

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF MILWAUKEE : Case C
Involving Certain Employees of : No. 14267 ME-607
CITY OF MILWAUKEE : Decision No. 10063-C

Appearances:

Mr. John J. Fleming, City Attorney, by Mr. Nicholas M. Sigel,
Principal Assistant to the City Attorney, for the Petitioner.
Gratz, Shneidman & Gollin, Attorneys at Law, by Mr. Robert E.
Gratz, for District Council 48 and its appropriate Local
No. 33, AFSCME, AFL-CIO.
Mr. Frederick P. Mett, Attorney at Law, for Teamsters Local No.
242, IBT.
Mr. Milton S. Padway, Attorney at Law, for Public Employees Union
#61, Laborers International Union of North America, AFL-CIO.

DIRECTION OF ELECTION

The City of Milwaukee having, on December 4, 1970, filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted, pursuant to Section 111.70, among certain employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee; and, pursuant to notice, hearing on such petition having been conducted at Milwaukee, Wisconsin, on January 6, 7 and 8, 1971, the full Commission being present, and during the course of the hearing District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO; Teamsters Local No. 242, IBT; and Public Employees Union #61, Laborers International Union of North America, AFL-CIO; having each moved to intervene in the proceeding on the basis that each of said labor organizations claimed to represent employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee; and at the outset of the hearing, upon being satisfied that such labor organizations did have a proper interest in the matter, the Commission having granted said motions to intervene; and prior to the close of the hearing Teamsters Local No. 242, IBT and Public Employees Union #61, Laborers International Union of North America, AFL-CIO, having advised the Commission that, should the Commission direct an election in the instant proceeding, that said organizations would merge into a labor organization known as Public Employees Joint Council, Teamsters Local No. 242, IBT, and Laborers Union, Local 61, AFL-CIO, CLC, and desired to be placed on the election ballot as such merged labor organization, and further that District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, also desired to be placed on the election ballot; and the Commission, having reviewed the evidence and the arguments of Counsel, and being satisfied that a question of representation has arisen involving employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee;

NOW, THEREFORE, it is

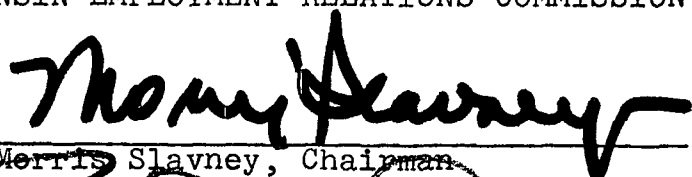
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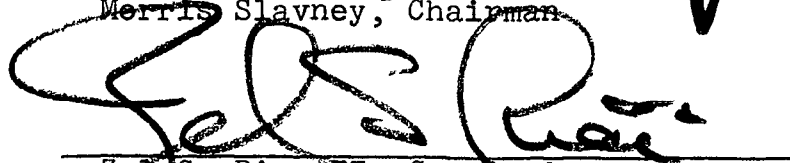
That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive among all employees employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee who were employed on January 8, 1971 (including those employees who are in transfer or layoff status or on leave of absence, as of December 30, 1970), excluding supervisors and confidential employees, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Public Employees Joint Council, Teamsters Local No. 242; IBT and Laborers Union, Local 61, AFL-CIO, CLC, or by District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, or by neither of said labor organizations, for the purposes of conferences and negotiations with the Municipal Employer on questions of wages, hours and conditions of employment.

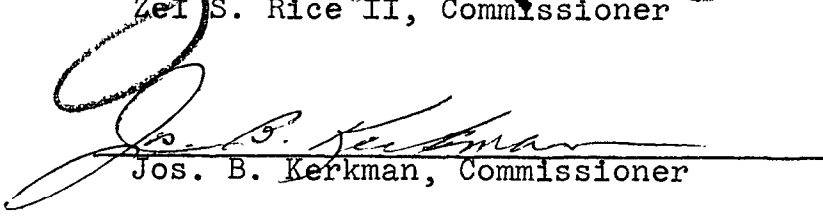
Given under our hands and seal at the
City of Madison, Wisconsin, this 14th
day of January, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On December 4, 1970, the City of Milwaukee, hereinafter referred to as the City, filed a petition with the Commission requesting that a representation election be conducted among otherwise eligible employees in a newly established Bureau in the Department of Public Works of the City of Milwaukee, namely, the Bureau of Sanitation. In its petition the City alleged that, as a result of entering into a contract with a private employer for rubbish and garbage removal in the City, the City, as of January 4, 1971, would consolidate its existing operation for garbage and trash collection, previously performed by certain employees in the Bureau of Garbage Collection and Disposal, and by certain employees employed in the Bureau of Street Sanitation, both bureaus being a part of the Department of Public Works of the City. The City further alleged that also being transferred to the new bureau were Truck Drivers who were, prior to the establishment of the Bureau of Sanitation, employed in the Bureau of Municipal Equipment.

