

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of

A majority of the employees of the SHAWANO
COUNTY SHERIFF & TRAFFIC DEPARTMENT

Involving Employes of

SHAWANO COUNTY, WISCONSIN

Case III
No. 9684 FF-46
Decision No. 7051

FINDINGS OF FACT, CONCLUSIONS OF LAW,
CERTIFICATION OF RESULTS OF INVESTIGATION AND
ORDER INITIATING FACT FINDING AND APPOINTING FACT FINDER

A majority of the employees of the Shawano County Sheriff & Traffic Department having petitioned the Wisconsin Employment Relations Board to initiate fact finding proceedings pursuant to Section 111.70 of the Wisconsin Statutes on behalf of the employees of the Shawano County Sheriff & Traffic Department; and the Board, by Commissioner Arvid Anderson, having conducted a hearing on said petition on May 26, 1964 at Shawano, Wisconsin to determine whether the conditions precedent to the appointment of a Fact Finder have been met; and after the close of the hearing the Board having received, in evidence, certified copies of pertinent ordinances adopted by Shawano County, as well as related documents; and the parties herein having filed written arguments in the matter; and the Board being fully advised in the premises makes and files the following Findings of Fact, Conclusions of Law, Certification of Results of Investigation and Order Initiating Fact Finding and Appointing Fact Finder.

FINDINGS OF FACT

1. That Shawano County, hereinafter referred to as the Municipal Employer, has its offices at the Shawano County Courthouse, Shawano, Wisconsin

2. That Eldor Kunschke, Walter E. Schardt, William C. Seering and Ed K. Krueger are employed as deputy sheriffs by said Municipal Employer; that Robert A. Montour, Dennis R. Kleman and Chester J. Dahl are employed as traffic officers by the Municipal Employer; that Mildred Schreiber is employed as a secretary for the

Sheriff and Traffic Departments of the Municipal Employer; that all of the aforementioned said employees, hereinafter referred to as the Petitioners, constitute all the employees in the employ of the Sheriff and Traffic Department of the Municipal Employer.

3. That on August 12, 1963 the above named employees notified the Law Enforcement Committee of the County Board of Supervisors of said Municipal Employer that they had elected to affiliate with the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union, for the purposes of "all labor bargaining procedures."

4. That on October 10, 1963 the Petitioners selected Robert W. Swanson, of Appleton, Wisconsin, as their representative for the purposes of discussing and negotiating changes and improvements in the wages, hours and working conditions affecting said Petitioners; that Swanson also, at all times material herein, was employed as a full-time representative by the Wisconsin Council of State, County and Municipal Employees, AFL-CIO, affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO; that on various occasions, in such capacity, Swanson met with the Advisory Committee of the County Board of the Municipal Employer while representing employees in the employ of the Highway Department of said Municipal Employer on behalf of Local 1520 affiliated with said Wisconsin Council, on matters pertaining to wages, hours and working conditions of said Highway Department employees.

5. That on October 11, 1963, Swanson directed a letter to the Law Enforcement Committee of the County Board of the Municipal Employer, wherein he indicated that he had been elected by a majority of the employees in the County Traffic Department and Sheriffs Department of said Municipal Employer and in that letter Swanson made certain requests with respect to the conditions of employment of the Petitioners.

6. That on October 11, 1963, the Law Enforcement Committee of the County Board of said Municipal Employer, at the request of the Petitioners, met with Swanson who appeared and attempted to represent the Petitioners for the purposes stated in his letter of October 11, 1963; and that on said occasion, the Law Enforcement Committee, by the District Attorney of the Municipal Employer, objected to Swanson's status as the representative of the Petitioners, claiming that neither a labor organization nor its representative

could represent law enforcement employees of the Municipal Employer without the permission of the Municipal Employer; and that, however, without waiving such objections, the members of the Law Enforcement Committee would permit Swanson to address the Committee; and at that time Swanson requested civil service for the Petitioners.

