STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	
MUNICIPAL TRUCK DRIVERS LOCAL UNION 242, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA	Case LXII No. 12105 ME-374 Decision No. 8622
Involving Employes of	
THE CITY OF MILWAUKEE	

Appearances:

Asher, Greenfield, Gubbins and Segall, Attorneys at Law, by Mr. Marvin Gittler, for the Petitioner.

Mr. John F. Kitzke, Assistant City Attorney, for the Municipal Employer.

Lawton and Cates, Attorneys at Law, by Mr. John C. Carlson, for the Intervenor.

DIRECTION OF ELECTIONS

Municipal Truck Drivers Local Union 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70, Wisconsin Statutes, among certain employes of the City of Milwaukee employed in the Bureau of Municipal Equipment of the Department of Public Works; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, before Chairman Morris Slavney and Commissioner William R. Wilberg; and at the outset of the hearing Milwaukee District Council 48, AFSCME, AFL-CIO, and its Local 33, having been permitted to intervene on the basis of being a certified collective bargaining representative for the employes involved herein; and the Commission having considered the evidence, arguments and briefs of counsel, and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and concerning the representation for said employes of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections shall be conducted under the direction of the Wisconsin Employment Relations Commission by secret ballot within

thirty (30) days from the date of this Directive among all employes of the Operations Division of the Bureau of Municipal Equipment of the City of Milwaukee, excluding craft employes, supervisors, confidential employes and all other employes of the City of Milwaukee, who were employed by the Municipal Employer on July 23, 1968, except such employes as may prior to the elections quit their employment or be discharged for cause for the purposes of determining: (1) whether a majority of such employes eligible desire to constitute themselves as a separate collective bargaining unit; and (2) whether a majority of such employes voting desire to be represented for the purposes of conferences and negotiations on questions of wages, hours and conditions of employment by Municipal Truck Drivers Local Union 242, affiliated with the International Brothernood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or by Milwaukee District Council 48, AFSCME, AFL-CIO, and its Local 33, or by neither of said labor organizations.

Given under our hands and seal at the City of Madison, Wisconsin, this 23rd day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
William R. Wilberg, Commissioner

I concur in part and
I dissent in part.

_____
Zel S. Rice II, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of MUNICIPAL TRUCK DRIVERS LOCAL UNION 242, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA Involving Employes of THE CITY OF MILWAUKEE	Case LXII No. 12105 ME-374 Decision No. 8622

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

On April 17, 1968, Teamsters filed a petition with the Commission requesting that an election be conducted "among all truck drivers, including tractor operators and equipment operators, but excluding office clerical employes, guards, supervisors and all other employes of the City of Milwaukee", to determine the bargaining representative of the employes in the alleged unit. Accompanying the petition was a showing of interest in the form of membership cards executed by various employes in the claimed unit.

Thereafter and while the Commission was conducting its administrative review of the showing of interest Teamsters on April 24, 1968, filed an amended petition[1/] which indicated that the unit claimed to be appropriate consisted of all "truck drivers in the Bureau of Municipal Equipment, including tractor operators and equipment operators, but excluding office clerical employes, guards, supervisors and all other employes". After being satisfied that the showing of interest was sufficient to process the petition, the Commission issued a notice of hearing and hearing on the petition was conducted on May 14, 1968.

During the course of the hearing issues arose with respect to (1) the sufficiency of the showing of interest, (2) the timeliness of the petition, (3) the appropriateness of the claimed unit, and (4) eligibles.

Showing of Interest

On February 28, 1968, in a case involving Wauwatosa Board of Education[2/] the Commission adopted the following policy with respect to showing of interest:

1/ The petition and amended petition are hereinafter referred to as the "petitions".

2/ Dec. No. 8300-A

"Where there presently exists a recognized or certified bargaining representative:

(1) Any election petition filed by a rival labor organization or employes must be accompanied by applications for membership or some form of authorization to seek such election, signed and currently dated, by at least 30 percent of the employes in the existing unit, or in the unit desired by tne petitioner. Such showing of interest shall not be deemed to be part of tne petition, but will be reviewed administratively by the Commission. Prior to the issuance of the notice of hearing, the employers involved will be requested to furnish the Commission with a list of employes in the proposed unit, as of the date of the filing of the petition, for the Commission's use in administratively determining whether there is sufficient showing of interest. The validity of the showing of interest shall not be subject to litigation in the representation hearing, as the details of such showing of interest will not be revealed.