The evidence disclosed that on December 12, 1967, the Common Council of the City adopted a resolution relative to the organizational plan for the future Bureau of Sanitation in the Department of Public Works, and, thereafter, on December 21, 1970, adopted a resolution amending that resolution adopted December 12, 1967, and that the resolution adopted on December 21, 1970, set forth an organizational plan for the Bureau of Sanitation and that such plan would become fully operational on January 4, 1971, or as soon as possible thereafter, to expedite the implementation of the single collection of refuse, which operation was previously performed by certain employees in both the Bureau of Garbage Collection and Disposal and certain employees in the Bureau of Street Sanitation. 1/ Also, on December 21, 1970, the following Ordinance was adopted by the City: 2/

"AN ORDINANCE

To further amend an ordinance entitled 'An ordinance determining the offices and positions in the various departments, bureaus, boards and commissions in the City Service, under control of the Common Council,' passed November 20, 1970.

1/ Resolution No. CC 64-1535 yy.

2/ File Number 70-1632-b.

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Section 1. Section 1, as amended, of an ordinance, the title of which is recited in the title of this ordinance, is hereby further amended as follows:

Under 'Department of Public Works,' eliminate the captions 'Bureau of Garbage Collection and Disposal' and 'Bureau of Street Sanitation,' together with all division captions, subcaptions, positions, and footnotes listed thereunder; add the caption 'Bureau of Sanitation' together with one position of 'Superintendent of Sanitation Services,' one position of 'Assistant Superintendent of Sanitation Services,' three positions of 'Sanitation Supervisor IV,' two positions of 'Management Administrative Assistant II,' two positions of 'Account Clerk II,' one position of 'Stores Clerk II,' two positions of 'Account Clerk I,' three positions of 'Clerk III,' two positions of 'Clerk Stenographer II,' one position of 'Clerk Typist II,' nine positions of 'Sanitation Supervisor III,' twenty-seven positions of 'Sanitation Supervisor II,' nine positions of 'Sanitation Supervisor I,' nine positions of 'Field Headquarters Clerk,' nine positions of 'Labor Foreman I (Auxiliary, Snow Emergency),' 128 positions of 'Truck Driver (Over 3 1/2 Ton),' 36 positions of 'Truck Driver (Under 3 1/2 Ton),' 519 positions of 'Sanitation Worker,' 128 positions of 'Sanitation Worker (Auxiliary),' and 3,300 positions of 'Emergency City Laborer (Auxiliary),' and the subcaption 'Temporary Positions (to expire no later than April 30, 1971)' together with one position of 'Special Assistant to the Superintendent of Sanitation Services,' one position of 'Clerk IV,' three positions of 'Scaleman,' seven positions 'Sanitation Supervisor II,' nine positions of 'Sanitation Supervisor I,' one position of 'Labor Foreman II,' one position of 'Labor Foreman I,' 64 positions of 'Truck Driver (Over 3 1/2 Ton)' and 310 positions of 'Sanitation Worker.'

Under 'DPW, General Office, Administrative Division,' after the title 'Engineer-in-Charge, Coordination,' add one position of 'Sanitation Engineer;' and under 'Bureau of Municipal Equipment, Service Division, Equipment Operation,' eliminate 192 positions of 'Truck Driver (Over 3 1/2 Ton)' and 36 positions of 'Truck Driver (Under 3 1/2 Ton).'

Section 2. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in force during and after Pay Period 1, 1971."

Also, on December 21 the City adopted a pay rate ordinance for the positions to be employed in the Bureau of Sanitation. 3/

3/ File Number 70-1631-b.

Prior to the filing of the petition initiating this proceeding, various labor organizations, following elections conducted by the Wisconsin Employment Relations Commission, were, on various dates, certified as the bargaining representative for various employees employed in various bureaus in the Department of Public Works, for the purposes of collective bargaining with the City on wages, hours and conditions of employment covering the employees involved. Prior to the elimination of the Bureau of Garbage Collection and Disposal and the Bureau of Street Sanitation there existed in the Department of Public Works its General Office, the City Engineer, a Water Department, all separate departments of the Department of Public Works, as well as the following separate bureaus: Bridges and Public Buildings, Forestry, Garbage Collection and Disposal, Municipal Equipment, Street Sanitation, Street and Sewer Maintenance, and Traffic Engineering and Electrical Services.

