

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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| In the Matter of the Petition of | : | |
| KENOSHA CITY EMPLOYEES, LOCAL 71, | : | |
| AFSCME, AFL-CIO | : | Case IX |
| Involving Employes of | : | No. 10620 ME-226 |
| CITY OF KENOSHA | : | Decision No. 7529-A |
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| In the Matter of the Petition of | : | |
| KENOSHA MUNICIPAL EMPLOYEES' | : | |
| ASSOCIATION | : | Case X |
| Involving Employes of | : | No. 10805 ME-242 |
| CITY OF KENOSHA | : | Decision No. 7529-A |
| ----- | : | |

Appearances:

Mr. Robert J. Oberbeck, Executive Director, Wisconsin Council of County & Municipal Employees, for Kenosha City Employees, Local 71.
Mr. George C. Berteau, Attorney at Law, for Kenosha Municipal Employees' Association.
Mr. Burton Scott, City Attorney, for the Municipal Employer.

DIRECTION OF ELECTIONS

Kenosha City Employees, Local 71, AFSCME, AFL-CIO having filed a petition with the Wisconsin Employment Relations Board wherein it requested that the Board conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among all civil service employees in all departments of the City of Kenosha, including Water and Park Departments, and excluding supervisory, confidential, craft and professional employees and police and fire personnel; and Kenosha Municipal Employees' Association having filed a petition with the Board requesting that the Board conduct separate elections among employees of the City of Kenosha employed in separate departments thereof, e.g. Department of Finance, Purchasing Department, Assessing Department, City Planning Department, Police Department, Inspection Department, Parks Department -- Clerical Division, Public Works --

No. 7529-A

Administration Division, Public Works -- Engineering Division, Health Department, Water Department -- Clerical Division, and excluding all other employees of the City of Kenosha, supervisors and executives; and hearing on such petitions having been conducted at Kenosha, Wisconsin, on March 23 and May 5, 1966, by Kenneth R. Loebel, Examiner; and the Board having considered the evidence and being satisfied that questions have arisen concerning the appropriate collective bargaining units 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 ninety (90) days from the date of this Directive among all employees employed by the City of Kenosha in the Department of Finance (including Purchasing Division), Assessing Department, City Planning Division, Police Department, Department of Inspection, Administration and Engineering Divisions of the Department of Public Works, Department of Health, and the Office Division of the Water Department, excluding supervisory and confidential employees, craft and professional employees, and uniformed police, and also excluding all other employees of the City of Kenosha, who were employed on June 10, 1966, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of such employees desire to constitute themselves a collective bargaining unit separate and apart from other employees of the Municipal Employer, and
- (2) Provided that the vote on the above question establishes a separate bargaining unit, whether a majority of the employees voting in said unit desire to be represented for the purposes of collective bargaining by Kenosha City Employees Local 71, AFSCME, AFL-CIO, or by Kenosha Municipal Employees' Association, or by neither of said labor organizations, for the purposes of conferences and negotiations with the City of Kenosha on questions of wages, hours and conditions of employment.

IT IS FURTHER DIRECTED that, provided the vote in paragraph (1) above establishes a separate unit, that an election also be conducted among all employees of the City of Kenosha employed in the Central Service and Streets Divisions of the Department of Public Works, in the Department of Parks, in the Construction, Filtration and Meter Divisions of the Water Department, in the Sewage Treatment Plant and its Pumping Division, and in the Parking Commission, excluding supervisory and confidential employees, craft and professional employees, and all other employees of the City of Kenosha, who were employed on June 10, 1966, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of the employees in said unit desire to be represented for the purposes of collective bargaining by Kenosha City Employees Local 71, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the City of Kenosha on questions of wages, hours and conditions of employment.

