

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of :
LOCAL UNION NO. 1486, affiliated :
with DISTRICT COUNCIL NO. 48 of the :
AMERICAN FEDERATION OF STATE, COUNTY, : Case V
AND MUNICIPAL EMPLOYEES, AFL-CIO : No. 10503 FF-80
Involving Employes of : Decision No. 7494
VILLAGE OF WHITEFISH BAY :
(DEPARTMENT OF PUBLIC WORKS) :
-----:

Appearances:
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S.
Williamson, Jr., and Mr. Thomas J. King, Representative,
for the Petitioner.
Mr. Harry J. Hayes, Village Attorney, for the Municipal
Employer.

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

Local Union No. 1486, affiliated with District Council No. 48
of the American Federation of State, County, and Municipal Employees,
AFL-CIO, having petitioned the Wisconsin Employment Relations Board
to initiate fact finding pursuant to Section 111.70 of the Wisconsin
Statutes on behalf of employes in the Department of Public Works;
and the Board, having conducted a hearing on such petition at
Whitefish Bay, Wisconsin, on November 11, 1965, Commissioner Arvid
Anderson being present, and having considered the evidence and argu-
ments of Counsel and being fully advised in the premises, makes and
files the following Findings of Fact, Conclusions of Law, Certifica-
tion, and Order Initiating Fact Finding and Appointing Fact Finder.

FINDINGS OF FACT

1. That Local Union No. 1486, affiliated with District Council
No. 48 of the American Federation of State, County, and Municipal

2. That the Village of Whitefish Bay, Wisconsin, hereinafter referred to as the Municipal Employer, is a village located in the State of Wisconsin, and has its offices at the Village Hall, 801 East Lexington Boulevard, Whitefish Bay, Wisconsin.

3. That at all times material herein the Municipal Employer has recognized the Petitioner as the exclusive representative of the employees in its Department of Public Works; that in said representative status, the Petitioner, and the Municipal Employer, through their designated agents, on July 16, 1965, commenced negotiations in an effort to reach an agreement on changes and improvements, requested by the Petitioner, in the wages, hours and working conditions for said employees; that the parties, in that regard, continued to meet on August 12, September 14, 16, 17 and 28, 1965, without reaching an agreement on matters being negotiated; and that at least from the latter date, and continuing at all times thereafter, the Petitioner and the Municipal Employer have remained deadlocked and that said deadlock remains after a reasonable period of negotiations between the Petitioner and the Municipal Employer with respect to changes in wages, hours and conditions of employment of the employees in the Department of Public Works of the Municipal Employer.

4. That on October 15, 1962, the Municipal Employer adopted Ordinance No. 833, providing for fact finding procedures for submission of disputes to a fact finding panel in municipal employment relation disputes involving the Municipal Employer; that said Ordinance, Section 5.03 of the Personnel Code of the Village of Whitefish Bay, contains among its provisions, the following material herein:

"4. Initiation of Fact Finding.

(a) When Authorized. Fact finding may be initiated in the circumstances set forth in s. 111.70(4)(e) of the Wisconsin Statutes.

(b) Petition for Fact Finding.

(1) Matters Requiring Legislative Action.

Written requests for changes or improvements in wages, hours or working conditions requiring legislative action by the governing body of the village shall be submitted to the Village Board on or before August 1.

Unless by the succeeding October 8 all parties have negotiated in good faith and the Village Board has enacted legislation or, in the case of a request affecting the village budget, a resolution of intent to comply with such written request in its current

budget or its budget ordinance for the succeeding fiscal year, any of the parties named in paragraph 3 of this Section may initiate fact finding by petitioning the other party within 5 days after enactment of such legislation or a resolution of intent not complying with any such written request or within 5 days after October 8 if the Board fails to enact any such legislation or resolution of intent.

* * *

(d) Action by party receiving copy of petition for fact finding. The party receiving such petition shall within 7 days after receipt thereof serve upon the petitioner a written certification of its appointee to the fact finding panel and shall file a copy of said certification with the Village Clerk-Treasurer.

(e) Selection of Impartial Fact Finder. The two (2) appointees selected by the parties to the dispute shall select a competent and disinterested third member of the fact finding panel and, failing for 3 days to agree upon such third member, either party may apply to the American Arbitration Association which shall then make the appointment of the third member.

(f) Qualifications of panel members. Panel members shall be registered voters and property owners in the Village of Whitefish Bay for at least three years prior to his appointment.

5. Fact Finding Procedure.

(a) Chairman. The third and disinterested member of the panel shall be the chairman and administer the oaths. It shall be the duty of the chairman prior to the first meeting of the panel to make an investigation in such manner as he deems necessary to determine whether either of the circumstances set forth in s. 111.70(4)(e) of the Wisconsin Statutes exist and to report thereon to the panel at its first meeting. Either party at its own expense shall have the right to file with the chairman a written brief prior to his report. The chairman shall be entitled to compensation for his services during this period of investigation as provided in paragraph 6 of this Section.

(b) Initial Determination. Upon conclusion of his investigation as set forth in subsection (a) of this section, the chairman shall call a meeting of and report to the entire fact finding panel. The panel shall then determine whether or not either of the circumstances set forth in s. 111.70(4)(e) of the Wisconsin Statutes exist and shall serve written notice of its findings and determination and the facts or basis thereof on the parties to the dispute.

