

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

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In the Matter of the Petition of  
WHITEWATER TEACHERS UNION, LOCAL 1744,  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO  
Involving Employes of  
WHITEWATER UNIFIED SCHOOL DISTRICT  
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Case ~~111~~  
No. 11365 ME-300  
Decision No. 8034

ORDER OF DISMISSAL

Whitewater Teachers Union, Local 1744, American Federation of Teachers, AFL-CIO, having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among all certified personnel including full-time and regular part-time classroom teachers, librarians, guidance counselors and other special teachers, but excluding the District Administrator, assistant administrators, supervisors, principals, vice-principals, specialists in administrative capacity, clerical and custodial employes of the Whitewater Unified School District; and the hearing on such petition having been conducted at Whitewater, Wisconsin, on April 11, 1967, Commissioner Arvid Anderson being present; and the Board having considered the evidence and being satisfied that no question of representation presently exists among the employes in the proposed collective bargaining unit;

NOW, THEREFORE, it is

ORDERED

That the petition filed herein be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 19<sup>th</sup> day of May, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney  
Morris Slavney, Chairman

Arvid Anderson  
Arvid Anderson, Commissioner

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

STATE OF WISCONSIN

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| AMERICAN FEDERATION OF TEACHERS, AFL-CIO | : |
| Involving Employes of                    | : |
| WHITEWATER UNIFIED SCHOOL DISTRICT       | : |
| -----                                    | : |

Case III  
 No. 11365 ME-300  
 Decision No. 8034

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

On March 13, 1967, Whitewater Teachers' Union, Local 1744, American Federation of Teachers, AFL-CIO, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Board requesting the Board to conduct a representation election involving "all certified personnel including full-time and regular part-time classroom teachers, librarians, guidance counselors and other special teachers in the employ of the School District, but excluding the District Administrator, assistant administrators, supervisors, principals, vice-principals, specialists in administrative capacity, clerical and custodial employes".

No issue exists with respect to the appropriateness of the bargaining unit or the eligibility of employes to be included in such unit. However, an issue did arise with respect to the timeliness of the filing of said petition. The Whitewater Education Association, hereinafter referred to as the Association, was represented at the hearing and claimed to be the recognized representative of the employes in the claimed unit. The Association also alleges that an agreement exists between the School District and the Association for the school year 1967-1968, which agreement constitutes a bar to a present determination of bargaining representative and that the petition must therefore be dismissed as untimely.

In February, 1964, the School District voluntarily granted recognition to the Association as the bargaining agent for the teachers in the School District. Thereafter, the School District and the Association entered into a collective bargaining agreement for the school year 1966-1967.

Subsequently in November, 1966, the parties began negotiating an agreement for the 1967-1968 school year, and in that regard met at least on three occasions and executed the agreement on March 13, 1967. During negotiations, in early February, 1967, the School District's proposal was rejected by the Association membership. Thereafter, the Association, in a subsequent negotiation meeting, advised the School District that its membership had rejected the School District's proposal and the Association presented a counter proposal. The School District thereafter advised the Association that its proposal constituted its final offer. The Association then resubmitted the offer to its membership and it was accepted by a vote of 76 to 36. The agreement was subsequently reduced to writing and was executed on March 13, 1967, and is effective for the school year from September, 1967 thru June, 1968.

In September, 1966, a group of teachers began circulating a petition for the organization of another teacher organization. Said organizational activity was completed on February 23, 1967, at which time approximately 40 teachers had affixed their signature to said petition. On March 7, 1967, said organization, the Union, received its charter from the American Federation of Teachers and executed an election petition to be submitted to the Wisconsin Employment Relations Board. At no time prior to the filing of the petition was the Superintendent of Schools or the members of the board of the School District advised by any of the members or officers of the teachers' union that a petition was going to be filed. However, it was acknowledged by representatives of the School District that they had heard rumors that a petition was to be filed by the newly formed Union.

