

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GENERAL DRIVERS AND DAIRY EMPLOYEES
UNION, LOCAL 563

To Initiate Fact Finding Between
Said Petitioner and

CITY OF APPLETON

Case XV
No. 11980 FF-166
Decision No. 8430-A

ORDER DISMISSING FACT FINDING PETITION

General Drivers and Dairy Employees Union, Local 563, having petitioned the Wisconsin Employment Relations Commission to initiate fact finding, pursuant to Section 111.70 of the Wisconsin Statutes, among employes of the City of Appleton, Wisconsin, employed in four alleged appropriate bargaining units, namely, Health Department, certain City Hall employes, Engineering Division of the Department of Public Works, and Assessor's Office; and hearing on said petition having been conducted at Appleton, Wisconsin, on March 15, 1968, Chairman Morris Slavney and Commissioner William Wilberg being present, and during the course of the hearing Local 73, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having been permitted by the Commission to intervene in the matter; and the Commission having considered the evidence and arguments of Counsel and being satisfied that questions concerning the appropriateness of the collective bargaining unit set forth in the fact finding petition as well as questions concerning representation of employes thereof presently exist, and further being satisfied that the statutory requirements to initiate fact finding, as set forth in Section 111.70(4)(h)2, do not exist;

NOW, THEREFORE, it is

ORDERED

That the petition to initiate fact finding in the above entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of May, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Zel S. Rice
Zel S. Rice, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner

STATE OF WISCONSIN

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In the Matter of the Petition of	:
GENERAL DRIVERS AND DAIRY EMPLOYEES	:
UNION, LOCAL 563	:
To Initiate Fact Finding Between	:
Said Petitioner and	:
CITY OF APPLETON	:
-----	:
In the Matter of the Petition of	:
LOCAL 73, WISCONSIN COUNCIL OF	:
COUNTY AND MUNICIPAL EMPLOYEES,	:
AFSCME, AFL-CIO	:
Involving Employes of	:
CITY OF APPLETON	:
-----	:

Case XV
No. 11980 FF-166
Decision No. 8430-A

Case XVI
No. 11981 ME-366
Decision No. 8431-A

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS
AND ORDER DISMISSING FACT FINDING PETITION

On February 23, 1968, General Drivers and Dairy Employees Union, Local 563, hereinafter referred to as the Teamsters, filed a petition with the Wisconsin Employment Relations Commission requesting that fact finding be initiated, pursuant to Section 111.70, Wisconsin Statutes, for certain employes of the City of Appleton, alleging that said Municipal Employer refused to meet and negotiate in good faith with the Teamsters with respect to negotiating wages, hours and conditions of employment for employes in the following alleged bargaining units:

1. "All employees of the Health Department of the City of Appleton, excluding professional employees and supervisory employees."
2. "All janitors, janitresses, and custodians at the City Hall under the Department of Public Works by the City of Appleton, excluding supervisory employees."
3. "All employees of the Engineering Division of the Department of Public Works of the City of Appleton, excluding professional and supervisory employees."
4. "All employees employed in the Assessor's Office under the Finance Committee in the City of Appleton, excluding professional and supervisory employees."

The Teamsters alleged in its petition that the Municipal Employer had previously accepted evidence indicating that the Teamsters represented employes in each of said units and, that after acknowledging said majority status, the Municipal Employer refused to meet and negotiate with it.

Also on February 23, 1968, Local 73, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, filed a petition with the Commission requesting that the Commission conduct a representation election among certain employes of the Municipal Employer, more specific, "all City Hall employes, and employes of conjunction thereto, eligible for representation, excluding elected officials, confidential employes, all other City employes not directly associated with City Hall and supervisors as defined in the Act."

It is to be noted that the unit described in the election petition filed by AFSCME would include the employes involved in the units described in the fact finding petition filed by Teamsters.

The Commission consolidated the fact finding and election petitions for the purposes of hearing, and following the hearing briefs were filed by Teamsters, AFSCME, as well as the Municipal Employer.