7. That thereafter said Law Enforcement Committee referred such request for civil service status to the Advisory Committee of the County Board of the Municipal Employer; that on November 18, 1963 said Advisory Committee, by Michael Powers, who is also Chairman of the County Board of the Municipal Employer, wrote Swanson denying the request to initiate civil service for the Petitioners; that also on November 18, 1963 Powers wrote a letter to Robert Montour, one of the Petitioners, and therein advised Montour that, "The question of whether your group can be represented by an outsider is a legal question which is held in abeyance and need not be decided by the Committee at this time."

8. That on March 9, 1964 the Municipal Employer, by its District Attorney, notified Swanson in writing that he could not represent the Petitioners in conferences and negotiations with the Municipal Employer without the approval of the County Board of the Municipal Employer and that the Petitioners did not have the right to be represented by a labor union, or its representative, acting as an individual, without the approval of the County Board of the Municipal Employer; and that at the same time the District Attorney further advised that it was the opinion of the County Board that the Petitioners could be adequately represented in conferences and negotiations by one or more of their own members and that representatives of the Municipal Employer stood willing to meet on that basis with the Petitioners.

9. That on April 9, 1964 the Petitioners, by Swanson, filed the fact finding petition which instituted the instant proceeding wherein the Petitioners alleged that (1) they had selected Swanson as their representative, (2) the Municipal Employer had questioned Swanson's representative status, (3) the Petitioners had been unable to negotiate with the Municipal Employer with respect to civil service status desired by the Petitioners, and (4) the Municipal Employer had not established fact finding procedures substantially in compliance with Section 111.70 of the Wisconsin Statutes.

10. That on April 23, 1964 the Municipal Employer adopted a fact finding ordinance identified as "Ordinance No. 2", wherein

the Municipal Employer established a Fact Finding Commission consisting of three members who were not affiliated with any county or municipal employer or with any labor organization or any municipal organization, one member of which was to be appointed from the public at large by the Judiciary Committee of the County Board of the Municipal Employer; that the other two remaining representatives were to be each appointed from the public at large by the two County Judges of Shawano County; and that said Fact Finding Commission was created in an attempt to establish a local forum wherein petitions to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, could be processed from the filing of the petition to initiate fact finding through the appointment of a fact finder.

11. That between May 11, 1964 and June 22, 1964, Clarence P. Bleser, R. W. Dickinson, both of Shawano, Wisconsin and Victor Sousek, of Gresham, Wisconsin, were appointed as members of the above noted Fact Finding Commission in accordance with the aforementioned Ordinance; that on July 27, 1964 the members of said Fact Finding Commission adopted rules and regulations with respect to fact finding proceedings contemplated to be conducted by said Fact Finding Commission.

12. That although two of the members of the Fact Finding Commission were appointed by the County Judges, who are considered to be neutrals, the third member of the Fact Finding Commission is, and was, appointed by the Judiciary Committee of the County Board of the Municipal Employer; that by granting only the Municipal Employer the privilege to appoint a member of the Fact Finding Commission without granting a similar privilege to the representatives of municipal employes, Ordinance No. 2 does not establish fact finding procedures as contemplated by Section 111.70 of the Wisconsin Statutes.

13. That since Ordinance No. 2 limits the right to filing fact finding petitions to only those organizations and individuals who have been recognized by the Municipal Employer as the representative of the majority of its employes in its Sheriff and/or County Traffic Officer Departments, Ordinance No. 2 imposes a condition inconsistent with the provisions of Section 111.70 of the Wisconsin Statutes.

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

CONCLUSIONS OF LAW

1. That Ordinance No. 2 adopted by Shawano County on

April 23, 1964, pertaining to fact finding proceedings in municipal employment relations, is not in substantial compliance with Subchapter 4 of Chapter lll of the Wisconsin Statutes.

2. That Shawano County and the majority of the employees of the Shawano County Sheriff and Traffic Departments are deadlocked within the meaning of Section lll.70 (4)(e) of the Wisconsin Statutes with respect to the Petitioners' request for civil service status and other terms and conditions of employment.

3. That Shawano County has refused to meet and negotiate with the representative chosen by the majority of the members of the Sheriff and County Traffic Departments employed by Shawano County within the meaning of Section lll.70 (4)(e) of the Wisconsin Statutes.

