



concerning representation for certain employes of the  
Municipal Employer; 1/

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 employed by Waukesha County in the Waukesha County Highway Department, excluding supervisors, office employes, and craft employes, who were employed by said Municipal Employer on May 4, 1966, 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 County and Municipal Employees, Council 40, AFSCME, AFL-CIO, or by Waukesha County Highway Employees Association, or by neither of said organizations for the purposes of conferences and negotiations

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1/ At the hearing the Association moved to withdraw its petition and thereafter to be treated as an intervenor in regard to the Petition filed by Council 40 AFSCME, AFL-CIO and in that regard contended that the petition filed by Council 40 be dismissed. For the reasons set forth in the accompanying memorandum, we have determined not to dismiss the petition of Council 40, AFSCME, AFL-CIO.

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 *SIX*  
day of May, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD



By \_\_\_\_\_  
Morris Slavney, Chairman

*Arvid Anderson*  
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Arvid Anderson, Commissioner

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

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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 In the Matter of the Petitions of  
 WISCONSIN COUNCIL OF COUNTY AND  
 MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO,  
 COUNCIL 40,  
 and  
 WAUKESHA COUNTY HIGHWAY EMPLOYEES  
 ASSOCIATION  
 Involving Employees of  
 WAUKESHA COUNTY (HIGHWAY DEPARTMENT)  
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 : Case III  
 : No. 10634 ME-228  
 : Decision No. 7435-A  
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On December 30, 1965, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Council 40, hereinafter referred to as the Council, filed a petition with the Board wherein it requested that the Board conduct an election among certain employees employed in the Highway Department of Waukesha County.

Subsequent to the receipt of the petition filed by the Petitioner, the Waukesha County Highway Employees Association, hereinafter referred to as Association, on January 13, 1966 also filed a similar petition with the Board with regard to the same employees.

During the course of the hearing the Association moved to withdraw its petition and merely sought thereafter to appear as an intervenor in the proceeding involving the petition filed by the Council. The Association contends that the petition filed by the Council was untimely and should be dismissed because the Municipal Employer and the Association, on December 21, 1965, had

entered into a written labor agreement which was effective for the calendar year of 1966, covering the wages, hours and conditions of employment of the employees in the bargaining unit sought to be represented by the Council.

The municipal employer also takes the position that its written agreement with the Association bars an election among employees employed in its Highway Department.

The Board is satisfied that on December 21, 1965, the Association and the Municipal Employer executed a labor agreement effective for the calendar year 1966, covering the wages, hours and conditions of employment of the employees employed in the Highway Department. <sup>1/</sup>

The Council concedes that prior to the filing of its petition it had made no demand upon the Municipal Employer for recognition. <sup>2/</sup>

The Association had in the past been recognized by the Municipal Employer, and had in fact executed written labor contracts in prior years as well as for the calendar year 1966.

The Association also established that at least as of December 21, 1965, the date upon which it executed the labor agreement for the calendar year 1966, it did in fact represent a majority of the employees in the Highway Department.

If this were a proceeding arising under the Wisconsin Employment Peace Act, the Board would have no hesitancy in dismissing the Council's petition herein as being prematurely filed

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<sup>1/</sup> All parties stipulated that the appropriate bargaining unit consisted of all employees employed by Waukesha County in the Waukesha County Highway Department, excluding supervisors, office employees, and craft employees.

<sup>2/</sup> Cf. West Allis Jt. School District No. 1 (6544) 11/63.

since the labor agreement had some twelve months to run at the time of the filing of the Council's petition. <sup>3/</sup> However, as the Board has stated in a previous representation proceeding arising under Section 111.70, <sup>4/</sup>

" . . . In the Board's experience in mediation and fact finding cases in public employment it has observed that it is common practice for labor organizations and municipal employers to commence their conferences and negotiations with respect to wages, hours and conditions of employment far in advance of the commencement of the new fiscal year. It may be in some instances that the collective bargaining relationship between a municipal employer and the union representing its employes are not reflected in a collective bargaining agreement but in an ordinance or resolution adopted by the municipality. We therefore do not adopt the so-called "contract bar" rule with respect to petitions for elections among municipal employes. This does not mean that the Board will at any time automatically entertain petitions for elections among municipal employes. 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 employes, their bargaining agent, and their employer. . . ." (emphasis added)

The facts reveal that in the past the Municipal Employer and Association began their negotiation for each calendar year as early as June of the preceding year, and in that regard it is important to emphasize that the labor agreement for the calendar year 1966 was in fact negotiated in 1965, commencing some time in June of 1965.

The Board recognizes the necessity for initiating early negotiations in municipal employment since the Municipal Employer must arrive at the budget upon which it can prepare its tax schedules prior to the actual year in which the labor agreement is to be effective.

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<sup>3/</sup> See Hartwig, Inc. (1076) 8/46; Holton & Humbel Greenhouse (1077) 8/46; Vandehy Motors (1516) 1/48.

<sup>4/</sup> City of Green Bay, Dec. No. 6558, 11/63.

However, because of this distinguishing factor of public employment, bargaining relations of which there is no counterpart in the private sector of employment, the Board cannot in public employment adopt the "contract bar" rule in toto which was formulated in the area of private employment.

To do so would mean that the Council, or any other labor organization alleging an interest amongst the employes involved herein, could not have an election until approximately November or December 1966, but by that time the budget for the calendar year 1967 would in all likelihood have already been established, and thus the employes would effectively have been denied their rights under 111.70(2) Wisconsin Statutes to be represented in conferences and negotiations over their wages, hours and conditions of employment for the year 1967. On the other hand, as we have found above, there is presently in effect a valid written labor agreement by and between the Association and the Municipal Employer governing the wages, hours, and conditions of employment for the calendar year 1966.

If an election is conducted at this time in 1966, whatever organization is certified as the exclusive bargaining representative of the employes, it is clear that said organization could commence negotiations with the Municipal Employer regarding the wages, hours, and conditions of employment of the employes for the year 1967, but, similarly to the situation that developed in the City of Green Bay case supra, if the employes should select Council as their bargaining representative, an issue is raised as to whether the Association or Council has the right to administer the written agreement remaining in effect for the calendar year 1966.

We will continue to adhere to our conclusion expressed in City of Green Bay wherein we stated,

" [where] the employes 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 enuring to the benefit of the employes covered by the ordinance or agreement. Any provision which runs to the benefit of the former bargaining agent normally will be considered extinguished and unfavorable."

It is our conclusion herein that a question concerning representation has been raised at least by the filing of the petition of the Council regarding which, if any, bargaining representative the employes involved herein wish to have represent them in conferences and negotiations for the year 1967. We are, therefore, directing an election wherein the employes will be given the opportunity to determine whether they desire to be represented by the Association, by the Council, or neither organization.

Dated at Madison, Wisconsin, this 5<sup>th</sup> day of May, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney  
Morris Slavney, Chairman

Aryid Anderson  
Aryid Anderson, Commissioner

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