If the determination of the panel is that no grounds for formal fact finding under s. 111.70(4)(e) of the Wisconsin Statutes exist, it shall dismiss the petition and adjourn. If the panel determines that such

grounds do exist, it shall proceed to hear testimony and make further findings and recommendations as hereinafter provided.

* * *

(h) Findings. Upon completion of hearings the panel shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties. The panel shall make every effort to complete and serve such findings or recommendations which affect the municipal budget for the succeeding fiscal year by November 15 in order that they may be given due consideration by the Village Board.

6. Cost of Fact Finding Proceedings.

(a) Compensation of Fact Finders. Members of the fact finding panel shall receive compensation of \$100.00 per day provided that any member already paid by the municipality shall receive no additional compensation for his services as fact finder."

5. That on October 20, 1965, the Petitioner filed, with the Wisconsin Employment Relations Board, pursuant to Section 111.70 of the Wisconsin Statutes, a petition requesting the Board to initiate fact finding and to appoint a fact finder to make recommendations with respect to the deadlock existing between the Petitioner and Municipal Employer.

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

CONCLUSIONS OF LAW

1. That, pursuant to Section 111.70(4)(e) of the Wisconsin Statutes, the Wisconsin Employment Relations Board has sole jurisdiction to determine whether the conditions precedent to fact finding exist and to determine whether fact finding should be initiated.

2. That Section 5.03 of the Personnel Code of the Village of Whitefish Bay, providing for fact finding procedures and submissions to a fact finding panel in municipal employment relation disputes existing between the Village of Whitefish Bay and labor organizations representing its various employees is not in substantial compliance with Section 111.70 of the Wisconsin Statutes since such local ordinance (a) would deprive the Wisconsin Employment Relations Board of its exclusive jurisdiction to determine whether the conditions for fact finding exist, (b) establishes time limitations as conditions precedent to fact finding, (c) requires a tri-partite panel of fact

finders, and (d) limits the membership of such fact finding panels to only registered voters and property owners of the Village of Whitefish Bay.

3. That a deadlock within the meaning of Section 111.70(4)(e) of the Wisconsin Statutes exists between Local Union No. 1486, affiliated with District Council No. 48 of the American Federation of State, County, and Municipal Employees, AFL-CIO and the Village of Whitefish Bay.

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

CERTIFICATION AND ORDER

IT IS HEREBY CERTIFIED that the conditions precedent to the initiation of fact finding as set forth in Section 111.70(4)(e) of the Wisconsin Statutes with respect to the negotiations between Local Union No. 1486, affiliated with District Council No. 48 of the American Federation of State, County, and Municipal Employees, AFL-CIO, and the Village of Whitefish Bay have been met.

NOW, THEREFORE, it is

ORDERED

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

2. That Thomas P. Whelan, Milwaukee, Wisconsin, is hereby appointed as the fact finder to proceed forthwith in the matter, pursuant to Section 111.70(4)(e) of the Wisconsin Statutes.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of March, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS
OF LAW, CERTIFICATION, AND ORDER INITIATING
FACT FINDING AND APPOINTING FACT FINDER

There are two issues involved in this matter. They are (1)
May a local fact finding panel, established by a municipal ordinance,
determine whether the conditions precedent to fact finding exist
and whether fact finding should be initiated? and (2) Is the fact
finding ordinance adopted by the Village of Whitefish Bay in sub-
stantial compliance with Section 111.70 of the Wisconsin Statutes?

The local fact finding ordinance, the material provisions of
which are reflected in the Findings, establishes a local fact find-
ing panel, not only for the purpose of making recommendations in an
effort to resolve disputes between the Municipal Employer and the
representatives of its employes, but also establishes procedures to
determine whether conditions precedent for fact finding exist under
Section 111.70 of the Wisconsin Statutes. We have previously
determined that the Wisconsin Employment Relations Board has exclusive
jurisdiction under Section 111.70 to determine whether the conditions
precedent to the initiation of fact finding exist.^{1/}

The ordinance is not in substantial compliance with Section
111.70 because it establishes conditions precedent to fact finding
which are not required under Section 111.70. These conditions

1/ City of Wauwatosa (7106) 4/65; 51AG90, 5/18/62.

include the establishment of time limitations for the filing of requests for changes in wages, hours and working conditions as well as for the initiation of fact finding. Time limitations are procedural requirements which establish conditions neither contemplated nor required in Section 111.70^{2/}

While we recognize the desirability of having sufficient time during which to negotiate prior to the adoption of the municipal budget, it is our view that neither ordinances nor statutes intend to prohibit or limit the ability of the municipal employer to take action regarding questions of wages, hours and conditions of employment if necessity dictates such action.^{3/}

We further conclude the ordinance herein is not in substantial compliance with Section 111.70 in regard to the qualifications established for panel members by the ordinance. The ordinance provides that members of the fact finding panel shall be registered voters and property owners in the Village of Whitefish Bay for at least three years prior to appointment to the panel. Furthermore, the local ordinance requires a tri-partite panel, while Section 111.70 provides that a three-man neutral panel shall only be appointed by the joint request of the parties.

Section 111.70(4)(f) does not make a three member panel of fact finders mandatory, nor does it limit the designation of any fact finder to individuals residing in and paying taxes to the municipality which is involved in the deadlock.

There was no issue that the parties are in deadlock or remain deadlocked after a reasonable period of negotiations and the Board therefore has certified the matter to fact finding and has appointed a fact finder.

Dated at Madison, Wisconsin, this 3rd day of March, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

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

2/ City of Wauwatosa (Ibid.)

3/ City of Racine (6242) 2/63.