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding as required by Section lll.70 (4) (e) of the Wisconsin Statutes have been met;

NOW, THEREFORE, it is

ORDERED

1. That fact finding be initiated for the purpose of recommending a solution to the dispute.

2. That Gilbert E. McDonald is hereby appointed as a fact finder to proceed forthwith in said matter pursuant to Section lll.70 (4)(g) of the Wisconsin Statutes.

Given under our hands and seal at the City of Madison, Wisconsin, this 5th day of March, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

SEAL

Arvid Anderson /s/
Arvid Anderson, Commissioner

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

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW,
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The Municipal Employer contends that it has a right to refuse to negotiate and to meet with the representative designated by the Petitioners. It argues that law enforcement employees are excluded from the definition of employees under Section 111.70 and that only those employees covered in the definition have the right to confer and negotiate with the Municipal Employer. It also argues that law enforcement personnel are not given the right to confer and negotiate and that said privilege can only be conferred by the Municipal Employer. The Municipal Employer refused to recognize the designated representative since he was in fact an official and representative of a labor organization representing other employees of the Municipal Employer. Section 111.70 (4)(j) specifically confers upon the majority of law enforcement personnel in the employ of a municipal employer the right to initiate fact finding after it has petitioned the municipal employer for changes or improvements in their wages, hours and working conditions and has designated a representative which may be one of the Petitioners "or otherwise."

The statutory language is explicitly clear and the only condition attached to the right of law enforcement personnel to proceed to fact finding is that a petition for changes in wages, hours and working conditions be made by a majority of the members of a police, sheriff or county traffic officer department. There is no requirement that their representative be selected in any election or that such representative need be voluntarily recognized by the Municipal Employer. The provision leaves the employees involved entirely free to choose their own representative.

The record establishes that, while the Municipal Employer refused to engage in conferences and negotiations with the designated representatives of the Petitioners, the Municipal Employer acknowledges the request of the Petitioners that the Municipal Employer establish civil service status for them. There is no doubt, therefore, that the conditions for initiating fact finding procedures under Section 111.70 have been met and we have so found.

The Board must also consider the issue as to whether Ordinance No. 2, which was adopted by the Municipal Employer in establishing a Fact Finding Commission of its own, is in substantial compliance with Section 111.70 of the Wisconsin Statutes. We have concluded that such Ordinance is not in substantial compliance. While two of the members of the Fact Finding Commission have been appointed by neutrals, the two County Judges, the third member is appointed by a committee of the Municipal Employer. This destroys what would otherwise appear to be a Commission appointed by neutrals. The designee of the Municipal Employer on the Fact Finding Commission would give the Municipal Employer a possible undue advantage in the appointment of the fact finder. As stated in a previous decision,^{1/} issued in June, 1963 involving a previous fact finding ordinance established by the Municipal Employer, that where fact finding commissioners, and fact finders appointed by them, lack neutrality or the appearance of 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 considered by the fact finder. Our conclusion herein is not intended to indicate that we cast any reflection upon the appointed members of the Fact Finding Commission and upon the fact finders who may be appointed. However, we do emphasize that the circumstances surrounding the appointment of one of the members of the Fact Finding Commission by the Municipal Employer and the subsequent appointment of a fact finder are of such nature as to cast a reflection on the impartiality of the Fact Finding Commission and on the fact finders appointed by it.

Further, Ordinance No. 2 provides in part that fact finding may be initiated by a majority of the members of the Sheriffs Department or County Traffic Officer Department of Shawano County only if Shawano County has recognized an organization or individual as the representative of a majority of the employees of the Law

^{1/} Shawano County, Dec. No. 6388, 6/11/63

Enforcement Department. No requirement of recognition by the Municipal Employer of an individual, or of an organization, as the majority representative exists under Section 111.70 (4)(j) of the Wisconsin Statutes. The majority of law enforcement employees have the right to file a petition to initiate fact finding regardless of whether their Municipal Employer has afforded recognition to the individual or organization as the majority representative. Since Shawano County has made it clear that it will not recognize a labor union representative as the representative of the majority of its law enforcement personnel, the inclusion of such condition in its fact finding ordinance does effectively deny the right of fact finding to the majority of the members of its law enforcement employees. Therefore, the ordinance is not in substantial compliance with the Wisconsin Statutes.

Dated at Madison, Wisconsin, this 5th day of March, 1965.

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