

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
VERNON COUNTY, VERNON COUNTY INSTITUTIONS
Involving Employees of
VERNON COUNTY, WISCONSIN, Employed in
VERNON COUNTY INSTITUTIONS

Case III
No. 6647 ME-132
Decision No. 6652

Appearances:

Mr. Ole Gulbrandsen, Attorney at Law, for the Petitioner.
Mr. Larry A. Siegen, District Attorney, for the Employer.
Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson,
for the Union.

DIRECTION OF ELECTION

The Municipal Employer named above having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of Vernon County, Wisconsin, employed in Vernon County Institutions; and a hearing on said petition having been conducted at the Vernon County Courthouse, Viroqua, Wisconsin on March 6, 1964, by Commissioner Zel S. Rice II; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employees 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 employees of Vernon County, employed in Vernon County Institutions, excluding superintendents, supervisory personnel and confidential personnel, who were employed by the Municipal Employer on July 16, 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 Vernon County Institutions Employees, Local

No. 6652

1667, 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 16th day of July, 1964.

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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In the Matter of the Petition of
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On February 15, 1963, after an election conducted by it, the Wisconsin Employment Relations Board certified Vernon County Institution Employees, AFSCME, AFL-CIO as the exclusive collective bargaining representative for all employees of Vernon County, Wisconsin, employed in Vernon County Institutions, excluding superintendents, supervisory personnel, and confidential clerical personnel. Subsequently, the Union was assigned Local No. 1667. On January 21, 1964, Mose Marshall, the Chairman of the Board of Trustees of the Vernon County Institutions, filed a petition with the Board requesting that an election be held, pursuant to Section 111.70 of the Wisconsin Statutes, to determine whether the employees in the Vernon County Institutions desired to be represented by the Union. At the outset of the hearing the Union moved that the Board dismiss the petition since neither Mr. Marshall nor the Board of Trustees of the Vernon County Institutions had any authority to represent Vernon County for the purposes of filing the petition.

The record discloses that in November, 1963, the Union advised members of the Vernon County Board that the Vernon County Institutions had created no authorized committee to engage in conferences and negotiations with the Union or considerations of the wages, hours and conditions of employment of the employees employed in the Institutions. On November 16, 1963, the County Board adopted an ordinance creating a Personnel Committee to meet and negotiate with the Union and to propose recommendations to the County Board with respect to the wages, hours and working conditions of the employees involved. The County Board established such a Committee and it commenced to negotiate with the Union on December 17, 1963. During the course of the negotiations, the representatives of the Union and the Personnel Committee agreed that any agreement reached between the Union and the County Board after January 1, 1964, would apply retroactively to that date. Prior to February 11, 1964, after negotiating with the Union, the Personnel

committee prepared a list of its recommendations and submitted them to the County Board. On February 11, 1964, the County Board, after considering the recommendations, voted to adopt same and the Union was so notified on February 12, 1964 by letter from the County Clerk. The Union, at a meeting of its membership, voted to accept the recommendations of the Personnel Committee. On March 1, 1964, the Union formally advised the Personnel Committee that it had accepted the recommendations of the Personnel Committee and its approval by the County Board. Thereafter and prior to the hearing herein, which was held on March 6, 1964, the parties had made arrangements to reduce their agreement to writing. The instant petition had been filed on February 6, 1964, during the period of negotiation between the Personnel Committee and the Union, but prior to the submission of the Personnel Committee recommendations to the County Board on February 11, 1964.

The original election proceeding involving the instant Union and the Vernon County Institutions had been filed on October 12, 1962, and after a hearing, the Board on January 10, 1963, directed an election to be held among the employees involved. Said election was conducted on February 5, 1963, and on February 15, 1963, the Board issued its Certification with respect to the exclusive representative status of the Union. The Municipal Employer did not actually commence negotiations with the Union until December 17, 1963, some ten months after the issuance of the Certification of the Board. Section 111.70 provides that elections to determine bargaining representatives in municipal employment should be governed by the procedures for conducting elections pursuant to the Wisconsin Employment Peace Act where applicable, and in that regard, the Board has adopted certain practices and procedures, as well as policy, with respect to petitions filed with the Board requesting an election to determine bargaining representatives and as to what affect a previously conducted election and Certification issued by the Board as well as the existence of a collective bargaining agreement has upon the processing of a new election petition.

It is a general policy of the Board that where an election has been held and where a bargaining representative has been selected and a certification issued as a result thereof, such Certification shall remain in effect for at least one year before a new election is directed.^{1/} The reason for the policy is to permit an insulation period for the certified bargaining agent and the Employer to attempt to negotiate a

^{1/} Kress Packing Co., Dec. No. 5581, 8/60; Lindey Cleaners, Dec. No. 2711, 3/51; Antigo Milk Products Co., Dec. No. 1308, 5/47; Garton Toy Co., Dec. No. 1238, 2/47.

mutually satisfactory collective bargaining agreement. The petition in the instant case was filed just one week short of the one year anniversary of the date of the issuance of the Certification. However, such policy contemplates that there has been no substantial delay in commencing negotiations following the Certification of the Union as the exclusive bargaining representative. However, for some reason not disclosed in the record, the County Board did not commence bargaining with the certified Union until some ten months following the date of Certification. In addition thereto the instant petition was filed while representatives of the County Board and the Union were engaged in bargaining with respect to wages, hours and working conditions of the employees for the 1964 year and as a matter of fact the negotiations came to fruition by an agreement reached on at least March 1, 1964, some five days prior to the hearing on the instant petition and said agreement has been in full force and effect retroactively to January 1, 1964 and continuing to at least December 31, 1964. This agreement poses another matter which the Board must consider as to whether it will process the instant petition. We stated in the City of Green Bay case as follows:

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 . . . 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." 2/

2/ City of Green Bay, Dec. No. 6558, 11/63.

Had the Board been able to determine the issues in this matter shortly after the hearing thereon, we would have dismissed the petition on the basis that it was prematurely filed. However, substantial time has elapsed between the dates of the hearing and the filing of the final briefs, and we find the parties now find themselves in the second half of their agreement and also they are approaching the period where the County Board must commence its deliberations with respect to its budget for the fiscal year, 1965. For this reason we are satisfied that the question of representation is now timely and we have directed that an election be conducted among the employees.

Should the majority of the employees select the Union as their bargaining representative, the Union will not only have the right to administer the present existing collective bargaining agreement, but it will also have the right and duty to represent the employees in the bargaining unit in negotiations with respect to their wages, hours and working conditions for the year 1965. Should the employees select the Union as their bargaining representative, the Union will retain its right, however, to administer the terms of the existing collective bargaining agreement which are not to the benefit of the employees. At the termination of the calendar year, the agreement will be terminated and the obligation of the Union with respect thereto will also be concluded. If rejected by the employees, the Union of course will have no right to negotiate with the Municipal Employer on wages, hours and working conditions for the year 1965.

Dated at Madison, Wisconsin, this 16th day of July, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

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