BACKGROUND

During the month of December 1967 representatives of AFSCME and Teamsters were engaged in organizational activities among the employes of the Municipal Employer who were not at that time represented by any organization, either through voluntary recognition or previous certification by the Commission. During said activity representatives of the Municipal Employer, including the City Clerk, the Mayor and the City Attorney were aware that the Teamsters and AFSCME were active in this regard. On December 18, 1967, in a meeting with department heads the City Clerk apprised those present of such activity and advised the department heads to remain neutral in regard to the matter. The City Clerk and the Mayor, prior to January 9, 1968, had both independently been apprised of the fact that certain unidentified employes had executed cards authorizing AFSCME as their bargaining representative. On January 3, 1968, a representative of the Teamsters delivered to the Mayor statements by six employes, three of the employes of the Electrical Department

executed cards authorizing AFSCME as their representative and further requested those cards to be destroyed. There was no evidence indicating that prior to January 3, any representative or agent of the Municipal Employer had any specific knowledge with respect to employes who may have previously authorized either AFSCME or the Teamsters to represent them for the purposes of collective bargaining.

On January 9 Teamsters hand delivered letters to the Mayor wherein it notified that a majority of the employes employed in two separate alleged units, the Electrical Department (Division of the Inspection Department), and Parking Commission, had authorized Teamsters as their bargaining representative. Said letters contained authorization cards executed by three employes in the first "unit" and four employes in the second "unit." Teamsters requested that the Mayor verify their authenticity against the Municipal Employer's payroll record and further therein Teamsters demanded recognition and indicated that one of its representatives would call at the Mayor's office on January 11 for the express purpose of negotiating a collective bargaining agreement for the employes in the two "units" described in said correspondence. The authorization cards in support of the majority claim regarding employes in the Electrical Department were executed by three employes who had also signed the January 3 statement indicating a withdrawal of authorization on behalf of AFSCME. Of the four cards submitted in support of the majority claim with respect to the Parking Commission, three of the cards were executed by three employes who had previously on January 3 also executed the statement withdrawing their authorization of AFSCME.

On January 10 the Mayor, by letter to Teamsters, acknowledged the receipt of Teamsters' letters of January 9 and cards enclosed. The Mayor further advised that the Director of Finance had examined the signatures on the cards and that said signatures appeared to be authentic and further said letter contained the following statement: "As I have no reason to believe that the cards were not freely executed, and in the absence of a conflicting representational claim, we are willing to recognize Local 563 as bargaining representative on the basis that you propose. Kindly submit an appropriate agreement to this effect for our approval and signatures." A copy of this letter was sent by the Mayor to the City Attorney.

On January 11 the City Attorney delivered the following letter to the Mayor:

"I received your copy of your letter to Mr. Schlieve indicating your intention to recognize Local 563 as bargaining representative.

It appears to me that your proposed recognition is ill-advised and may possibly expose the City to the commission of an unfair labor practice. We have reason to believe that other unions may also have signed representation cards."

Teamsters request for recognition as the bargaining representative for the employes of the Electrical Department and the Parking Commission was referred to the Board of Public Works. Said Board met on January 18 and initially determined that the Municipal Employer would file a petition for an election in regard to the Teamsters request. However, after a representative of the Teamsters appeared and persuaded said Board to reconsider its action, and the Board reported the matter to the City Council and recommended that the Municipal Employer recognize Teamsters as the bargaining representative for employes in the Electrical Department and for employes employed as parking meter servicemen and ramp men employed in the Parking Commission. The City Council authorized the Mayor and City Clerk to sign a recognition agreement with the Teamsters, and on about January 19 the Mayor and City Clerk as well as a representative of the Teamsters executed the following recognition agreement:

"Pursuant to the proof presented in accompaniment with the January 9th demand for recognition as the bargaining agent for the employees in the bargaining units set forth therein the City of Appleton hereby agrees and does recognize General Drivers and Dairy Employees Union Local No. 563 as the exclusive bargaining representative of the employees in the bargaining units consisting of all employees of the Electrical Department, division of the Inspection Department of the City of Appleton and all Parking Meter Servicemen and Ramp Attendants employed by the Appleton Parking Commission of the City of Appleton.

It is further agreed that said Labor Organization is recognized as the bargaining representative in all matters of wages, hours and conditions of employment and as the representative for initiation of Fact Finding within the meaning of Section 111.70(h)(2) and that negotiations for a Labor Agreement shall commence immediately upon the execution by the representative of the parties of the Agreement."

