STATE OF WISCONSIN : IN CIRCUIT COURT : DANE COUNTY

#119-489
VILLAGE OF WHITEFISH BAY,
a Municipal Corporation
(Police Department),
Petitioner,
vs.

WISCONSIN EMPLOYMENT RELATIONS
BOARD,
Respondent.

#119-490
VILLAGE OF WHITEFISH BAY,
a Municipal Corporation
(Department of Public Works),
Petitioner,
vs.

WISCONSIN EMPLOYMENT RELATIONS
BOARD,
Respondent.

MEMORANDUM OPINION

These are actions to review Orders of the Wisconsin Employment Relations Board which had determined that the labor dispute between the municipality and its employees had become "deadlocked", and further that the Municipal Ordinance providing for Fact Finding by a "disinterested" person did not comply substantially with Sec. 111.70(4) of the Statutes, and accordingly the WERB appointed its own Fact Finder in accordance with the Statutes.

By the enactment of Chap. 663, Laws of 1961, the Wisconsin Legislature embarked into a new field of labor relations. (For a complete discussion of the theory underlying the legislation and a discussion of the administration of the law and its success, see 1965 Wisconsin Law Review, p. 652.) The implement of Fact Finding with consequent reports upon which public opinion might be molded has long been used by the Federal Government, originally in the field of railway legislation. On a local level municipal labor disputes can be just as critical when relating to law enforcement or sanitary problems, as is transportation to the national economy, and many courts have held that municipal employees cannot strike.

Chap. 663, Laws of 1963, deals with the problem of municipal labor disputes comprehensively by providing expressly on the one hand that strikes are prohibited, and on the other hand making provision for Fact Finding by "qualified disinterested persons," with such Fact Finder to make written Findings of Fact and recommendations for solution of the dispute. The Act does not expressly state to what extent such Findings and recommendations shall be publicized, but it can be assumed that when such Findings and recommendations are served on the parties, as required by the Statute, due publicity will promptly follow.

As originally introduced, Bill 336A, which became Chap. 663

to function as a Fact Finder. (Chap. 87, Laws of 1963, made further provision that a three-member panel could be appointed when jointly requested by the parties.)

Bill 336A was passed by the Assembly by a vote of 60 ayes and 15 no's. In the Senate by an "agreed to amendment" the following subsection (4)(m) was added:

> "The Board (WERB) shall not initiate Fact Finding proceedings in any case when the municipal employer through ordinance or otherwise has established Fact Finding procedures substantially in compliance with this subchapter."

No provision was made as to who should determine when there was "substantial compliance."

It is the obligation of a Court in interpreting a Statute to assume that the Legislature intended to accomplish its avowed purpose, and if necessary the Court should supply any omissions necessary to carry into execution the legislative intent. Obviously, the Legislature did not intend by this "agreed to amendment" to sterilize the bill and leave the labor dispute in a hiatus. Similarly, as pointed out in the cogent opinion of the Attorney General in 51 OAG, 90, the Legislature should not be convicted of the inanity of giving to one party to the dispute the power to frustrate the law by making its own determination that its own ordinance was in compliance with the Statute, despite whatever whimsical ideas the municipality might decide to put into its ordinance defining who a "disinterested person" is. Fact Finding in a labor dispute is a very useful implement and more times than not will lead to a settlement of the dispute on approximately the same terms as recommended by the Fact Finder. It would be nonsensical to give to one of the parties to the dispute the power to determine when the other party could utilize such implement. (See 1965 Wisconsin Law Review as to the value and utility of Fact Finding and the almost astounding success already accomplished in Wisconsin in the first two years of operation.)

Petitioner's contention that the amendment in subsection (m) indicates a legislative intent to give the complete green light to "local Fact Finding" ordinances, and for the municipality to make its own determination as to whether its ordinance substantially complies with the Statute, is totally lacking in any merit whatsoever when the true legislative purpose is viewed with an unprejudiced, unemotional eye.

Upon the presentation to WERB of a petition to "initiate Fact Finding" it is the duty of the WERB, regardless of any local ordinance, to make the basic determination as to whether or not a "deadlock" exists. "If the certification requires that Fact Finding be initiated, * * *" the Board shall appoint a Fact Finder unless it determines that there is a municipal ordinance in "substantial compliance with the law" in which case the Board shall not "initiate" the Fact Finding at the state level. It is the duty of the Board to determine whether or not the ordinance is in substantial compliance with the Statute, and that necessarily relates to the question of whether or not the Fact Finders provided for under the ordinance are "qualified disinterested persons."