The petition was received by the Wisconsin Employment Relations Board on March 13, 1967 and the School District received official notice from the Board on March 16, 1967 that a representation hearing was to be conducted.

The Union contends that the teachers have the right to presently select a bargaining representative to represent them in collective bargaining for the school year 1968-1969. There is evidence that bargaining in the past generally has begun in November of the year preceeding the school year in which the agreement is to be effective. Thus, based on past practice, the bargaining for the school year 1968-1969 would normally begin in November, 1967.

During the summer of 1967 many of the teachers are absent from the area and therefore it would be most difficult to obtain a representative vote if an election were held during this period. It is also asserted that September of 1967 would be inappropriate in that during this month there is confusion in beginning the new school year. The Union contends therefore that the most appropriate time for the conduct of an election herein is before the end of the present school year.

The Union does not, if it becomes the teachers' certified bargaining representative, intend to propose changes in the 1967-1968 salary schedules negotiated by the Association. In fact, the Union asserts that it would be bound by the Board's decision in City of Green Bay<sup>1/</sup> in which the Board determined that where employes select a representative in an election other than the one previously recognized by a municipal employer, the newly selected representative is obligated to enforce and administer the provision of a collective bargaining agreement negotiated by the previous representative inuring to the benefit of the employes. However, provisions in the agreement benefiting the former bargaining representative would be considered extinguished and unenforceable.

The Union contends that the principle of contract bar is inapplicable to the present situation since, if the present contract constitutes a bar until its expiration on July 1, 1968, there would be no opportunity for the teachers to exercise a choice in the selection of their representative for the 1968-1969 school year since negotiations for that year would take place in November, 1967. Lastly, the Union argues that even if the Board considers the contract bar principle applicable, a bar does not exist under these circumstances since the contract in question was executed on the same day on which the petition was filed with the Board and the parties to the agreement knew that the competing union intended to file the petition when they entered into the agreement. The Union cites Deluxe Metal Furniture Co., 121 NLRB 995, 999 in which the National Labor Relations Board held that "a collective bargaining contract executed on the same day that a rival union petition has

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<sup>1/</sup> (6558) 11/63.

been filed with the Board will bar an election if the employer has not been informed at the time of execution that a petition has been filed." (Emphasis added.) Similarly, in Rappahonock Sportswear Co., 163 NLRB No. 66 the NLRB held that a collective bargaining agreement executed on the same day that the NLRB received a petition did not constitute a bar, where the employer had been informed of the petitioning union's representation interest and intent to file a representation petition before he executed the contract with the rival union.

The Association contends that the contract which exists between the School District and the Association should constitute a bar, precluding the holding of an election at this time. The Association cites Wauwatosa Board of Education<sup>2/</sup> where the WERB held that a resolution and agreement adopted by a municipal employer pursuant to negotiations with the certified representative of its maintenance department employes constituted a bar to a representation petition by a competing union. The Association argues that the contract bar principle is applicable in this case, for there is an agreement between the Association and School District, executed in good faith and effective during the 1967-1968 school year. It is therefore argued that the petition for an election should be dismissed as untimely since an agreement exists for the 1967-1968 school year and teachers' contracts have been entered into thereunder for that year.

It is clear from the record that the Union seeks to become the certified bargaining representative for the employes in the unit described herein and to negotiate a collective bargaining agreement for the school year 1968-1969. The record also indicates that negotiations for that year will not commence before November, 1967. The Board agrees with the Union that the principle of contract bar cannot automatically be adopted in representation elections among teachers employed by municipal employers. Although the Board has in the past utilized the principle of contract bar in dismissing petitions for elections among employes of municipal employers,<sup>3/</sup> it recognizes that this principle cannot always be applied when representation