On February 12 Teamsters hand delivered three letters to the Mayor's office, similar in content to the letters previously delivered by Teamsters on January 9. In said separate letters Teamsters claimed to have been designated by a majority of employes in three separate alleged bargaining units, namely, Health Department, janitors, janitresses and custodians employed in the City Hall, and all employes of the Engineering Division of the Department of Public

Works. Attached to each letter were authorization cards alleged to have been executed by the majority of the employes in each of the alleged units. Attached to the letter having reference to the Engineering Department was a statement purportedly executed by nine employes who were indicating that they were withdrawing their authorizations on behalf of AFSCME and requested that such authorization cards be destroyed.

On February 14 the Mayor in a letter to Teamsters acknowledged receipt of Teamsters' letters of February 12 and therein indicated that the authorization cards previously submitted with the Teamsters letters of February 12 had been verified by the Director of Personnel and that the Mayor was forwarding the matter to the City Clerk so that it would be brought to the attention of the Board of Public Works at a meeting on February 20.

On February 16 the Mayor received another letter from Teamsters, similar in content to the Teamsters' letters of February 12, wherein Teamsters requested recognition as the exclusive bargaining representative for employes of the Assessor's office, and attached to same were three authorization cards purportedly executed by three employes in the Assessor's office.

On February 16 Teamsters, by letter to the Mayor, acknowledged receipt of the Mayor's February 14 letter, further indicating "in view of the recent disposition of similar requests by this local union involving your employes of the City of Appleton, the contents of your reply indicate to the writer an agreement to recognize our organization as the collective bargaining representative for the bargaining units involved. Please clarify and advise."

On February 20 the Mayor directed a letter to the Teamsters acknowledging receipt of the Teamster letter concerning its claim as a bargaining representative for employes in the Assessor's office and indicated that the letter and cards were being sent to the Finance Director for verification of signatures and that the matter would then be forwarded to the City Clerk in order that the latter might bring the matter to the attention of the Board of Public Works.

On February 21 the Board of Public Works considered the Teamsters request that the Municipal Employer recognize it as the exclusive bargaining representative for employes in the four units involved. The Board of Public Works referred to the Common Council the question of whether or not elections should be held relative to

the selection of the bargaining agent for the employes in said alleged units. On the same date AFSCME sent a wire to the Mayor wherein it requested recognition "as exclusive bargaining agent for all City Hall employes and all employes in conjunction thereto," and therein also indicated that it was filing an election petition with the Commission in that regard. On the evening of February 21 the City Council considered the question as to whether elections should be held with respect to the selection of the bargaining representative of employes in the Health Department, the Assessor's office, engineering employes and City Hall custodians. Upon being apprised of the AFSCME telegram the Common Council took no final action in regard thereto and referred the matter back to the Board of Public Works. As indicated earlier herein, on February 23, 1968, the Teamsters filed its petition for fact finding and on the same date AFSCME filed its petition for an election.

POSITION OF THE PARTIES

Teamsters argue that the Municipal Employer verified that said organization did in fact represent a majority of the employes in each of the bargaining units which it claims appropriate, therefore the Municipal Employer is obligated to recognize the Teamsters as the bargaining representative and to meet and negotiate with Teamsters at reasonable times and in a bona fide effort to reach an agreement, and that since the Municipal Employer failed to do so, Teamsters are entitled to proceed to fact finding. Teamsters ground their claim on the fact that a majority of the employes in each of the alleged units had executed authorization cards which had been accepted by the Mayor as proof of its majority status, and that the signatures on such cards had been verified, and in addition, that the Mayor had admitted, in the course of the hearing, that he had the authority to extend such recognition. With respect to the election petition filed by AFSCME, Teamsters contend that it should be dismissed since at the time it was filed no question concerning representation exists with respect to those employes involved in the units granted recognition by the Municipal Employer.