As a result of previous elections and certifications by the Commission, certain employees employed in the various divisions and bureaus of the Department of Public Works are presently represented for the purposes of collective bargaining. District Council 48 (and its affiliated locals), AFSCME, AFL-CIO, hereinafter referred to as District Council 48, represents all the non-supervisory, non-confidential, non-professional and non-craft employees 4/ in one bargaining unit throughout the Department of Public Works, 5/ with the following exceptions:

The employees employed in the Natatoria of the Building Operations and Maintenance Division of the Bureau of Bridges and Public Buildings have chosen no collective bargaining representative. 6/

The employees in the Bridge Operation Section and the Boat Operator employed in the Bridge Maintenance Section, both in the Division of Bridges and Viaducts of the Bureau of Bridges and Public Buildings are represented by Local 195, International Brotherhood of Electrical Workers, AFL-CIO. 7/

Scalemen employed in the General Office, Plant Tipping Floor Attendants employed in the Collection Division and employees employed in the Disposal Division of the Bureau of Garbage Collection and Disposal are represented by Local 125-B, International Brotherhood of Firemen and Oilers, AFL-CIO. 8/ In addition, Public Employees Union #61, Laborers International Union of North America, AFL-CIO, was certified as the collective bargaining representative of Garbage Collection Laborers, subsequently classified as Truck Loaders (Combustible), employed in the Collection Division of the Bureau of Garbage Collection and Disposal. 9/

4/ Section 111.70 requires that professional and craft employees be included in separate bargaining units of the same profession or craft.

5/ Decision No. 6215-J.

6/ Decision No. 9560, 4/70.

7/ Decision No. 6215-C, 4/63.

8/ Decision No. 6215, 4/63.

9/ Decision No. 7310, 11/65.

In the Bureau of Municipal Equipment, Municipal Truck Drivers Local No. 242, IBT, represents non-supervisory, confidential and craft employees in the Operation Division; and included among those employees are a substantial number of Truck Driver (Over 3 1/2 Ton) and Truck Driver (Under 3 1/2 Ton) positions. 10/ In addition, certain craft employees operating heavy equipment employed in the Service Division of the Bureau of Municipal Equipment are jointly represented by District Council 48 and Local 139, International Union of Operating Engineers, AFL-CIO. 11/ Further, Local 494, International Brotherhood of Electrical Workers represents employees employed in the Shop Operations Division in the Bureau of Traffic Engineering and Electrical Services. 12/

During the course of the hearing District Council 48 urged the Commission to conduct a representation election in a unit consisting of all the employees of the Department of Public Works, except in those divisions of the various bureaus in the Department of Public Works, where there presently exists certified bargaining representatives other than District Council 48. In other words, District Council 48 seeks a somewhat fragmented unit among certain employees employed in various bureaus of the Department of Public Works to the exclusion of other employees in certain divisions of various bureaus thereof.

Initially, Laborers Union #61, AFL-CIO, CLC, contended that the establishment of the Bureau of Sanitation had not been accomplished to such a degree that an election was now warranted, and therefore that it should continue to be recognized as the representative of those employees previously represented by it in the Garbage Collection Division in the Bureau of Garbage Collection and Disposal, consisting of Truck Loader (Combustible) positions, which positions have now been transferred to the Bureau of Sanitation and which positions are now classified as Sanitation Workers.

Teamsters Local No. 242, IBT, took a similar position with regard to those Truck Drivers who were removed from the jurisdiction of the Service Division of the Bureau of Municipal Equipment and transferred to the Bureau of Sanitation. However, prior to the close of the hearing and after Teamsters Local No. 242, IBT, and Laborers Union Local 61, AFL-CIO, CLC, determined to join hands for the purposes of this election, said labor organizations indicated that they were in the process of combining and would be identified as Public Employees Joint Council, Teamsters Local No. 242, IBT, and Laborers Union, Local 61, AFL-CIO, CLC. Said Joint Council then agreed with the City's position that the unit appropriate for the election should consist of all the otherwise eligible employees employed in the Bureau of Sanitation.

The Commission concludes that the unit proposed by District Council 48 is not an appropriate bargaining unit since it would exclude employees in certain divisions of various bureaus of the Department of Public Works. District Council 48 presently represents

10/ Decision No. 9606, 6/70.