IT IS FURTHER DIRECTED that, should the employees reject the separate unit in the election directed in paragraph (1) above, an election then be conducted among all employees of the City of Kenosha, excluding supervisory and confidential employees, craft and professional employees, uniformed police and fire personnel, and Waste Division employees, who were employed on June 10, 1966, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented for the purposes of collective bargaining by Kenosha City Employees Local 71, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the City of Kenosha on questions of wages, hours and conditions of employment.

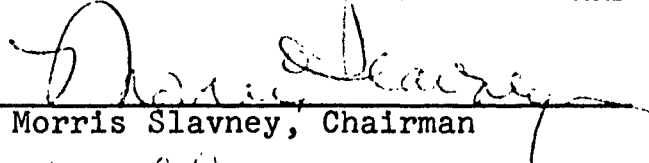
IT IS FURTHER DIRECTED that an election also be conducted among employees occupying the professional classifications of Civil Engineer II, III and IV in the employ of the City of Kenosha, excluding supervisory and confidential employees, who were employed on June 10, 1966, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented for the purpose of collective bargaining by Kenosha Municipal Employees'


Association, for the purposes of conferences and negotiations with the City of Kenosha on questions of wages, hours and conditions of employment.

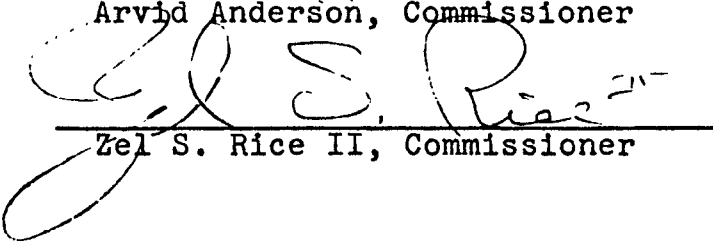
Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of June, 1966.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner

STATE OF WISCONSIN
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AFSCME, AFL-CIO :
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Case IX
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

Background

In a previous proceeding^{1/} involving the City of Kenosha, General Drivers and Helpers Local Union No. 95 filed a petition requesting the Board to conduct an election among employees employed in the Waste Division of the Department of Public Works. During the hearing in that proceeding the petitioner herein, Kenosha City Employees Local 71, AFSCME, AFL-CIO, hereinafter referred to as Local 71, opposed the establishment of a separate unit of Waste Division employees, contending that the appropriate unit consisted of all of the employees in the Department of Public Works. In elections directed by the Board in that proceeding the employees in the Waste Division established a separate unit and they selected General Drivers as their bargaining representative.

In the instant proceeding, initiated by a petition filed by

^{1/} City of Kenosha (Waste Division), Dec. No. 7424, 2/66.

Local 71 on November 2, 1965, after hearing had been commenced in the previous proceeding but prior to the direction of elections therein, Local 71 requested an election among all civil service employes in the employ of the Municipal Employer except supervisors, craft, confidential and professional employes, police and fire personnel. Since the employes in the Waste Division of the Department of Public Works have established themselves as a separate unit, the Board shall exclude the employes in the Waste Division from any unit herein.

Hearing on Local 71's petition was held on March 23, 1966, and at the outset thereof, Francis Holmes, an employe in the Department of Health, appearing on behalf of an organization known as Municipal Employes Professional, Technical and Clerical Association, moved to intervene on the basis of its claim to represent certain employes in the employ of the City of Kenosha. Local 71 opposed the intervention, contending that said organization was not a "bona fide" organization. The Municipal Employer raised no objection to the intervention. The facts reveal that the Association was formed the evening prior to the hearing, and that certain supervisory employes were present and acted in the formation thereof. The employes sought to be represented by said Association are all salaried employes of the City of Kenosha employed in "white collar" positions. At the close of the hearing on March 23, the Hearing Examiner denied the motion to intervene and suggested that the Association file a formal petition for an election with the Board.