AFSCME contends that Teamsters' fact finding petition should be dismissed because of the existence of a question concerning representation involving employes covered by said petition. It also argues that the Commission must determine whether or not the

units cannot be established without separate unit votes. AFSCME further argues, with respect to the electrical group and the parking meter group, that the Municipal Employer improperly recognized Teamsters as the bargaining agent for the employees in said groups while it was aware that AFSCME was engaged in organizational activity, and further that the action of the Mayor with respect to the Teamsters' demand of recognition for the four remaining groups did not constitute recognition by the Municipal Employer.

The Municipal Employer's City Attorney contends that the units alleged to be appropriate in the Teamsters' fact finding petition cannot constitute appropriate units until a self-determination vote has been conducted by the Commission, and further that the Municipal Employer did not grant recognition to the Teamsters with respect to the employees employed in the units alleged to be appropriate in its fact finding petition, and further, there was no demand for bargaining made upon any representative of the Municipal Employer by the Teamsters prior to the filing of the fact finding petition. The Municipal Employer urges the Commission to dismiss the fact finding petition and conduct an election to determine the bargaining representative of all the employees employed at the City Hall excluding supervisors, craft and confidential employees.

DISCUSSION

The Question Concerning Representation

The petition filed by AFSCME requesting an election alleged that the appropriate unit for the purposes of the election consists of "all City Hall employees and employees in conjunction thereto eligible for representation, excluding elected officials, confidential employees and all other City employees not directly associated with City Hall and supervisors." The evidence discloses that there are other employees employed by the Municipal Employer. However, said employees are included in collective bargaining units, not involved in these proceedings, wherein the employees are represented for the purposes of collective bargaining. Therefore, while the unit set forth in AFSCME's petition does not constitute all the employees of the Municipal Employer it constitutes a residual unit and therefore could constitute an appropriate collective bargaining unit without the necessity of a self-determination ballot.

The Classifications of employees involved in the instant proceedings and the departments or divisions in which they are employed are as follows:

City Assessor

Assessment Clerk
Clerk Typist II

Deputy Assessor

City Clerk

Assessment Clerk

City Hall

Chief Building Custodian
Building Custodian

Janitress

Finance

Account Clerk I
Bookkeeper
Bookkeeping Machine Operator - Clerk
Payroll Clerk

Fire Department

Clerk

Health Department

Registrar, Deputy

Sanitarian II

Inspections

Building and Heating Inspector
Clerk Steno II
Electrical Inspector
Electrician I

Electrician II
Electrician Helper
Plumbing Inspector
Sealer of Weights and Measures

Parking Commission

Cashier, Ramp
Meter Technician

Ramp Custodian

Planning

Clerk Steno III

Planning Aid

Police Department

Clerk Steno II
Clerk Typist I
Clerk Typist II
Clerk Typist III

Janitor
Meter Maid
Traffic Sign Painter
Traffic Sign Painter Helper

Engineering Division of the
Department of Public Works

Assessment Clerk
Civil Engineer I
Civil Engineer II
Civil Engineer III
Clerk Steno II
Clerk Typist II

Engineering Aid I
Engineering Aid II
Inspector
Record Clerk
Stock Clerk

City Treasurer

Account Clerk II
Cashier

Deputy Treasurer

Welfare

Administrative Clerk
Clerk Steno II

Welfare, Deputy Director

The various departments and divisions above noted are separate and distinct from each other as are their functions. The employes in each of said departments and divisions are supervised by supervisors in each of said departments and divisions and there is no common supervision.

In the Inspection Department the plumbing inspector classification is filled by journeyman plumber. The classifications of electrical inspector, electrician II, electrician I and electrician helper are filled by craft employes in the first three classifications and in the latter classification an employe working towards his craft status. The civil engineer positions in the Engineering Division of the Department of Public Works are filled by professional engineers. Teamsters contend that there exists no question of representation among the employes employed in the Health Department, Assessor's office, the Engineering Department, City Hall janitors, Parking Commission and the Electrical Department, arguing on the basis of its alleged representative status granted to it by the Municipal Employer. As indicated in the background recitation, there is no doubt that the City Council took formal action in recognizing Teamsters as the collective bargaining representative for the employes of the Electrical Department and the employes in the Parking Commission.