(2) Where the petition is filed by the employer, the employer at the hearing must demonstrate, by objective considerations, reasonable cause to believe that the incumbent organization has lost its majority status either in the existing unit or in a different claimed appropriate unit."

The employe classifications in the claimed unit as requested by the Teamsters are presently represented by Milwaukee District Council 48, AFSCME, AFL-CIO, and its Local 33, hereinafter jointly referred to as AFSCME. Prior to the issuance of the notice of hearing the Commission made an administrative determination that the showing of interest presented by the Teamsters was sufficient to warrant further processing of its petition. During the course of the hearing an issue was raised with regard to the appropriateness of the unit requested by the Teamsters and, as will be indicated subsequently herein, the voting group involved herein consists of additional employe classifications not originally set forth in the petition. In light of such changes AFSCME moved that the hearing be adjourned for the purpose of permitting the Commission to make a redetermination of the showing of interest. Tne Commission during the hearing denied the motion and herein reaffirms said ruling. Tne voting group involved herein does not contain such a substantial departure from the unit requested by the Teamsters so as to warrant a redetermination of the showing of interest.

Timeliness of the Filing of the Petition

Both AFSCME and the City contend that the petition was not timely filed and therefore the Commission should dismiss same. In Wauwatosa Board of Education[3/] the Commission adopted the following policy with respect to the timely filing of representation petitions.

> "Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employes in an appropriate collective bargaining unit, the petition must be filed within the sixty (60) day period prior to the date reflected in the resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employes in the unit covered by said resolution or ordinance."

AFSCME is the certified bargaining representative of the employes involved herein. Such employes are presently in an overall unit consisting of employes of the Department of Public Works of the City. AFSCME and the City are parties to an existing collective bargaining agreement which by its terms became effective January 1, 1966, and is to continue until December 31, 1968. Said agreement contains among its provisionsthe following material herein:

> "PART I.
>
> . . .
>
> B. Conditions and duration of agreement. (1) This Agreement shall remain in full force and effect commencing on the 1st day of January, 1966, and terminating on the 31st day of December, 1966, except as provided below. In accordance with this provision and the intent of the parties and as provided for in paragraphs (2), (3) and (4) of Part I, Section B, the Labor Policy Committee of the Common Council prior to July 31, 1966 agrees to recommend the financial terms of this Agreement for 1967 to the Finance Committee of the Common Council, and prior to July 31, 1967 agrees to recommend the financial terms of this Agreement for 1968 to the Finance Committee of the Common Council.
>
> (2) If the Labor Policy Committee makes the aforementioned recommendation or if the Union fails to exercise the right to terminate this Agreement, which right as provided below results from the Labor Policy Committee's failing to make the aforesaid recommendation, and if the Common Council in its budget for 1967 adopts the financial terms of this Agreement for 1967, the parties agree that this shall constitute a readoption of all the terms of this Agreement from the 1st day of January, 1967 and terminating on the 31st day of December, 1967.

3/ Ibid.

(3) If the Labor Policy Committee makes the aforementioned recommendation or if the Union fails to exercise the right to terminate this Agreement, which right as provided below results from the Labor Policy Committee's failing to make the aforesaid recommendation, and if the Common Council in its budget for 1968 adopts the financial terms of this Agreement for 1968, the parties agree that this shall constitute a readoption of all the terms of this Agreement from the 1st day of January, 1968 and terminating on the 31st day of December, 1968.

(4) If and in the event the Labor Policy Committee of the Common Council fails to act as set forth above prior to July 31, 1966, or July 31, 1967, as the case may be, the Union may within ten (10) days terminate this Agreement.

(5) If and in the event the Common Council in its annual budget in November, 1966, and/or November, 1967, does not adopt the financial terms of this Agreement, the Union may within ten (10) days after passage of the budget terminate this Agreement.

. . .

(7) Any reference to or interpretation of Chapter 65 as it relates to the foregoing paragraphs shall not be subject to arbitration.

C. Negotiations. Either party to this Agreement may select for itself such negotiator or negotiators for purposes of carrying on conferences and negotiations under the provisions of Section 111.70, Wisconsin Statutes, as such party may determine. No consent from either party shall be required in order to name such negotiator or negotiators.