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<sup>2/</sup> (7472) 2/66

<sup>3/</sup> Wauwatosa Board of Education (7472) 2/66

issues arise among municipal employes.<sup>4/</sup> The Board, in entertaining petitions for elections to be conducted among municipal employes, must balance the right of the employes to select and change their collective bargaining representative with the interest of preserving the stability of a collective bargaining relationship. In attempting to achieve this balance, the Board examines many factors, only one of which is an existing agreement between the municipal employer and the recognized bargaining representative. In addition in municipal employment, the Board must consider budget and teacher contract deadlines, bargaining history, the opportunities the employes have had to select their representative, and any other factor which affects the stability of the relationship between the employes, their chosen representative, and the municipal employer.<sup>5/</sup>

The agreement which exists between the School District and the Association in this instance becomes effective at the outset of the 1967-1968 school year. The parties, prior to executing such agreement, received no notification from the Union that it intended to file a petition with the Wisconsin Employment Relations Board. The record does not indicate that the parties executed the agreement for the purpose of establishing a bar to the instant petition. Although the National Labor Relations Board has held that a collective bargaining agreement would not constitute a bar if the parties had been informed that a competing union intended to file a timely petition for a representation election, there appears to be no precedent even in the private sector, which would nullify the contract bar where the parties to the agreement had no notice that a representation petition was going to be filed. In our opinion, absent such notice and any other evidence indicating that the parties entered into the agreement solely for the purpose of barring the competing union from filing a petition, the agreement must be given considerable weight as a stabilizing factor in the collective bargaining relationship.

However, recognizing that the teachers in the unit herein have not had the opportunity to select their bargaining representative

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<sup>4/</sup> City of Green Bay (6558) 11/63.

<sup>5/</sup> Kenosha Board of Education (8031) 5/67.

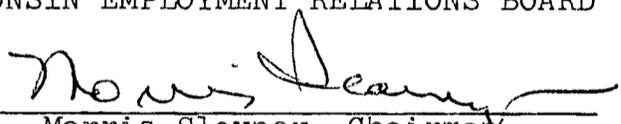
since 1965, and that the School District must negotiate during the year prior to the effective date of any collective bargaining agreement because of budget submission dates and teachers' contract requirements, it is the Board's opinion that the period from October 15 to November 15, 1967 would constitute an appropriate period for the filing of a representation petition to determine the bargaining representative of the unit described herein for the purposes of negotiating an agreement for the 1968-1969 school year. If a petition were submitted during this period, there would be, after the election, sufficient opportunity for the certified representative to negotiate and enter into an agreement for the 1968-1969 school year, as demonstrated by the past negotiations and agreements between the School District and the Association. At the same time, in the interest of stability, it would permit the Association at least some opportunity to administer the collective bargaining agreement which it negotiated for the 1967-1968 school year. Any extension made prior to November 15, 1967 of the collective bargaining agreement will not affect the processing of any petition for an election filed during the period mentioned above.

Therefore, the Board concludes that it would not effectuate the purposes or policies of Section 111.70 of the Wisconsin Statutes to conduct an election at this time, and we are therefore dismissing the petition without prejudice to refiling same in the period from October 15 to November 15, 1967.

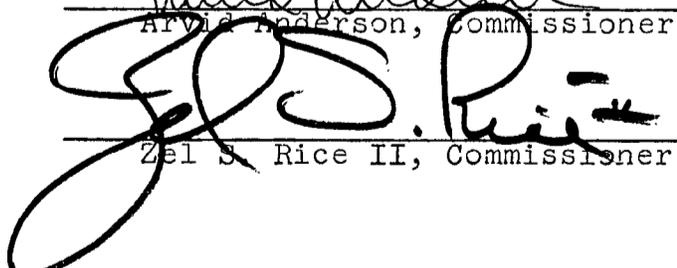
Dated at Madison, Wisconsin, this 19<sup>th</sup> day of May, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

  
Morris Slavney, Chairman

  
Arvid Anderson, Commissioner

  
Zel S. Rice II, Commissioner