

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of

KENOSHA TEACHERS UNION LOCAL 557,  
AMERICAN FEDERATION OF TEACHERS,  
AFL-CIO

Involving Certain Employes of

CITY OF KENOSHA BOARD OF EDUCATION  
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Case IV  
No. 11393 ME-302  
Decision No. 8031

DIRECTION OF ELECTION

Kenosha Teachers Union, having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of the City of Kenosha Board of Education, Kenosha, Wisconsin, and a hearing on such petition having been conducted at Kenosha, Wisconsin on April 27, 1967, the full Board being present, and during the course of the hearing the Board having permitted the Kenosha Education Association to intervene in the proceeding on the basis that it presently is the certified collective bargaining representative of said employes; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of said Municipal Employer;

NOW, THEREFORE, it is

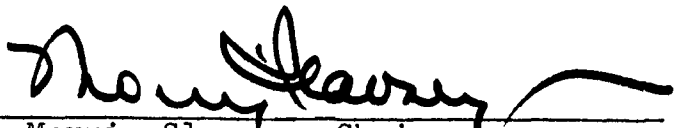
DIRECTED


That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and all regular part-time certificated teaching personnel employed by the City of Kenosha Board of Education, but excluding all other employes, supervisors and administrators, who were employed by the Municipal

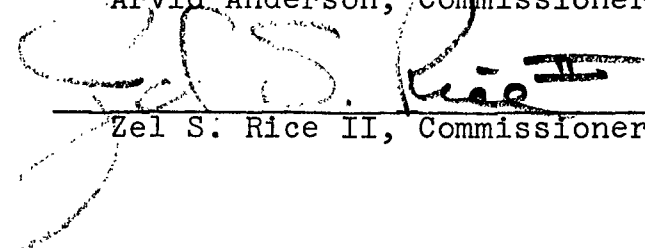
Employer on May 10, 1967, except those employes who have given or have been given notice of the non-renewal of their individual teacher contract for the school year 1967-1968, for the purposes of determining whether a majority of such employes desire to be represented by Kenosha Teachers Union, Local 557, American Federation of Teachers, AFL-CIO, or by Kenosha Education Association, or by neither of them, for the purposes of conferences and negotiations with the City of Kenosha Board of Education, Kenosha, Wisconsin, on questions of wages, hours and conditions of employment.<sup>1/</sup>

Given under our hands and seal  
at the City of Madison, Wisconsin  
this 10th day of May, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By   
Morris Slavney, Chairman

  
Arvid Anderson, Commissioner

  
Zel S. Rice II, Commissioner

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<sup>1/</sup> Inasmuch as approximately only one month remains to the end of the present school year, the Board, upon determining that an election should be conducted, has issued its Direction today. The Memorandum accompanying said Direction is presently being prepared, and said Memorandum will be forwarded to the parties within ten days.

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On March 16, 1967, Kenosha Teachers Union Local 557, American Federation of Teachers, AFL-CIO, hereinafter referred to as the Union, filed a petition, pursuant to Section 111.70, Wisconsin Statutes, wherein it requested the Board to conduct a representation election among all certified classroom teachers, librarians, guidance counsellors and other special teachers in the employ of the Kenosha Board of Education, Joint School District No. 1. Hearing was conducted on the petition at Kenosha, Wisconsin, on April 27, 1967. The Kenosha Education Association, hereinafter referred to as the Association, was permitted to intervene on the basis that it had been certified as the exclusive collective bargaining representative for the employes involved, on February 25, 1966, following an election conducted by the Board among said employes wherein they had the opportunity to vote for either the Association, the Union, or neither organization.

The initial election, which resulted in the above-noted certification, was conducted by the Board on February 3, 1965. The lapse of almost one year in certifying the results resulted from a complaint of prohibited practices and objections to the conduct of the election, both filed by the Union. The certification was issued after the Board had disposed of the complaint and objection cases. The complaint had alleged that the School Board had engaged in prohibited practices which among other things, affected the results of the election, and the Union objected to the conduct of the election based on activity which was alleged to have interfered with the free choice of the employes. After a hearing in said proceedings and receipt of transcript and briefs, the Board dismissed both the complaint and objection cases.

