

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of :
GENERAL DRIVERS AND HELPERS LOCAL :
UNION No. 95, INTERNATIONAL BROTHER- :
HOOD OF TEAMSTERS, CHAUFFEURS, :
WAREHOUSEMEN & HELPERS OF AMERICA :

Case VII
No. 10471 ME-209
Decision No. 7424

Involving Employees of :
CITY OF KENOSHA Employed in the :
WASTE DIVISION of the DEPARTMENT :
OF PUBLIC WORKS :
-----:

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Petitioner.

Mr. K. Thomas Savage, Assistant City Attorney, for the Municipal Employer.

Mr. Robert J. Oberbeck, Executive Director, for the Intervenor.

DIRECTION OF ELECTIONS

General Drivers and Helpers Local Union No. 95, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America having petitioned the Wisconsin Employment Relations Board to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among employees of the City of Kenosha, employed in the Waste Division of the Department of Public Works; and hearing on such petition having been conducted at Kenosha, Wisconsin, on October 26, 1965, by Kenneth R. Loebel, Examiner; and during the course of the hearing, Local 71, Kenosha City Employees, AFSCME, AFL-CIO, having been permitted to intervene in the instant proceeding on the basis of its claim that it represented the employees involved; and the Board having considered the evidence and arguments of Counsel, and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and concerning representation for certain employees of the City of Kenosha;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60)

No. 7424

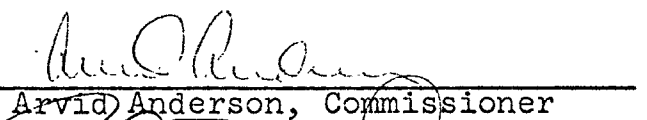
days from the date of this Directive among all regular employees of the City of Kenosha employed in the Waste Division of the Department of Public Works, excluding seasonal employees, craft employees, professional employees, confidential employees, supervisors and department heads, who were employed by the City of Kenosha on January 4, 1966, except such employees as may prior to the elections quit their employment or be discharged for cause, for the purposes of determining (1) whether a majority of the employees eligible to vote desire that the employees employed in the Waste Division of the Department of Public Works of the City of Kenosha constitute a collective bargaining unit separate and apart from any other employees of the City of Kenosha, and (2) whether a majority of the eligible employees voting desire to be represented by General Drivers and Helpers Local Union No. 95, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, or by Local 71, Kenosha City Employees, AFSCME, AFL-CIO, or by neither of such organizations, for the purpose of conferences and negotiations with the City of Kenosha on questions of wages, hours and conditions of employment. The ballots cast by the employees for the unit determination shall be tallied first, and if the required number of employees fail to vote in favor of establishing the separate unit, then the ballots with respect to the selection of the bargaining representative shall be immediately impounded, and the results thereof not determined.

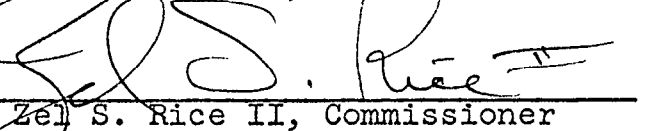
Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of January, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

General Drivers and Helpers Union Local No. 95, hereinafter referred to as the Petitioner, petitioned the Board to conduct an election among the employees of the City of Kenosha, employed in the Waste Division of the Department of Public Works, to determine what, if any, representation the employees therein desired for the purposes of collective bargaining, pursuant to Section 111.70 of the Wisconsin Statutes. At the hearing, Local 71, AFSCME, hereinafter referred to as the Intervenor, was permitted to intervene on the basis of its claim to be the recognized representative for all civil service employees of the Municipal Employer.

Appropriateness of Unit

The Intervenor would have the Board dismiss the petition on the grounds that the unit sought by the Petitioner is inappropriate. The evidence discloses that on May 3, 1965, the Municipal Employer enacted a resolution recognizing the Intervenor as the exclusive bargaining representative for all non-uniformed employees working under civil service. None of the parties contend that there exists any bar to the conduct of a present election. The issue raised in this matter is whether the unit is appropriate. Initially the Intervenor contended that the appropriate unit consisted of all civil service employees, excluding the police and fire departments. However, subsequently during the hearing, the Intervenor changed its position, contending that the appropriate unit could consist of all

employees in the Department of Public Works.^{1/}

The employees of the Municipal Employer are employed in nine separate departments as follows:

Police Department	Department of Law
Fire Department	Assessing Department
Department of Finance	Water Department
Department of Health	Department of Public Works
Department of Parks	

The Department of Public Works consists of four Divisions as follows: Central Service Division, Waste Division, Street Division, and Engineering Division.

