamsters request the Board to delay the effect of the election so that it will not affect present negotiations engaged in by the Teamsters with respect to the employees involved. Such a dispute, the Teamsters argue, would relieve the new bargaining agent, if elected, of the pressure of meeting budgetary deadlines and would however permit said agent adequate time to conduct negotiations during the year 1964 with respect to wages, hours and working conditions for 1965.

The Board rejects the Teamsters request in regard to delaying the effect of the election. To accept such a concept of an insulation period would thwart the statutory right of the employees to choose their bargaining representative and would permit the possibility of a labor organization not representing a majority of the employees to act as their exclusive bargaining representative contrary to the concepts and policies of Section 111.70.

#### APPROPRIATE UNITS

The Teamsters contend that the duties of park custodial employees will peculiarly distinguish them from other park employees because they report directly to their assigned parks and work alone, never interchanging with other park employees. The Teamsters request that the park custodial employees vote separately on whether or not they desire to constitute a separate departmental unit. Section 111.70 (4) (d) provides that elections in municipal employment shall be in accordance with Section 111.05 of the Wisconsin

Employment Peace Act insofar as is applicable. In elections conducted pursuant to the above cited section in private employment where an issue arises as to the appropriateness of the bargaining unit the Board must determine whether or not the employees claimed to constitute an appropriate unit are included in a separate craft, division, department or plant. The Board determines whether or not such a separate craft, division, department or plant exists and then thereupon the employees therein are given the opportunity to decide for themselves whether they desire to constitute a bargaining unit separate and apart from other employees of the employer.<sup>1/</sup> In municipal employment the same principle applies except that employees engaged in a single craft automatically constitute a unit separate and apart from other crafts or employees of the municipal employer. The Board still must determine whether or not the employees are employed in a separate department, division or plant and if it makes such a finding then the employees therein are given the opportunity to determine whether they desire to constitute themselves a separate bargaining unit. In determining whether a separate division or department exists the Board looks to whether the group of employees claimed to constitute the division or department, have special interests and working conditions which differ from the remaining employees.<sup>3/</sup> The evidence discloses that the Teamsters and the Municipal Employer have included park custodial employees with the remaining park employees in their collective bargaining agreement. Although the duties of the park custodial employees are somewhat different from other park employees they essentially maintain the grounds and are under the same supervision. The fact that they work separately at many park locations does not persuade us that they constitute a

1/ Normington Laundry, Decision No. 3864, 12/54.

2/ Appleton Water Commission, Decision No. 6075, 8/62.

3/ Dodge County, Decision No. 6067, 7/62.

separate department or division nor does the fact that they are employed seasonally from April through September establish a separate department or division since other employes of the department are also employed seasonally. We find that the custodial park employes do not constitute a separate department or division and therefore they shall be included in the same collective bargaining unit with other employes of the Park and Recreation Department.

#### ELIGIBLES

The parties agreed to exclude five temporary student employes identified as laborers and helpers from those eligible to participate in the election. The Teamsters initially claimed that employes Wood, Boesen, Vertz, Mommaerts and Steel were temporary employes and thus should not be permitted to vote. The evidence discloses that said five employes were seasonably employed but that all had a reasonable expectancy of being employed during the 1964 season and we therefore conclude that said five employes are regular seasonal employes and are to be included among the eligibles.

#### CRAFT ISSUE

Local 1672 requested in a separate petition that an election be conducted for the craft of carpenters in a separate and distinct unit pursuant to Section 111.70 (4) (d). The Teamsters, during the course of the hearing, questioned the craft status of the mechanic-welder and painter. Both Local 1672 and the Teamsters subsequently changed their position with regard to the craft status of said employes and contended that they should be included in the overall unit. The Board is satisfied from the record that none of the foregoing employes are "craft" within the meaning of Section 111.70 (4) (d)

4/ City of Menomonie, Decision No. 6158, 10/62

since they did not work as a distinct and homogeneous group of skilled journeymen nor are they required to have any formalized training or apprenticeship.<sup>5/</sup> Therefore the carpenter, carpenter helper, mechanic-welder and painter are to be included in the overall unit.

Dated at Madison, Wisconsin this 20th day of November, 1963.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney  
Morris Slavney, Chairman

Arvid Anderson  
Arvid Anderson, Commissioner

Zel S. Rice II  
Zel S. Rice II, Commissioner

5/ Winnebago County Hospital, Decision No. 6043, 7/62.