Following the issuance of the certification in February, 1966,

the School Board and the Association engaged in collective bargaining, and on July 1, 1966, entered into a document identified as "The Professional Negotiation Agreement". This instrument, effective for a period of one year from the date of its execution, contained a recognition clause, an agreed procedure with respect to negotiations, the form of the agreement, and impasse and grievance procedures. On September 1, 1966, the Association and School Board entered into an agreement, identified as "Teacher Salary and Welfare Agreement", which agreement, by its terms, was to continue for a period of one year from the date of its execution. Said agreement contained provisions establishing (1) certain working conditions, including a provision for the appointment of a committee to study the question of teacher load and class assignment at the secondary school level for the purpose of making a recommendation for implementation in the 1967-1968 school year; (2) teacher assignments; (3) the salary schedule for the 1967-1968 school year, including the choice of pay periods, as well as provisions for compensation for other activity; (4) fringe benefits; and (5) provisions providing for the handling of requests or proposals re changes "in the plan of compensation, e.g. a check-off system", re requests for changing "the school calendar, e.g., teacher conventions", re the creation of a committee to study credit requirements, and a clause reserving to the School Board "the right to negotiate the school calendar for the 1967-1968 school year during the period in which this agreement shall be in effect."

The evidence adduced at the hearing disclosed that prior to the filing of the instant petition, the Association requested the School Board to reopen the agreement with respect to salaries, and that the School Board has indicated that it will reopen the agreement for that purpose inasmuch as the School Board has concluded that under the present salary schedule it has been difficult to employ new teachers for the 1967-1968 school year. Furthermore, no agreement has as yet been reached on the 1967-1968 school calendar.

The Association opposes the conduct of a second election at this time and proposes that the Board adopt a rule to the effect that where the Board has previously certified an organization as the exclusive bargaining representative of employes in an appropriate unit, a second election should not be conducted within two years of the date of the certification of the results of the first election, and further, that said two-year certification bar rule be extended at two-year intervals. The Association also proposes that where an election petition is filed by a labor organization other than that presently certified, said petitioning organization should be required to administratively demonstrate to the Board that at least 40 per cent of the employes in the

unit are presently dues-paying members of said petitioning organization.

The Union would put no limitations on the present conduct of an election. The School Board takes no position with regard to the issue.

The Wisconsin Employment Relations Board has never required an administrative showing of interest to be demonstrated by any petitioner with respect to the processing of election petitions filed pursuant to the Wisconsin Employment Peace Act or pursuant to the Municipal Employer-Employee Labor Relations Act. This policy has been applied in initial and subsequent elections. It has been our experience that the overwhelming number of petitioners have filed their petitions in good faith and with the expectation of obtaining the results prompting the petition. There have been very few, if any, petitions which have been frivolously filed with the Board. To establish any type of administrative showing of interest test would require the parties to furnish the Board with data prior to any formal Board action, which might delay and frustrate the election procedure. If the Board were inclined at this time to adopt an administrative showing of interest test, it would not adopt the test proposed by the Association. Said proposal would deprive employes involved of the opportunity to exercise their rights under the law. Since the election of the bargaining representative is determined by a majority of the employes casting ballots in favor of the organization, it is possible that less than 40 per cent of the total eligible employes may elect the bargaining representative where less than that percentage constitutes a majority of those voting.

