

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
ELMBROOK EDUCATION ASSOCIATION
Involving Employes of
ELMBROOK SCHOOLS,
JOINT COMMON SCHOOL DISTRICT NO. 21

Case I
No. 10282 ME-192
Decision No. 7361

Appearances:

Mr. Terry Tuttrup, President, and Mr. Jack B. Eleyet, for the
Elmbrook Education Association.

Hoebreckx, Davis & Vergeront, Attorneys at Law, by Mr. Walter
S. Davis, for the Municipal Employer.

DIRECTION OF ELECTION

Elmbrook Education Association having petitioned the Wisconsin
Employment Relations Board to conduct an election, pursuant to
Section 111.70 of the Wisconsin Statutes, among certain employes of
Elmbrook Schools, Joint Common School District No. 21, Brookfield,
Wisconsin; and a hearing on such petition having been conducted at
Brookfield, Wisconsin, on October 1, 1965, by Kenneth R. Loebel,
Examiner; and the Board having considered the evidence and arguments
presented by the parties, and being satisfied that a question
exists 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 regular full-time and all regular
part-time certificated teaching personnel employed by the Elmbrook
Schools, Joint Common School District No. 21, including guidance
counselors, librarian, department heads, teaching vice principals,
and teaching nurses, but excluding per diem substitute teachers,
office and clerical employes, maintenance employes, dietician,


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kitchen employes, all supervisors and all other employes who were employed by the Municipal Employer on November 15, 1965, 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 the Elmbrook Education Association for the purposes of conferences and negotiations with Elmbrook Schools, Joint Common School District No. 21 on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of November, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

In this proceeding, the Municipal Employer questioned the status of the Association as an employee organization and moved that the Board dismiss the petition on said grounds. During the course of the hearing, Counsel for the Municipal Employer attempted to introduce evidence with respect to the activity and membership by supervisory employees in the Association. The hearing officer did not permit such evidence to be introduced. In a recent Board decision, we stated:1/

"The function of the Board in a representation proceeding is to determine whether or not a question of representation exists, to take evidence with respect to the appropriate collective bargaining unit and with respect to the employees eligible to participate in the election if one is ordered by the Board. It is now our opinion that the Board should not, in a representation proceeding, question the internal affairs of an organization, which the Board is satisfied exists for the purpose of representing municipal employees in conferences and negotiations with municipal employers on matters pertaining to wages, hours and conditions of employment. Therefore, in a representation proceeding, we do not believe that we should impose conditions on any organization seeking to represent municipal employees, which conditions would limit the right of such organizations to establish rules for the acquisition, retention and rejection of membership. . . If it can be established, in a prohibited practice proceeding, that any labor organization which has been selected as the collective

1/ City of Milwaukee, Case VI (Association of Graduate and Registered Engineers of Milwaukee), Dec. No. 6960, 12/64.

bargaining representative of municipal employees in an election conducted by the Board, that the rules and regulations of such an organization interfere with the rights of employees under Section 111.70 or that supervisory employees have dominated that organization and thus interfered with the rights granted to the employees, we will, among other remedies, set aside the certification.

" . . . Since supervisors are the agents of the municipal employer, a municipal employer, by permitting supervisory employees to participate actively, in any manner similar to that described above, in the affairs of an organization representing employees for the purposes set forth in Section 111.70, could, in the proper proceeding, be found to have committed prohibitive practices by interfering, restraining and coercing its employees in the exercise of their rights granted to them under the law . . . Whether the activities of supervisors as members of a labor organization constitute prohibitive practices under Section 111.70 will be determined by the Board in formal complaint proceedings before the Board and by the facts established in each case."

Counsel for the Municipal Employer in this proceeding attempted to question the internal affairs of the Association. This being a representation proceeding, the hearing officer properly excluded such evidence.

The Municipal Employer also contended that the Association did not have as its purpose the object of representing teachers in collective bargaining. It is to be noted that Article VI, Section 6 of the Association's constitution reads as follows:

"Section 6. Professional Improvement Committee Subsection 1., Membership. (a) There should be one member from each school building. Subsection 2. Duties. Promote in all ways the professional improvement of the membership to the end that the conditions of teaching continue to attract the best possible personnel into our schools. (b) Advise the Association regarding salaries including fringe benefits. (c) Keep membership informed as to the welfare benefits which they possess or which may be available to them. (d) Present to the Board of Education any request of the Elmbrook Education Association in regard to salaries and other benefits."

Clearly the above constitutional provisions amply support the conclusion that the Association has, as one of its purposes, the representation of its teacher members in such matters as wages, hours and other terms and conditions of their employment. Furthermore,

during the course of the hearing, the Association's president indicated that it was the intention of the Association to engage in conferences and negotiations with the Municipal Employer concerning wages, hours and conditions of employment of teachers in the employ of the Municipal Employer. Therefore, it is clear that the Association is an organization which does, and can, represent municipal employes with respect to their rights as set forth in Section 111.70 of the Wisconsin Statutes. The motion of the Municipal Employer to dismiss the petition is therefore herewith denied.

The remaining issues which arose during the hearing were related to the scope of the appropriate bargaining unit and which classifications of employes should or should not be eligible to vote in the election.

The Municipal Employer employs persons in the following classifications: Superintendent, Assistant Superintendent, Director of Instruction, principals, vice principals, teaching vice principals, elementary supervisor, department heads, regular full-time certificated teaching personnel, regular part-time certificated teaching personnel, on-call substitute teachers, nurses, teaching nurses, guidance counselors, librarian, dietician, kitchen employes, maintenance employes, and office and clerical employes.

The Municipal Employer and Association agreed that all regular full-time and regular part-time certificated teaching personnel, guidance counselors, and librarian should be included as being in the appropriate bargaining unit. The parties were also able to agree that the classifications of Superintendent, Assistant Superintendent, Director of Instruction, principals, and elementary supervisor were all supervisory positions and thus excluded from the bargaining unit. Also the parties agreed that on-call substitute teachers, office clerical employes, dietician, kitchen employes and maintenance employes should not be included in the bargaining unit since these latter groups do not have a community of interest with the teachers, and since teachers have previously been held to constitute a separate identifiable "craft" profession.

The only classifications in issue are teaching vice principals, department heads, and teaching nurses. The Municipal Employer seeks to exclude all the above classifications, whereas the Association seeks to include them.

Teaching Vice Principals

The two employes occupying the classification of vice principal teach at least 50% of a full teaching schedule. Said individuals are on the same salary schedule as classroom teachers and are excluded from the administrative salary schedule. On occasions, in the absence of the principal, teaching vice principals may be in charge of the school building. However, classroom teachers can be designated in charge in the absence of the vice principal. We conclude that teaching vice principals are not supervisors and have a greater community of interest with classroom teachers, and we are therefore including teaching vice principals, since they teach at least 50% of a full teaching schedule, among the eligibles in the bargaining unit.^{2/}

Department Heads

The Municipal Employer contends that department heads are supervisors and should be excluded. In the City of Milwaukee (Association of Graduate and Registered Engineers of Milwaukee)^{3/} the Board stated:

"In determining whether an employe is a supervisor, the Board considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.
2. The authority to direct and assign the work force.
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.

^{2/} Janesville Board of Education, Dec. No. 6678, 3/64.

^{3/} Dec. No. 6960, 12/64.