STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of GREEN BAY MUNICIPAL EMPLOYEES, LOCAL 1672, AFSCME, AFL-CIO Involving Certain Employes of CITY OF GREEN BAY employed in the DEPARTMENT OF PUBLIC WORKS	Case XIX No. 11495 ME-310 Decision No. 8098

DIRECTION OF ELECTION

Green Bay Municipal Employees Union, Local 1672, AFSCME, AFL-CIO, 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 above named Municipal Employer; and a hearing on said petition having been conducted at Green Bay, Wisconsin, on June 8, 1967, by Examiner Herman Torosian; and during the course of the hearing, Drivers, Warehouse & Dairy Employees Union Local 75, IBT, moved to intervene in the proceeding claiming to be the recognized bargaining representative of certain employes in a proposed bargaining unit pursuant to the terms of a collective bargaining agreement existing between it and the Municipal Employer, and such motion having been granted during the course of the hearing; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the 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 sixty (60) days from the date of this directive in the collective bargaining unit consisting of all employes employed by the City of Green Bay in its Public Works Department in the Street Division, Sanitation Division, Sewer Division, excluding seasonal employes, supervisors, office and clerical employes and executives, who were employed by the Municipal Employer on July 10, 1967, except such employes as may prior to the

election quit their employment or be discharged for cause, for the purpose of determining whether or not a majority of such employes desire to be represented by Green Bay Municipal Employees Union Local 1672, AFSCME, AFL-CIO; by Drivers, Warehouse and Dairy Employees Union Local 75, IBT; or by neither, for the purposes of conferences and negotiations with the above named Municipal Employer 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 July, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By _____
Morris Slavney, Chairman

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Arvid Anderson, Commissioner

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Zel S. Rice II, Commissioner

No. 8098

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GREEN BAY MUNICIPAL EMPLOYEES, LOCAL 1672, AFSCME, AFL-CIO

Involving Certain Employes of

CITY OF GREEN BAY employed in the DEPARTMENT OF PUBLIC WORKS

Case XIX
No. 11495 ME-310
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On May 15, 1967, Green Bay Municipal Employees Local 1672, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Board requesting the Board to conduct a representation election involving employes of the City of Green Bay employed in the unit described in the direction.

The parties stipulated that the appropriate unit consists of all employes employed by the City of Green Bay in its Public Works Department in the Street Division, Sanitation Division, Sewerage Division, excluding seasonal employes, supervisors, office and clerical employes and executives.

In July 1962, following a petition filed by the present Intervenor, the Board conducted an election among the employes in the same unit to determine whether said employes desired to be represented by the present Intervenor, or by the present Petitioner, or by neither of said organizations. The Board, after said election, certified the Intervenor on July 25, 1962, as the collective bargaining representative. During that balloting, of 121 employes eligible to vote, 60 employes cast ballots for the Intervenor, while 52 cast ballots in favor of the Petitioner. Approximately two years later the Petitioner filed a petition with the Board requesting a second election among the same employes, and on July 8, 1964, the Board directed an election among the same employes to determine whether or not they desired to be represented by the Petitioner, by the Intervenor, or by neither of said organizations. Following the conduct of the balloting, the Board, on August 13, 1964, certified the Intervenor as the collective bargaining representative after it had received 63 votes out of 114 employes eligible to vote.

Since the latter certification, representatives of the Intervenor and the Municipal Employer have entered into collective bargaining agreements covering wages, hours and conditions of employes in the unit. The last of such agreements, and the agreement which is presently in effect, became effective January 1, 1967, and is to continue in full force and effect until December 31, 1967. The agreement also provides that it could renew itself for an additional one year period "until and unless either party, prior to June 1, before the expiration of this Agreement and the expiration of any of its renewal dates, notify the other party in writing that it desires to alter or amend the same at the end of the contract." On or about May 31, 1967, the Intervenor, by letter, advised the Municipal Employer that it desired to reopen the current agreement "to negotiate the wages, hours and working conditions of the employes." The petition initiating the instant representation proceeding was filed by the Petitioner on May 15, 1967.

The Intervenor opposes the present conduct of an election on two grounds. It contends first, that the petition has not been timely filed and therefore should be dismissed, and secondly, that before processing the petition, the Petitioner should be required to display a showing of interest to the extent that at least 50% of the eligible voters should indicate (no doubt administratively) that they desire to be represented by the Petitioner.

The Intervenor would have the Board apply a rule adopted by the National Labor Relations Board with respect to the timely filing of an election petition. This rule provides that the NLRB will not process an election petition where there is an existing collective bargaining agreement, where such petition is not filed within a 60-90 day period preceding the termination date of the agreement. Since the present petition was filed at least six months prior to the stated expiration date of the agreement, the Board, if it were to adopt the Intervenor's argument, would dismiss the present petition as not being timely filed. If the Intervenor's argument were to prevail, the Board could not entertain the Petitioner's petition unless it was filed in October, 1967.