The Board has seriously considered whether it should adopt a two-year certification bar rule. That is to say, whether the Board should not conduct a second election in a period earlier than two years from the certification of the results of a previous election. In such consideration we must weigh the right of the employes to select or change their bargaining representative with the interest of preserving the stability of the established collective bargaining relationship. The problem is aggravated as a result of the fact that collective bargaining agreements in public employment, and especially those involving teachers, are not coextensive in time with budgetary considerations. Because of its statutory budgetary deadline and because of the nature of teacher employment, the School Board herein normally commences bargaining in May of each year for terms and conditions of employment for the following school year. It therefore becomes a necessity that if the employes are to select a new collective bargaining representative, said representative should be given a reason-

able time to negotiate the collective bargaining agreement. If the ordinary contract bar rules were to apply, the election would not be held during the term of an existing agreement, and the selected collective bargaining representative, therefore, normally would not have a reasonable period of time to negotiate the collective bargaining agreement to succeed the existing agreement.

No rule with respect to certification bar is being established because the history of employment relations in municipal employment has not been such as to require such a rule at the present time, and because that history is not sufficiently developed to indicate a pattern of similar conditions. The conditions to be regulated are still too vaguely defined, and the Board prefers to wait until it is sufficiently certain that its rule, once adopted, will not be eroded by exceptions. Each case will be reviewed and determined on its own facts in order to balance the objective of employe choice with the objective of a stable bargaining relationship.

In determining how the two objectives will best be balanced and achieved, the Board will be influenced by various factors such as (1) the presence or absence of a current agreement; (2) the presence or absence of current and active negotiations for an agreement and how long such negotiations have been in progress; (3) the budgetary deadlines imposed upon the parties; (4) the special deadlines imposed by statute, such as is the case with respect to teachers' personal contracts; (5) whether the current bargaining agent was certified or recognized; (6) the period of time since the current bargaining agent was certified or recognized; and (7) the employment relations history involved.

Of the current agreements between the School Board, the "Professional Negotiations Agreement" will expire July 1, 1967. The other agreement "Teacher Salaries and Welfare Agreement," although by its terms expiring on September 1, 1967, includes the salary schedule for the coming school year, 1967-1968. However, negotiations on the salary schedule for said school year have been reopened and the school calendar for the same school year has not been finalized. Therefore, current and binding agreements containing finalized provisions are about to expire, and the period for commencing negotiations for succeeding agreements is at hand, as are negotiations for changes in the 1967-1968 salary schedule and for the adoption of the school calendar for the same school year. Under such circumstances, we believe that the present time is most appropriate to permit the teachers in the employ of the School Board to express their choice as to their

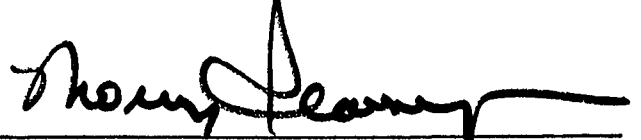
bargaining representative, and, therefore, we have found that a question of representation exists and have directed that an election be conducted.


If the employes select a representative other than the representative which is presently certified and which is a signator to any collective bargaining agreement existing after the certification of the results of the election, the selected representative will be obligated to enforce and administer the substantive provisions therein enuring to the benefit of the teachers. Any provisions running to the benefit of the former bargaining agent will be considered extinguished and unenforceable.<sup>1/</sup> Of course, as the Board indicated during the course of the hearing, the School Board cannot continue in any negotiations until the question of representation has been resolved.<sup>2/</sup>

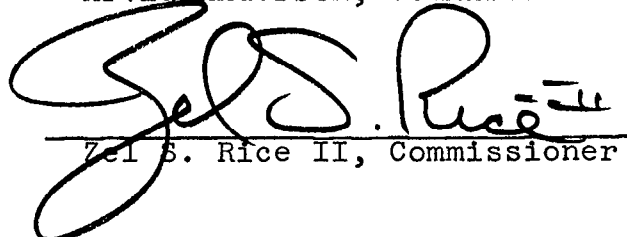
Dated at Madison, Wisconsin this 12th day of May, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

  
Morris Slavney, Chairman

  
Arvid Anderson, Commissioner

  
Zel B. Rice II, Commissioner

1/ City of Green Bay (6558), 11/63; Waukesha County (7435-A), 5/66.

2/ The presently pending prohibited practice case involving the School Board and the Union has been waived as having any effect upon the election proceeding.