11/ Decision No. 7432, 3/66.

12/ Decision No. 6215, 4/63.

employees in a majority of the divisions in the various bureaus in the Department of Public Works. The more appropriate possible unit would have been all of the employees of the Department of Public Works, excluding supervisors and confidential employees, as well as professional and craft employees. However, this was not the position of District Council 48.

The evidence discloses that the Bureau of Sanitation has been established as a separate bureau in the Department of Public Works, and that the Bureau of Garbage Collection and Disposal and also the Bureau of Street Sanitation have been eliminated as a result of the creation of the Bureau of Sanitation. Various positions formerly assigned to the Bureau of Garbage Collection and Disposal and the Bureau of Street Sanitation have been transferred to the new bureau, with certain changes in job titles. In addition, a substantial number of Truck Driver positions have been transferred from the Bureau of Municipal Equipment to the Bureau of Sanitation. The function of the new bureau combines the functions previously performed by employees in the Bureau of Garbage Collection and Disposal and the Bureau of Street Sanitation where there were previously separate collections of garbage and trash which are now combined in single collections. Prior to the establishment of the new bureau the Truck Drivers, who were driving trucks wherein garbage and trash were deposited and hauled, were employed in the Bureau of Municipal Equipment and under the supervision of supervisors in that bureau. Now, the Truck Drivers have been transferred from the Bureau of Municipal Equipment to the Bureau of Sanitation and are under the supervision of supervisors in the latter bureau. Thus, we are satisfied that the Bureau of Sanitation constitutes a separate division or department within the meaning of Sections 111.02(6), 111.05 and 111.70(4)(d) of the Wisconsin Statutes, and since it is a division or a department which is a residual division or department, separate and apart from other divisions, departments, and bureaus of the Department of Public Works, where the employees therein have either selected a bargaining representative or rejected collective bargaining, the Bureau of Sanitation constitutes an appropriate unit, and, therefore, all employees therein, excluding supervisors and confidential employees, are entitled to determine their choice as to their collective bargaining representative, if any. The eligible employees in the unit are given the choice whether they desire to be represented by Public Employees Joint Council, Teamsters Local No. 242, IBT and Laborers Union, Local 61, AFL-CIO, CLC, or by District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, or by neither of said labor organizations. If the employees select Public Employees Joint Council, Teamsters Local No. 242, IBT and Laborers Union, Local 61, AFL-CIO, CLC, as their bargaining representative, the certified representative will be the Joint Council and the Employer will not be required to bargain, as contemplated in Section 111.70, Wisconsin Statutes, separately with the two labor organizations constituting Public Employees Joint Council for any separate classifications included in the appropriate collective bargaining unit. If the employees select District Council 48 and its appropriate Local No. 33, AFSCME, AFL-CIO, as their bargaining representative, the Employer will not be required to bargain, as contemplated in Section 111.70, Wisconsin Statutes, separately with District Council 48 or with its Local No. 33. During the course of the hearing all parties agreed that employees who were

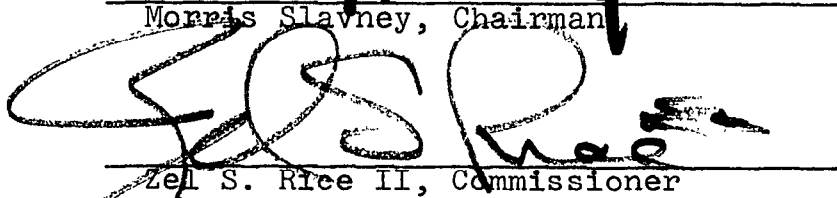
employed on January 8, 1971, including those employees who are in transfer or layoff status or on leave of absence as of December 30, 1970, would also be eligible to vote.

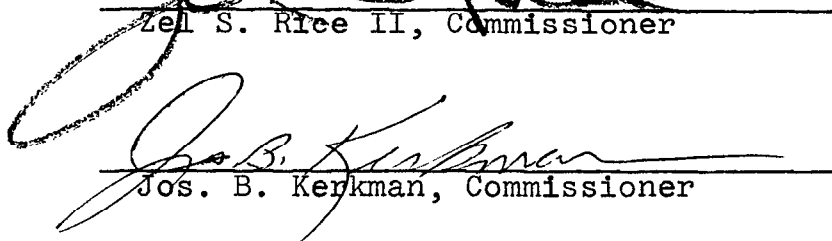
Dated at Madison, Wisconsin, this 14th day of January, 1971.

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By


Morris Slavney, Chairman


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