Prior to any further action by the Board and on April 18, 1966, a petition was filed by Kenosha Municipal Employees' Association, claiming to represent certain employes of the City of Kenosha. The record discloses that the new Association was established following the March 23 hearing and, with the exception of participation of supervisory personnel, is more or less the same organization which attempted to intervene in the March 23 hearing. The Association, in the hearing on May 5, 1966, sought separate units among employes in various separate departments established by the City of Kenosha.

Local 71 contends that the Association should not be placed on any ballot and that its petition should be dismissed because it has been "assisted" by supervisory personnel. The only evidence of possible assistance in the formation of the present association is that its organizational meeting was held on the Employer's premises

in the City Hall. However, the use of such premises was without the authority of any supervisor or department head. The fact that certain supervisory personnel might have been active in the formation of the original association should not now deprive employees of their opportunity to determine whether they desire to be represented by the present Association. As we have previously stated in City of Milwaukee (Engineers)^{2/} the issue of employer participation of an organization purporting to represent employees will not be determined in an election proceeding. If it can be established in a prohibited practice proceeding that a labor organization previously selected as the collective bargaining representative has been dominated by supervisory employees, the Board may, among other things, set aside the representative status of such organization. We are satisfied that the Association may properly represent employees for the purposes established in Section 111.70 of the Wisconsin Statutes.

Eligibles

During the course of the hearing, the parties agreed, except where otherwise noted, that the following positions should be excluded from the eligibles in all voting groups. Supervisory classifications are identified by (s), confidential employees by (c), craft employees by (k), and professional employees by (p). Where employees are both supervisors and professional, the Board has excluded them as supervisors only.

Mayor's Office

Secretarial Stenographer (Davies) (c)

Department of Law

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|-----------------------------|---|--------------------------|
| City Attorney (p) |) | No evidence adduced with |
| Assistant City Attorney (p) |) | regard to supervisory or |
| Corporation Counsel (p) |) | confidential status. |

Department of Finance - including Purchasing Division

Director of Finance and City Clerk (s)
Deputy City Clerk (s)
Secretarial Stenographer (Successor to Johanna Christensen) (c)
Purchasing Agent (s)

^{2/} Dec. No. 6960, 12/64.

Assessing Department

City Assessor (s)
Deputy City Assessor (s)

Personnel Division

Administrative Assistant and Supervisor of Personnel (s)

City Planning Division

City Planner (s)

Police Department

Secretarial Stenographer (Jean Thiel) (c)
Police Officers (not employees within meaning of Sec. 111.70)

Department of Inspection

Chief, Inspection Department (s)
Building Inspector (Carpenter) (k)) In issue at
Electrical Inspector (Electrical) (k)) hearing
Plumbing Inspector (Plumbing) (k))

Department of Public Works - Administrative Division

Director of Public Works (s)
Secretarial Stenographer (Esther Baker) (c)

Department of Public Works - Engineering Division

City Engineer (s)
Assistant City Engineer (s)
Traffic Engineer Trainee (s)

Department of Public Works - Central Service Division

Superintendent (s)
Mechanic Foreman (s)

Department of Public Works - Streets Division

Superintendent of Streets (s)
General Foreman (s)
Electrical Maintenance Man (k) (In issue at hearing)

Department of Public Works - Waste Division

All employees employed in the Waste Division are not eligible since they are included in a separate unit previously established and certified.

Department of Health

Acting Director of Health (s)
Bacteriologist & Director of Health Laboratory (s)
Supervisor of Nurses (s)
Public Health Nurse (p)
Junior Public Health Nurse (p)
Registered Professional Nurse (p)

Department of Parks

Director of Parks (s)
Secretarial Stenographer (c)
Superintendent of Parks (s)
Supervisor, Golf Course Maintenance (s)

Water Department - Office Division

Manager, Water Department and Sewage Plant (s)
Accountant (p)
Secretarial Stenographer (Marion Gorsuch) (c)

Water Department - Construction Division

Chief Design and Construction Engineer (s)
General Foreman (s)
Crew Foreman (s) (In issue at hearing)