D. Timetable. Conferences and negotiations shall be carred on by the parties hereto in 1968 as follows:

Step 1.	Submission of Union demands to the City	by Feb. 1
Step 2.	Submission of City's answer (within 6 weeks)	by Mar. 15
Step 3.	Negotiations to begin (within 4 weeks)	by Apr. 15
Step 4.	Conclusion of negotiations (within 3 months)	by July 15
Step 5.	Mediation, if any, begins	by July 15
Step 6.	Fact Finding, if any, begins	by Aug. 1
Step 7.	Recommendations issued	by Oct. 15

> Adherence to such timetable shall be effectuated as to its chronological order, as closely as may be practical under the circumstances which attend at the time such conferences and negotiations are undertaken."

AFSCME and the City contend that under the policy adopted by the Commission in Wauwatosa Board of Education the petition herein was not timely filed since it was filed more than two months after the date on which AFSCME and the City, in accordance with their collective bargaining agreement, had commenced negotiations toward a succeeding agreement and that in order to be timely, said petition would have had to be filed during the 60 day period prior to February 1, 1968.

The record indicates that AFSCME and the City have proceeded in their negotiations in accordance with the negotiating timetable set forth in their collective bargaining agreement and up to the date of the hearing had met on five occasions with respect to AFSCME's demands for a 1969 agreement and the City's counter proposals thereto. The timetable reflected in the collective bargaining agreement was adopted as a result of a fact finding panel's recommendations issued in 1964. Both AFSCME and the City, because of the number of employes involved, the number of units represented by various labor organizations with which the City must bargain, the number of public hearings that must be held with respect to budgetary problems, and the budgetary deadline, contend that the negotiation timetable set forth in the collective bargaining agreement is not unreasonable but on the contrary necessary to maintain collective bargaining stability.

Teamsters contend that the collective bargaining agreement which contains the negotiating timetable is illegal since it constitutes a three year agreement contrary to Section 111.70(4)(i). Further, that the timetable set forth in the agreement, if the agreement is found valid, is excessive and thus deprives employes of their right to freely select a bargaining representative, in that it provides for the commencement of bargaining eleven months prior to the expiration of the agreement, and over eight months prior to the budgetary deadline of the City. Further, Teamsters argue that although the petition was filed approximately 75 days after the negotiations commenced and that five negotiation meetings were held, that said meetings were not substantial and that the first public hearing on AFSCME's proposals was not convened by the City until May 10, after the petition was filed.

A careful reading of the pertinent language in the agreement persuades the Commission that the labor agreement is not in fact a three year agreement but a one year agreement providing for the readoption thereof at the end of the year, at least through December 31, 1968, and therefore we conclude that it is not invalid within the meaning of Section 111.70(4)(i).

In this regard it is to be noted that the pertinent language contemplates the possibility that agreements could not have been reached for the readoption of the agreement for the years 1967 and 1968 and that AFSCME could have terminated same on ten days notice prior to July 31, 1966, or July 31, 1967, in the event the Labor Policy Committee of the City failed to act as set forth therein, or within ten days following the failure of the Common Council to adopt the annual budget in November 1966 and 1967. This conditional right to prevent the readoption of the collective bargaining agreement if no agreement was reacned on the financial terms thereof for 1967 and 1968, implied that the parties would return to the negotiating table and continue their negotiations, and thus depart from the bargaining schedule reflected in the agreement. We are aware that the negotiation timetable set forth in the agreement was recommended by the eminent fact finding panel in order to promote stability of collective bargaining between employe representatives and the City. However, when making such a recommendation, it is doubtful that the fact finding panel contemplated the effect of such an extended period of negotiation upon the rights of employes to change or reject their collective bargaining representative. We must weigh the rights of the employes to select or reject a bargaining representative and the matter of stability of an existing collective bargaining relationship. The record indicates that the proposal submitted by AFSCME with respect to conditions of employment for employes, including those covered by the petition, for the year 1969 includes a proposal that the agreement be limited to one year. If AFSCME and the City were to enter into a one year agreement containing the same negotiating timetable, in February 1969, AFSCME normally would submit proposals for the year 1970. If we were to dismiss the petition as being untimely filed, it is probable that the Teamsters would refile a new petition in December 1968 or January 1969, and if the City and AFSCME had reached an agreement on the terms of the 1969 contract and if in an election conducted as a result of the petition filed by the Teamsters in December 1968 or January 1969 the Teamsters were successful in being selected as

the bargaining representative, the Teamsters would, in accordance with our policy expressed in City of Green Bay,[4] administer the collective bargaining agreement, for at least 11 months of its duration, which had not been negotiated by it. The administration of a collective bargaining agreement for such a substantial period of its term by an organization which did not negotiate same does not create or maintain the type of stability desirable in the collective bargaining relationship.