In this case the Board determined that the ordinance was not in substantial compliance because it: "(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."

(a) In view of the Court's decision with respect to (b) and (d) there is not much to be gained by discussing (a) except to point out that if the parties mutually agreed to pursue the ordinance

by the appointment of their respective representatives who were authorized to select a chairman who would make the Fact Finding in respect to a "deadlock" and in the event of failure to agree then such chairman would be appointed by the American Arbitration Association, then there would never by any petition filed with the WERB. The mutual agreement of parties to a labor dispute to voluntarily undertake a system which will result in the appointment of an impartial "umpire" is certainly not contrary to public policy. In this case the parties did not mutually agree to appoint representatives and a petition was filed which invoked the jurisdiction of the WERB and there is no value in discussing what would have happened had there not been such a petition filed.

(b) The ordinance limited the Fact Finding to a once-a-year shot by requiring that it could only be initiated upon "written requests for changes or improvement 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." There is nothing in the ordinance that prevents the village from changing working conditions at any time it sees fit and then the ordinance casts the burden upon the employees to wait until the following August 1st before requesting a change.

There is nothing in the statutes that indicates that Fact Finding in respect to labor disputes shall be limited to a once-a-year shot. In fact the inference is to the contrary. Section 111.70(4)(i) provides: "Agreements. Upon the completion of negotiations with a labor organization representing a majority of the employees in a collective bargaining unit, if a settlement is reached, the employer shall reduce the same to writing either in the form of an ordinance, resolution or agreement. Such agreement may include a term for which it shall remain in effect not to exceed one year. Such agreement shall be binding on the parties only if express language to that effect is contained therein."

The WERB has consistently and correctly held that such time limitations are not in substantial compliance with the statute. The Court has not been advised of any attempt having been made in the legislature to change the statute in this regard and at any rate no legislation has been adopted contrary to the WERB consistent holdings.

(d) The ordinance provided that each of the "panel members shall be registered voters and property owners in the Village of Whitefish Bay for at least three years prior to his appointment."

This was one of the issues in the case of Shawano County vs. WERB, Case Number 114-022, Dane County Circuit Court, in which the Honorable John A. Decker on August 2, 1963, rendered an erudite Opinion fortified by liberal reference to authoritative sources in the field of labor law tracing the history and value of Fact Finding. Judge Decker pointed out that Fact Finding as an implement in labor disputes is totally reliant for its effectiveness upon the impartiality of the Fact Finder. Public sentiment cannot be molded effectually by the Findings or recommendations of a person partial to one side or the other. A Fact Finder is neither an arbitrator not a mediator, but his function falls in between the two. If he is truly impartial and makes honest recommendations the liklihood is that public opinion will be molded and the parties persuaded to settle their differences approximately in accord with the Fact Finder's recommendations.

As stated by Judge Decker: "In the discharge of his Fact Finding function, the Fact Finder performs the role of the arbitrator and in proposing and discharging his function of proposing recommendations for the solution of the dispute, the Fact Finder performs the role of the mediator." And, "the arguments of counsel seem inordinately to emphasize the desirability of a local determination of the facts. Local self-government is an axiom of American political science based upon the premise that local people familiar with life in the community are best able to solve its governmental problems. When it is urged, as here, that the Fact Finder should be a 'taxpayer' 'sensitive to local conditions' rather than 'someone who is completely and coldly neutral to these pressures

and considerations,' the argument tends to evince an intention to seek a local fact-finder in the hope that he will not be 'disinterested' as the statute provides."

The requirement in the ordinance that the Fact Finder shall be a taxpaying voter for three years is not in substantial compliance with the statute which requires a "disinterested person."

The order of the WERB must be confirmed and counsel for the WERB may prepare the appropriate Judgment, submitting same to opposing counsel ten days before presenting it to the Court for signature.

Dated this 7th day of July, 1966.

BY THE COURT:

Norris Maloney /s/

NORRIS MALONEY,
CIRCUIT JUDGE