The following employee classifications are employed in the Waste Division:

Superintendent	Incinerator Operator II
Route Foreman	Laborer
Waste Collector	Equipment Operator
Incinerator Operator I	Seasonal Collector

Said employees are generally responsible for picking up and removal of waste materials from residences, commercial and industrial establishments located in the City. Said materials are picked up and transported by trucks and delivered to dumps or incinerators. No other employees of the Municipal Employer are engaged in this function, and there is little, if any, community of interest among employees of the Waste Division with the employees of the Central Service Division, Street Division and Engineering Division. There is some relationship between the Street Division and Waste Division, consisting primarily of use of trucks in snow removal by the Street Division. However, there is no substantial interchange of employees between the two divisions. The Central Service and Street Divisions each have their own superintendent, as does the Waste Division. The chief supervisory employee of the Engineering Division is the City Engineer.

^{1/} Subsequent to the conduct of the hearing, and on November 2, 1965, the Intervenor filed an election petition with the Board requesting the Board to conduct a representation election among "all civil service employees in all departments of the City government, including the water and park departments, except supervisory, confidential, craft and professional employees, but excluding police and fire personnel." The Board has held setting hearing on said petition in abeyance for reasons set forth subsequently in the Memorandum.

The Board's function with respect to the establishment of an appropriate collective bargaining unit of municipal employees is governed by the following statutory provisions:

"Section 111.70(4)(d). Collective Bargaining Units. 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 111.02(6). The term 'collective bargaining unit' shall mean all of the employees of one employer . . . , except that where a majority of such employees engaged in a single craft, division, department or plant shall have voted by secret ballot as provided in Section 111.05(2) to constitute such group a separate bargaining unit they shall be so considered,"

"Section 111.05(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, and the board, upon request, shall cause the ballot to be taken in such manner as to show separately the wishes of the employees in any craft, division, department or plant as to the determination of the collective bargaining unit."

Whenever a petition for an election is filed with the Board, and wherein the petitioner requests an election among certain employees not constituting all of the employees of the employer, the Board has no power, except if the employees constitute a single craft, to determine what constitutes an appropriate collective bargaining unit. It does determine whether the group of employees set out as being an appropriate bargaining unit does in fact constitute a separate craft, division, department or plant. The employees involved, if they do constitute a separate division, department, or plant, are given the opportunity to determine for themselves whether they desire to constitute a separate collective bargaining

unit.^{2/}

The statutory criteria does not permit the Board to rely on the bargaining history as grounds for denying an election among employees in a separate division to determine whether they desire to constitute themselves a unit separate and apart from other units of the Municipal Employer.^{3/}

The Board therefore is today issuing a Direction of Elections, wherein employees in the Waste Division will be given an opportunity to determine for themselves whether they desire to constitute a collective bargaining unit separate and apart from other employees of the Municipal Employer, and what, if any, representation said employees desire for the purpose of conferences and negotiations with the Municipal Employer. The results of the unit vote will be tabulated first, and if there is no question that the required number of employees voted in favor of a separate unit, then the ballots with respect to the selection of bargaining representative will be tallied. However, if the results of the vote on the unit determination does not establish a separate unit, the Board agent conducting the elections will immediately impound the ballots on the question of representation and the results thereof will not be determined.

Subsequent to the conduct of the hearing herein, the Intervenor filed an election petition with the Board, requesting the Board to conduct a representation election among all eligible employees in a city-wide unit. We have held setting the hearing in that matter in abeyance pending the results of the unit vote directed herein. It is obvious that if the eligible employees in the Waste Division establish a separate collective bargaining unit, then said employees cannot be included in the unit alleged as being appropriate by the Intervenor in the petition filed by it.

Eligibles

The following classifications are employed in the Waste Division:

^{2/} Appleton Water Commission, (6075) 8/62; County of Milwaukee, (7135) 5/65.

^{3/} The Board fully discusses a similar issue in City of Appleton (7423) issued today.

Superintendent
Route Foreman
Waste Collector
Incinerator Operator I

Incinerator Operator II
Laborer
Equipment Operator
Seasonal Collector

The parties stipulated that the Superintendent and Route Foreman classifications are supervisory, and should be excluded from the eligibles. They also stipulated to the exclusion of the Seasonal Collector classification.

Dated at Madison, Wisconsin, this 4th day of January, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Zel S. Rice II
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