However, any recognition, valid or otherwise, granted Teamsters by the Mayor and/or the City Council, under the

circumstances described herein, did not constitute such recognition which this agency will recognize as barring a question concerning representation for any of the employes employed in any of the alleged units. For the reason that at all times material herein, and prior to the initial recognition of the Teamsters for employes in the two employe groups in January 1968, responsible representatives of the Municipal Employer were aware of the organizational activity of AFSCME. Prior to the granting of recognition to the Teamsters as the representative for the Parking Commission and Electrical Department employes, the City Attorney advised the Mayor of organizational activity by another labor organization. As a matter of fact, early in January the Mayor himself had knowledge of the organizational activity of AFSCME when the Teamsters delivered statements to the Mayor, which were executed by certain employes indicating that they were withdrawing authorizations in favor of AFSCME, and requesting that such authorization be destroyed, albeit such authorizations were not in the possession of the Mayor. A similar statement was presented to the Mayor by the Teamsters on or about February 12 when it requested recognition for employes in the Engineering Division.

Under such circumstances proper procedure for the determination of bargaining representative should have been a determination of the representative status through the conduct of elections as provided in Section 111.70, and therefore we have concluded that the recognition granted to Teamsters for the electricians employed in the Inspection Department and for employes in the Parking Commission shall not constitute a bar to present elections involving those employes. We reach the same conclusion with regard to employes covered in the fact finding petition even though recognition was not completed by the Municipal Employer.

Pursuant to Section 111.70(4)(d) and Sections 111.02(6) and 111.05(2), Wisconsin Statutes, employes employed in a separate division or department are entitled to determine for themselves whether they desire to constitute a bargaining unit separate and apart from other employes of the Municipal Employer in an election conducted by the Commission. There is no unit vote required for employes engaged in a single craft. Section 111.70(4)(d) sets forth that employes engaged in a single craft constitute an appropriate bargaining unit. Since the electricians and electrician

helper^{1/} employed in the Inspection Department are members of the same craft, they constitute a separate unit. The employes employed in the (1) Parking Commission, (2) Health Department, (3) janitors, janitresses and custodians in the City Hall, and (4) employes in the Engineering Division of the Department of Public Works, and (5) employes in the Assessor's office are employed in either separate divisions or departments. Under the circumstances herein the employes of each of said separate departments or divisions must determine for themselves in a unit vote whether they desire to constitute themselves separate units.

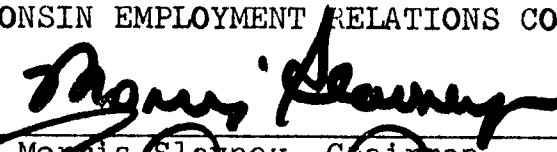
We have therefore directed elections in five separate voting groups, namely, (1) Parking Commission, (2) Health Department, (3) janitors, janitresses and custodians in City Hall, (4) Engineering Division of the Department of Public Works and (5) employes in Assessor's office, to permit the employes in said separate divisions or departments an opportunity to determine for themselves whether they desire to constitute separate and distinct bargaining units. Following the issuance of the certification of the results of the unit votes the Commission shall direct elections to determine the bargaining representative of the employes in those units separately established, as well as in the unit consisting of the craft electricians, and in the residual unit of "City Hall employes and employes in conjunction thereto", to the extent affected by the unit votes. Both labor organizations should notify the Commission within five days of the issuance of the certification of the results of the unit votes as to their desires to be included on the ballot in any of the units which will be involved in the representation elections.

Since there exists a question concerning the appropriateness of the bargaining units involved in the fact finding petition filed by Teamsters, as well as an existing question of representation concerning the employes in said four alleged appropriate units, the Commission is dismissing the fact finding petition filed by Teamsters.

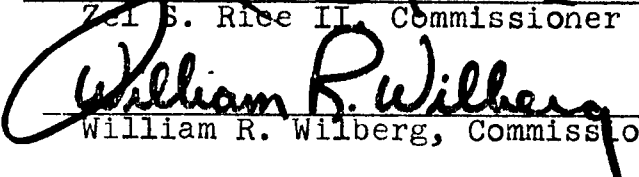
Dated at Madison, Wisconsin, this *29th* day of May, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

1/ Winnebago County Hospital, Dec. No. 6043, 7/62.