Although the eleven month timetable for negotiations may be reasonable as it generally applies to the collective bargaining relationship presently existing involving the City and the Unions which represent its employes, we are of the opinion that where a good faith question of representation exists, initiated by a sufficient showing of interest, this extended period of negotiations should not bar the present petitions. The petition herein was filed more than eight months prior to the expiration date of the current agreement, and following the determination of the question of representation raised thereby, in our opinion, after the employes select their bargaining representative, sufficient time remains for meaningful bargaining prior to the budgetary deadline.

In retrospect, the policy as expressed by the Commission in Wauwatosa Board of Education with respect to the time for filing petitions, is too general and we, therefore, modify it as follows: Where there presently exists a collective bargaining agreement, resolution or ordinance covering the wages, hours and conditions of employment of employes in an appropriate collective bargaining unit, a petition requesting an election among said employes must be filed within the 60-day period prior to the date reflected in said agreement, resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employes in the unit covered thereby unless the period of negotiations as set forth therein extends beyond six months prior to the budgetary dealine date of the municipal employer involved. In the latter event, petitions for elections will be entertained by the Commission if they are filed in good faith within sixty days prior to such six-month period.

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[4] Dec. No. 6558, 11/63.

The Appropriateness of the Claimed Unit

Teamsters request the Commission to conduct a representation election in the claimed appropriate collective bargaining unit consisting of "all truck drivers in the Bureau of Municipal Equipment, including tractor operators and equipment operators, but excluding office clerical employes, guards, supervisors and all other employes of the City of Milwaukee".

> Whenever a petition for an election is filed with the Board, and wherein the petitioner requests an election among certain employes not constituting all of the employes of the employer, the Board has no power, except if the employes constitute a single craft, to determine what constitutes an appropriate bargaining unit. It does determine whether the group of employes set out as being an appropriate bargaining unit does in fact constitute a separate craft, division, department or plant. The employes involved, if they do constitute a separate division, department, or plant, are given the opportunity to determine for themselves whether they desire to constitute a separate collective bargaining unit.[5/]

The employe classifications desired to be included in the unit are employed in the Operations Division of the Bureau of Municipal Equipment which is a separate Bureau of the Department of Public Works. The latter department consists of 8 additional Bureaus, the Water Department, and the General Office of the Department of Public Works. The issue with respect to the establishment of the appropriate collective bargaining unit therefore rests on the determination as to whether the classifications set forth in the petition constitutes a separate department or division of the City.

In the original elections conducted among employes of the City in 1963, which resulted in the selection of AFSCME as the exclusive collective bargaining representative of the employes of the Department of Public Works, a unit determination vote was conducted among "all regular employes having the classification of Special Equipment Operator and Truck Driver employed in the Equipment Operations of the Bureau of Municipal Equipment . . . excluding all other employes, confidential employes, supervisors and executives". This unit vote was initiated by a petition . . .

5/ Dodge County Hospital (6067) 7/62; City of Appleton (8431-A) 5/68.

filed by another local of the Teamsters. The employes in said voting group did not vote in favor of establishing themselves as a separate collective bargaining unit. Teamsters herein seek a unit identical to the voting group involved in the previous proceeding. However, the record discloses that since that time the Bureau of Municipal Equipment has been reorganized and where originally there were at least four separate divisions in the Bureau there are now only two, namely, the Maintenance Division and the Operations Division.

The Operations Division consists of the Dispatchers Office, Field Service, Equipment Operations, and Storage and Minor Maintenance Garages. All employes in the Operations Division have common supervision with the primary supervision resting in the Equipment Operator Supervisor III. Secondary supervision consists of the Equipment Operator Supervisor II, and immediate supervision lies with three Equipment Operator I positions, the incumbents of the latter positions each working different shifts. We are satisfied that the employe classifications sought by the Teamsters in a separate unit does not consist of a separate division or department of the City, but that the division in which they are employed, the Operations Division, is the appropriate voting group for the purpose of providing employes therein a self-determination with respect to the establishment of an appropriate collective bargaining unit. Therefore, the appropriate voting group consists of "all employes of the Operations Division of the Bureau of Municipal Equipment of the City of Milwaukee, excluding craft employes, supervisors, confidential employes and all other employes of the City of Milwaukee".

