

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of	:	
	:	
MILWAUKEE DISTRICT COUNCIL NO. 48,	:	Case I
AMERICAN FEDERATION OF STATE, COUNTY	:	No. 9425 ME-127
AND MUNICIPAL EMPLOYEES, AFL-CIO and	:	Decision No. 6650
LOCAL NO. 1486, AFSCME, AFL-CIO	:	
	:	
Involving Employees of	:	
	:	
VILLAGE OF BROWN DEER, WISCONSIN	:	
	:	

Appearances:
Wickert, Fuhrman & Ellegard, Attorneys at Law, by Mr. Harold H. Fuhrman, for the Municipal Employer.
Mr. Tony Ingrassia, Staff Representative for Milwaukee District Council No. 48, for the Petitioner.

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 Brown Deer, Wisconsin, on November 12, 1963, by James L. Greenwald, Examiner; and during the course of the hearing the parties having stipulated to the unit appropriate for collective bargaining; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes 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 within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all employes of the Village of Brown Deer, Wisconsin, employed in the Department of Public Works,

excluding craft and supervisory personnel, who were employed by the Municipal Employer on February 19, 1964, except such employees 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 employees desire to be represented by Milwaukee District Council No. 48 American Federation of State, County and Municipal Employees, AFL-CIO and Local No. 1486, 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.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of February, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

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: Case I
: No. 9425 ME-127
: Decision No. 6650

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Union filed a petition requesting that the Board conduct a representation election among all employees employed in the Municipal Employer's Department of Public Works, excluding craft employees and supervisors. At the hearing the Municipal Employer objected to the conduct of any election on the grounds that neither the Union nor any employees had requested that the Municipal Employer recognize the Union and hence no question concerning representation had thereby arisen and that, therefore, since this jurisdictional prerequisite had not been met, the Board should dismiss the petition.

The Board has a statutory mandate to resolve questions concerning representation by conducting elections by secret ballot among employees in the appropriate collective bargaining unit. Section 111.70 (4) (d) provides as follows:

"Whenever a question arises between a municipal employer and a labor union as to whether the union represents the employees of the employer, either the union or the municipality may petition the board to conduct an election among said employees to determine whether they desire to be represented by a labor organization. Proceedings in representation cases shall be in accordance with ss. 111.02 (6) and 111.05 insofar as applicable, except that where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit. The board shall not order an election among employees in a craft unit except on separate petition initiating representation proceedings in such craft unit."

Section 111.05 provides as follows:

"(2) Whenever a question arises concerning the determination of a collective bargaining unit as defined in section 111.02 (6), it shall be determined by secret ballot..."

"(3) Whenever a question arises concerning the representation of employes in a collective bargaining unit the board shall determine the representatives thereof by taking a secret ballot of employes and certifying in writing the results thereof to the interested parties and to their employer or employers...."

"(4) Questions concerning the determination of collective bargaining units or representation of employes may be raised by petition of any employe or his employer (or the representative of either of them)...."

The statute does not contain detailed provisions relating to the procedure to be used in determining representatives. The proceeding before the Board is in the nature of an investigation simply to determine whether a question of representation exists. In representation proceedings in private employment, the Board has viewed the filing of an election petition sufficient to raise a question of representation.^{1/} In the instant case, we have little doubt that a real question of representation exists. At least five days prior to the hearing, the Municipal Employer was in receipt of a copy of the Union's petition, which in effect is a claim that it represents a majority of the employes in an alleged appropriate unit, but did not extend recognition to the Union. Immediately prior to the commencement of the hearing, the Union requested recognition of the Municipal Employer's attorney who refused to consider such effort and who, further, did not indicate he would communicate the request to other officials of the Municipal Employer or that the request would be considered at any time in the future. To accede to the construction of the statute urged by the Municipal Employer would be to create an impediment to the Board's investigation and prevent it from performing the duties it is charged by the statutes to perform.

Our experience in administering Section 111.70 indicates that the Municipal Employer has a different mode of operation which makes

^{1/} A. O. Smith Corp., Dec. No. 8627, 1/46

it exceedingly difficult, at best, for it to respond with any dispatch to a demand for recognition by a Union. The private employer can recognize or decline to recognize a Union after a decision by the individual owner of the business or after conferences among members of the management. On the other hand, the Municipal Employer must decide upon its action through legislative process, which is often slow and drawn out and which lends itself more to inaction than action. During this same period, disputes concerning the terms and conditions of employment and the representative status of the Union would be aggravated by the Union's and the employes' suspicion that the Municipal Employer might be using the time to undermine its organization. Such delays are eliminated through the unhampered use of the Board's election machinery.

As we stated in a recent decision^{2/}, we have encouraged Municipal Employers to extend voluntary recognition to a Union where they are satisfied that the Union is the representative of the majority of the employes in the unit. Indeed, where the Union believes the Municipal Employer will recognize its claim of representation and enters into conferences and negotiations with the employe representative, such action is entirely in keeping with the voluntary nature of the collective bargaining process. However, the fact that the Union may choose to seek voluntary recognition does not mean that it must make known its claim to the Municipal Employer before filing an election petition with the Board.

An issue also arose with regard to the eligibility of Frank Mutz to participate in the election. The Municipal Employer takes the position that Mutz is a supervisor and should be excluded from the eligible employes, while the Union takes the position that Mutz is not a supervisor. Mutz is classified as a Grader Equipment Operator and is paid \$2.90 an hour. One other employe, who the parties stipulated to be eligible to vote in the election, receives \$2.95 an hour and two (2) other employes, also Grader Equipment

^{2/} School District No. 1, West Allis, Dec. No. 6544, 11/63

Operators, receive \$2.90 an hour, while the remaining seven (7) employees receive a lower hourly rate. Mutz spends the vast majority of his time performing work as a Grader Equipment Operator, and only on occasions, during the Highway Superintendent's short termed absences assumes some of his authority with respect to the direction of its work force, the requisitioning of materials, and the handling of time sheets. The Board concludes that by reason of the absence of any differential between Mutz's pay and that of employees with whom he works, his limited authority, and the greater portion of his work time being spent in non-supervisory activities, Mutz is a working supervisor and thus eligible to participate in the election.

Dated at Madison, Wisconsin, this 19th day of February, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

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