

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
	:	Case XIV
LOCAL 1561, DISTRICT COUNCIL #48,	:	No. 12857 ME-455
AFSCME, AFL-CIO	:	Decision No. 9234
	:	
Involving Certain Employes of	:	
	:	
WAUWATOSA BOARD OF EDUCATION	:	
Wauwatosa, Wisconsin	:	
-----	:	

Appearances:

Mr. Willis B. Ferebee, Attorney, for the Municipal Employer.
Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Petitioner.

DIRECTION OF ELECTIONS

Petition having been filed by Local 1561, District Council #48, AFSCME, AFL-CIO, with the Wisconsin Employment Relations Commission requesting that an election to determine bargaining representatives be conducted, pursuant to Section 111.70 of the Wisconsin Statutes, among all regularly employed part-time cafeteria employes in the employ of the Wauwatosa Board of Education; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, on June 4, 1969, and Allan J. Harrison, Hearing Officer, being present; and the Commission having considered the evidence and the arguments of Counsel and being satisfied that a question has arisen concerning representation for certain employes of Wauwatosa Board of Education;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Direction in the following voting groups for the following stated purposes:

VOTING GROUP NO. 1

All regular full-time and regular part-time cafeteria employes in the employ of the Wauwatosa Board of Education, but excluding all craft employes, office clericals, supervisors, professional employes, and all other employes, who were employed on September 23, 1969, except such employes as may prior to the election 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 a collective bargaining unit separate and apart from all other employes of said Municipal Employer, and (2) whether a majority of such employes voting desire to be represented by Local 1561, District Council #48, AFSCME, AFL-CIO for the purpose of collective bargaining with said Municipal Employer on questions of wages, hours and conditions of employment.

VOTING GROUP NO. 2


All regular full-time and regular part-time custodial and maintenance employes, including the stock clerk, in the employ of the Wauwatosa Board of Education, but excluding all craft employes, office clericals, supervisors, professional employes, and all other employes, who were employed on September 23, 1969, 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 a collective bargaining unit separate and apart from all other employes of said Municipal Employer, and (2) whether a majority of such employes voting desire to be represented by Local 1561, District Council #48, AFSCME, AFL-CIO for the purpose of collective bargaining with said Municipal Employer on questions of wages, hours and conditions of employment.

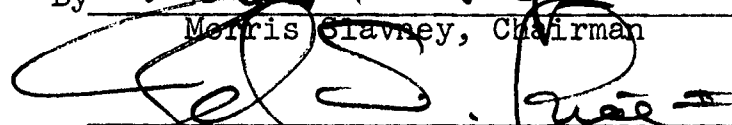
IT IS FURTHER DIRECTED that should the required number of employes in either, or both, of said voting groups vote in favor of establishing a separate unit or units, then the ballots cast in said voting groups with respect to the selection of the bargaining representative shall be tallied separately in each voting group; that however, should the required number of employes in both voting groups fail to establish separate bargaining units, then the bargaining unit shall consist of all regular full-time and regular part-time cafeteria employes and all regular full-time and regular part-time custodial and maintenance employes, including the stock clerk, but excluding all craft employes, office clericals, supervisors, professional employes and all other employes, employed by the Wauwatosa Board of Education, and therefore, the ballots cast by the employes in both voting groups, with respect to the bargaining representative, shall be tallied together.

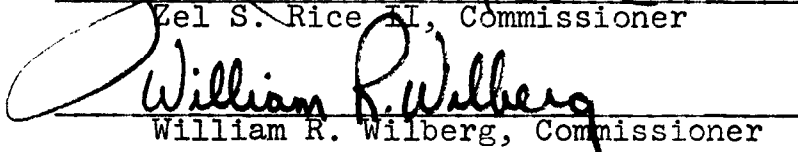
Given under our hands and seal at the
City of Madison, Wisconsin, this 23rd
day of September, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Clavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

Local 1561, District Council #48, AFSCME, AFL-CIO, hereinafter referred to as the Union, filed a petition with the Wisconsin Employment Relations Commission requesting that an election, pursuant to Section 111.70, Wisconsin Statutes, be conducted among "All full-time and part-time cafeteria employees who are employed by the Wauwatosa Board of Education, excluding confidential and supervisory employees." Subsequently, in the course of the hearing, the Union amended the description of the bargaining unit to be

"All part-time cafeteria employees who are employed by the Wauwatosa Board of Education, excluding confidential and supervisory employees."