The factual situation appears quite similar to the facts which existed in a previous case involving the same parties covering employes of the same Municipal Employer employed in its Park and Recreation Department.[1/] In that proceeding the Intervenor and Municipal Employer

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1/ City of Green Bay (6558) 11/63

were parties to a collective bargaining agreement effective January 1, 1963, to at least December 31, 1963. The agreement also contained a provision for reopening as soon as June 1 of that year. The Petitioner filed a petition for an election among the employes covered by said agreement during the month prior to the reopening date. In that proceeding the Board established a rule with respect to possible contract bar issues. We see no reason to overrule or change the rule established in that previous case, to the effect that the Board will "examine the various ordinances in existence as to the period for initiating conferences and negotiations with respect to wages, hours and conditions of employment; the budgetary deadline; the collective bargaining history, if any; the lapse of time from a previously conducted Board election, if any; and other factors which affect the stability of the relationship between the municipal employes, their bargaining agent, and their employer."

In private employment reopeners in collective bargaining agreements usually do not extend for more than a 60 day period prior to the expiration date of the agreement. The Intervenor and the Municipal Employer in their collective bargaining agreement have recognized the feasibility of negotiating changes in wages and hours and working conditions during a reasonable period of time prior to the date on which the Municipal Employer must adopt its budget, and therefore the parties in said agreement have provided for a reopener on a date seven months prior to the normal expiration of the agreement. If the Intervenor were permitted to reopen the agreement and commence negotiations shortly after June 1, 1967, and at the same time, if the Board were to prevent the Petitioner from filing its petition until October 1967, the Municipal Employer and the Intervenor could very well reach an agreement on a new collective bargaining agreement prior to October 1967, which could effectively prevent the conduct of another election on the basis that the parties had reached an agreement for the year 1968. In any event, as we have indicated earlier herein, we see no reason to deviate from the Board's policy expressed in the original Green Bay case. The factors existent here are not so different from the factors which existed in the case in which the Board's policy was established, and therefore we find and conclude that the petition was timely filed and that the present agreement does not constitute a bar to the present conduct of an election, regardless of the fact that the present Intervenor has had only a limited time to administer the 1967 agreement. This particular factor was discussed by the Board in a recent decision rendered involving the Whitewater

School District,[2/] wherein the Board determined to entertain a petition for an election although the contracting labor organization would administer a recently negotiated agreement for only approximately a three month period. The period of time during which the contracting labor organization has an opportunity to administer the contract it negotiated is not the only factor which the Board must consider determining whether a question of representation exists.

The Intervenor, as an alternate proposal, would have the Board adopt the 60-90 day rule to be measured, if not from the date of the termination of the agreement, then from the date on which the municipality would normally adopt its budget. The Municipal Employer normally adopts its budget in November 1967. Under the Intervenor's reasoning, the Board should not entertain any petition unless it was filed in the month of August, 1967. Such a determination would permit the Intervenor and Municipal Employer to negotiate a new collective bargaining agreement for 1968, and an argument could then be made that since the parties have an existing agreement for 1968, the petition of the Petitioner would then be untimely if filed in August, 1967. We reject the alternate proposal by the Intervenor for the same reasons that we have rejected its original argument as to timeliness.

The Intervenor also proposes that the Petitioner should be required to display a 50% showing of interest among employes in the unit before the Board should process the petition. The showing of interest requirement proposed by the Intervenor would, if adopted by the Board, impose a greater requirement than is necessary to select a bargaining representative in a Board conducted election. The organization selected as the collective bargaining representative of employes in an election conducted by the Board need only obtain a majority of those voting. If less than 98% of the employes vote, then a majority representative can be selected by 49%. The Board recently stated its policy in this area as follows:

> "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."[3/]

[2/] Whitewater Unified School District (8034) 5/67.

[3/] Kenosha Board of Education (8031) 5/67.

The fact that the Petitioner was not selected in the two previous elections does not warrant any deviation from the above stated policy.

In accordance with the Board's policy, in the event the employes select the Petitioner as their representative, the Petitioner will be obligated to enforce and administer the substantive provisions of the existing agreement which inure to the benefit of the employes of the unit, and any provision which runs to the benefit of the former representative will be considered extinguished and unenforceable.

Dated at Madison, Wisconsin, this 10th day of July, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By _____
Morris Slavney, Chairman

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Arvid Anderson, Commissioner

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Zel S. Rice II, Commissioner