Water Department - Filtration Division

Water Plant Superintendent (s)
Chemist (p)
Filtration Plant Operator II (s)

Water Department - Meter Division

Supervisor, Water Meter Services (s)

Sewage Treatment Plant

Superintendent, Sewage Plant (s)
Chemist (p)
Sewage Plant Operator II (s)

Sewage Treatment Plant - Pumping Division

Pumping Plant Operator II (s)

During the course of the hearing, issues arose as to whether the classifications of Assessor II and I employed in the Assessing Department in the Department of Finance were professional employees. We are satisfied that such positions are not professional as contemplated in Sec. 111.70, although the Municipal Employer desires that employees filling these positions are graduates from a college

or university with a major in accounting, finance, taxation or engineering, and has at least two years experience in assessment work or building construction. Such desired requirements do not establish the position as a professional one as interpreted by the Board, and therefore, the Board has determined that the Assessor II and I classifications are eligible to vote.

There was some question as to whether the Building Inspector, Electrical Inspector and Plumbing Inspector employed in the Department of Inspection were craft employees. These positions require journeyman experience of at least five years in the particular craft involved, and these positions are therefore excluded from the unit or units sought here because of their craft status, as required in Sec. 111.70(4)(d).^{3/}

We have also determined the Electrical Maintenance Man classification employed in the Streets Division to be a craft position. The present incumbents of such position are journeymen electricians and exercise journeyman skills in the performance of their assignments.

An issue also arose with respect to the eligibility of employees occupying the classification of "Crew Foreman." Said positions are employed in the Street Division of the Department of Public Works, in the Park Department, and in the Construction Division of the Water Department. We are satisfied from the evidence adduced at the hearing that the Crew Foremen employed in the Street Division of the Department of Public Works and in the Department of Parks are more or less working foremen or leadmen, inasmuch as they have not been delegated any authoritative responsibility to discipline or discharge employees who work under their direction and because said Crew Foremen work a majority of their time along side the employees in their department. Therefore, the Crew Foremen in said two departments are eligible to vote. However, the Crew Foreman employed in the Construction Division of the Water Department have been given the authority to issue oral and written warnings to employees, and the employees may be summarily suspended as a result of such warnings. The Crew Foremen in the Water Department have been given extensive authority in scheduling overtime hours and in the selection of employees for such overtime work, and spend considerable time in supervision activities.

^{3/} City of Milwaukee, Dec. No. 6215, 1/63.

Under such circumstances, we conclude that the Crew Foremen employed in the Construction Division of the Water Department are supervisors, and are not eligible to participate in any election.

Those classifications indicated as being craft or professional employees, with the exception of professional engineers, are not eligible to vote in any election directed in this proceeding since employees of a single craft or profession can only be in a unit with the same craft or profession, and no request has been made for such a vote. However, the Association has requested an election among the professional engineers employees by the City of Kenosha. Reference will be made to such matter subsequently in this Memorandum.

Appropriate Bargaining Units

Local 71 contends that the appropriate collective bargaining unit should consist of all civil service employees in the employ of the Municipal Employer, excluding supervisors, craft and professional employees, confidential employees, police and fire personnel.^{4/} The Association, in its petition, indicated it desired separate unit votes among the civil service employees in the following separate departments:

- Department of Finance - including Purchasing Division
- Assessing Department
- City Planning Division
- Police Department - excluding uniformed personnel
- Department of Inspection
- Department of Public Works - Administrative Division
- Department of Public Works - Engineering Division
- Department of Health
- Water Department - Office Division

During the hearing, after evidence had been presented with respect to the issue as to whether employees in the above departments could constitute separate and distinct collective bargaining units within the meaning of the Act, all parties agreed, provided the Board found units appropriate other than one over-all unit desired by Local 71, to the consolidation of all eligible civil service employees in the various departments and divisions noted above into one single voting group to determine whether such eligible employees desire to

^{4/} Uniformed police and firemen are not on civil service.

constitute a single collective bargaining unit separate and apart from other employes of the Municipal Employer.