The Union further requested that said employees be permitted to choose whether they wish to be included in the existing unit, consisting of custodial, maintenance and full-time cafeteria employees, or whether they wish to be a separate unit.

The Wauwatosa Board of Education, hereinafter referred to as the Municipal Employer, at the hearing requested that the petition be dismissed since no objective consideration was shown indicating that a question of representation exists on behalf of the employees in question.

The Municipal Employer further contended that all the cafeteria employees constitute one departmental unit and the maintenance and custodial employees, another. Thus any vote conducted should provide the employees in each of these departments with a choice as to whether they wish to be represented in a combined unit or as separate units.

The Union premised its request for a separate self-determination vote among part-time cafeteria employees on the contention that this group of employees is a "residual unit." Drawing upon experience under the National Labor Relations Act, the Union asserts that the Commission should direct an election among these employees to ascertain, first, whether they wish to be in the over-all unit or in a

separate unit and, second, whether they desire the Union to represent them.

The Municipal Employer argues that the "residual unit" concept is inapplicable since the Wisconsin Employment Peace Act and Section 111.70 of the Wisconsin Statutes restrict the Commission's determination of an appropriate bargaining unit to units of all employees of the employer or separate units based on craft, plant, division or department.

The Commission rejects the Union's contention that the part-time cafeteria employees are a residual group of employees, since office clerical employees also remain outside the presently constituted bargaining unit. Residual groups include all the employees who lack representation, and the part-time cafeteria employees are clearly not along in this case.

More importantly, however, even if the part-time employees in question were considered a fringe group rather than residual, they cannot constitute a unit under Section 111.70 since they are neither craft nor professional employees, nor do they constitute a separate department, division or plant. Although there is a difference between their fringe benefits and the fringe benefits of full-time employees, their community of interest with the other cafeteria employees is beyond serious dispute, since they share common working conditions and supervision and are fully integrated into the operations of the cafeterias.

If, at the time the present unit were established, and either of the parties had presented the question of unit placement of these part-time cafeteria employees, we would have included them in the unit. Their exclusion derives from historical accident rather than from any real difference in functions or status, and consequently it creates a fringe defect in the historical unit. The Union's request for an election among the part-time cafeteria employees has, therefore, raised a question of representation in the existing unit.

Since the Municipal Employer has requested that the cafeteria employees and the custodial maintenance employees separately be given the opportunity to determine whether they desire to establish separate bargaining units, it is necessary to determine whether cafeteria employees and custodial employees are employed in two separate departments.

The Commission concludes that the two groups of employes are employed in separate departments. Both departments have separate supervision and work functions. With the exception of an employe in the custodial and maintenance department who delivers food among the cafeterias, there is no significant integration of the operations of these two departments. In view of the above, the Commission will direct an election among the employes of these departments to determine whether they wish to constitute themselves as separate departmental bargaining units.


During the hearing the Municipal Employer moved that the petition be dismissed for the reason that the Union did not provide any showing of interest in support of its position. We deem that the Union's present representative status in the existing unit constitutes sufficient interest for the initiation of the instant proceeding. Since the proceeding was initiated by the Union we are not requiring the Municipal Employer, in support of its request for unit votes to establish, by objective considerations, reasonable cause to believe that the employes in the custodial and maintenance department desire to constitute themselves a separate collective bargaining unit. Should the employes in both of the voting groups determine to establish themselves as separate units then they shall be so considered. Furthermore, since the parties have apparently agreed to exclude all other employes from unit considerations, should the employes in one of the voting groups determine to establish themselves as separate then it will automatically result in a separate unit for the employes in the other voting group, regardless if their votes oppose same, since the employes in the latter voting group cannot be combined with the employes in the voting group who have voted for a separate unit.

We are also directing a representation election in each of said voting groups. Should the employes in both voting groups reject separate units, then the unit will consist of all regular full-time and regular part-time cafeteria employes and regular full-time and regular part-time custodial and maintenance employes, excluding all craft, office clerical, supervisors, professionals and all other employes, and the ballots in both voting groups with respect to representation shall be tallied together.

Dated at Madison, Wisconsin, this 23rd day of September, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


William R. Wilberg, Commissioner