The specific employe classifications which are included in the voting group are as follows:

Clerk Dispatcher	Special Equipment Operator
Clerk II (Field)	Truck Driver (3½ Tons and over)
City Laborer (Regular)	Truck Driver (under 3½ Tons)
Driver Training Instructor	Special Municipal Equipment Laborer
Field Serviceman	Automotive Mechanic Helper
Special Municipal Equipment Laborer/CL (Reg.)	City Laborer (Regular/Seasonal)

Eligibles

An issue arose with respect to the eligibility of individuals who are not employed as full time employes in the classifications

included in the voting group. These positions are auxiliary positions in the classifications of Special Equipment Operator, Truck Driver ($3\frac{1}{2}$ tons and over), Truck Driver (under $3\frac{1}{2}$ tons) and City Laborer (Regular/Seasonal). These auxiliary positions are filled by employes employed in the Bureau of Municipal Equipment in other classifications in a bargaining unit not involved in this proceeding, or in same or different classifications, but employed in bureaus or departments other than Municipal Equipment. We conclude that those employes not primarily in the voting group involved herein are not to be included among the eligibles to determine where a separate bargaining unit is to be established for the employes in the Operations Division. An employe to be considered as being primarily employed in the eligible classifications included in the voting group must have been employed in the voting group at least 50% of his time from the first payroll period in July, 1967 to the first payroll period in July, 1968, and further that said employe must be in the employ of the City as of the date of this Direction.

The Elections Procedure

In order to establish the separate unit of employes in the Operations Division, Section 111.02(6) requires that a majority of those employes eligible vote in favor of establishing the separate unit while pursuant to Section 111.05(1) the bargaining representative may be selected "by a majority of the employes voting". Although the voting on the two questions will be conducted simultaneously, the ballots with respect to unit determination will be counted first. If the required number of employes do not vote in favor of the separate bargaining unit, the representation ballots shall be impounded. If it is clear from the tally of the ballots on the unit question that the required number of employes voted in favor of the separate bargaining unit, the ballots with respect to representation will then be tallied.

Dated at Madison, Wisconsin, this 23rd day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
William R. Wilberg, Commissioner

I concur in part and
I dissent in part.

_____
Zel S. Rice II, Commissioner

MEMORANDUM OF PARTIAL DISSENT

I dissent with the determination of my colleagues to direct an election at this time. I would apply, without exception, the policy expressed by the Commission in Wauwatosa Board of Education and would conclude that the Teamsters did not timely file its petition.

In the Wauwatosa case the Commission stated that the reason for the adoption of time limitations ". . . is to promote stability in the collective bargaining relationship, and in municipal employment to insure the parties a reasonable period of time to engage in bargaining and to negotiate an agreement prior to the established budgetary deadlines . . ." In the 1964 fact finding recommendations involving the City of Milwaukee the fact finders considered the length of time necessary to insure the parties a reasonable period of time to engage in bargaining and to negotiate an agreement and it recommended that those negotiations begin on February 1. They considered such a period of bargaining to be reasonable and necessary and AFSCME and the Employer apparently agreed because they incorporated the timetable into their agreement. I am not prepared to say that the fact finders, who are recognized experts in the field of labor relations, did not contemplate the effect of such a period of negotiation upon the rights of employes to change or reject their collective bargaining representative. Regardless of their considerations, when I weigh the rights of the employes to select or reject a bargaining representative after one has been certified against the goals of (a) stability in an existing collective bargaining unit, and (b) a bargaining period sufficient to negotiate an agreement, I feel that greater consideration should be given to the stability of the bargaining relationship and a sufficient period of time for bargaining. I am not disturbed by the fact pointed out by my colleagues that strict adherence to the Wauwatosa rule might result in the Teamsters administering a collective bargaining agreement which had not been negotiated by it for at least 11 months.

Since the majority of the Commission has determined to direct the election, I agree with their conclusions concerning the voting group and concerning those employes eligible to vote in said voting group.

Dated at Madison, Wisconsin, this 23rd day of July, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Zel S. Rice II, Commissioner