Collective bargaining units established pursuant to Section 111.70 of the Wisconsin Statutes must conform to the requirements established in Section 111.02(6) of the Wisconsin Employment Peace Act. Said provision defines the term "collective bargaining unit" as "all of the employes of one employer . . . , except that where a majority of such employes engaged in a single craft, division, department or plant shall have voted by secret ballot . . . to constitute such group a separate bargaining unit they shall be so considered, . . .".

There is no doubt that the employes in the various departments and divisions of the Municipal Employer could constitute separate bargaining units under the statute.^{5/} In light of the agreement of all parties previously discussed herein, the Board, in order to effectuate the policies of the Statute, concludes that the consolidation of eligible employes in the various departments and divisions in a single voting group does not violate the intent and spirit of the Statute. Therefore the otherwise eligible employes employed in various departments and divisions of the City of Kenosha shall be included in a single voting group, hereinafter identified as Voting Group No. 1, to determine whether said employes desire to constitute a bargaining unit separate and apart from other employes of said Municipal Employer.

Voting Group No. 1 shall consist of all employes employed in the Department of Finance (including Purchasing Division), Assessing Department, City Planning Division, Police Department, Department of Inspection, the Administration and Engineering Divisions of the Department of Public Works, the Department of Health, and the Office Division of the Water Department, excluding supervisory and confidential employes, craft and professional employes, uniformed police, and also excluding all other employes of the City of Kenosha. The eligible employes in said voting group who are employed on the eligibility date set forth in the Direction, except such employes as may prior to the election quit their employment or be discharged for cause,

^{5/} City of Kenosha (Waste Division), Dec. No. 7424, 1/66; City of Appleton, Dec. No. 7423, 1/66.

shall be permitted to determine for themselves whether or not they desire to constitute themselves a bargaining unit separate and apart from otherwise eligible employees of the City of Kenosha. If a majority of the employees eligible in Voting Group No. 1 vote in favor of establishing the separate unit, then the Board will subsequently conduct a representation election among such established unit to determine whether the eligible employees therein desire to be represented for the purposes of collective bargaining by Local 71, or by the Association, or by neither of such organizations.

If the employees in Voting Group No. 1 establish a separate unit, in addition to the representation vote conducted in that particular unit, the Board will also conduct a representation election in another unit consisting of all employees of the Municipal Employer employed in the Central Service and Streets Divisions of the Department of Public Works, in the Department of Parks, in the Construction, Filtration and Meter Division of the Water Department, in the Sewage Treatment Plant and its Pumping Division, and in the Parking Commission, excluding supervisory and confidential employees, craft and professional employees, and all other employees of the Municipal Employer.

If in the unit determination vote in Voting Group No. 1 the required number of employees do not establish a separate bargaining unit, then said eligible employees shall be included in a unit consisting of all employees of the Municipal Employer, excluding supervisory and confidential employees, craft and professional employees, uniformed police and fire personnel, and Waste Division employees, for the purpose of determining their bargaining representative.

Professional Engineers Unit

The Association requested the Board to conduct a representation election among the professional engineers in the employ of the Municipal Employer. Such classifications are employed in the Engineering Division of the Department of Public Works, and in the Office Division of the Water Department. They are the classifications of Civil Engineer II, III and IV. We are satisfied that the requirements of the positions are professional in nature and therefore, pursuant to Section 111.70(4)(d), said professional employees are entitled to comprise a single unit. We shall therefore also conduct an election among said professional engineers to determine whether they desire to be represented by the Association.

The unit determination election in Voting Group No. 1 will first be conducted by the Board. Following the certification of the results of the unit vote, the Board will thereafter conduct the representation elections.

Dated at Madison, Wisconsin, this 10th day of June, 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