

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
WISCONSIN COUNCIL OF COUNTY AND :
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO :
Involving Certain Employes of : Case VIII
MEMORIAL HOSPITAL AND NURSING HOME : No. 14076 ME-587
(CITY OF MENOMONIE AND DUNN COUNTY) : Decision No. 10094

Appearances:

Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law,
by Mr. James C. Mallien, appearing on behalf of the Municipal
Employer.
Mr. Guido Cecchini, Business Representative, appearing on behalf
of the Petitioner.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70, Wisconsin Statutes, among certain employes of the Memorial Hospital and Nursing Home, Menomonie, Wisconsin; and a hearing on such petition having been conducted on October 16, 1970 at Menomonie, Wisconsin, by George R. Fleischli, Hearing Officer; and the parties having agreed to the unit appropriate for collective bargaining and to the employes eligible to vote within said unit; and the Commission having considered the evidence and arguments of the parties and being satisfied that a question has arisen concerning representation for certain employes of the above named Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this directive in the bargaining unit consisting of all employes employed by Memorial Hospital and Nursing Home, excluding supervisors, confidentials, clericals and registered nurses, who were employed by Memorial Hospital and Nursing Home on January 12, 1971, 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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO,
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 12th
day of January, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavhey, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

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MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

The Employer raised no objection to the appropriateness of the bargaining unit claimed by the Petitioner to be appropriate and no objection was raised by the Petitioner concerning the eligibility of any employe included on the list of employes, which was provided by the Employer subsequent to the hearing. However, the Employer contended that the Commission lacks jurisdiction to conduct an election under Section 111.70, claiming that it is not a Municipal Employer within the meaning of Section 111.70(1)(a). 1/ The Employer argues that the Commission's jurisdiction to conduct an election is pursuant to the Wisconsin Employment Peace Act, and stated that it had no objection if the Commission directed an election under the provisions of the Wisconsin Employment Peace Act pursuant to the instant petition, which it contends was filed erroneously under Section 111.70. The Employer relies on the case of Milwaukee County War Memorial Center, Inc., (6325) 4/63, wherein the Commission held that a nonprofit private corporation, without capital stock, which was organized under Wisconsin law and eligible to receive financial support from Milwaukee County to carry out a public purpose under Section 45.058 was not a political subdivision of the state. 2/

The Employer is an unincorporated entity created by a joint ordinance of the City of Menomonie and Dunn County pursuant to Section 66.47 of the Municipal Law of Wisconsin. It owes its existence to a grant of power from the City of Menomonie and Dunn County, which they ultimately derive from the sovereign power of the State. All members of the Board of Directors are appointed by the City and the County, either individually or jointly, and it has no private members or stockholders. It is totally dependent on the City and County's power to borrow money and otherwise raise revenue for capital expenditures, and may call upon the City and County to appropriate tax

1/ "111.70(1)(a) 'Municipal Employer' means any city, county, village, town, metropolitan sewerage district, school district or any other political subdivision of the state."

2/ The Milwaukee County War Memorial Center, Inc., is a private corporation and was not created by a delegation of the sovereign power of the state. Therefore its status is clearly distinguishable from the Employer herein which is a creature of municipal law.

revenues to cover anticipated operating expenditures in excess of anticipated receipts. The only question that is somewhat in doubt is whether the Employer is a political subdivision in itself or an agent of the City and County.

An enumeration of political subdivisions may be found in Section 22.20(2)(e) of the Wisconsin Statutes:

"22.20(2)(e) 'Political subdivision' includes counties towns, municipalities, special districts, authorities and other public corporations and entities whether organized and existing under charter or general law."

The Memorial Hospital and Nursing Home is a public entity with broad powers which was created under a grant of sovereign power from the State of Wisconsin and therefore appears to be a political subdivision rather than a mere agent of the two political subdivisions which brought it into existence. 3/ Even if the Memorial Hospital and Nursing Home

3/ This conclusion is supported by the express provisions of Section 66.47 which state in part:

. . .

"(8) POWERS OF BOARD. The board shall have power subject to provisions of the ordinance.

(a) To contract for the construction or other acquisition, equipment or furnishing of a general county-city hospital.

(b) To contract for the construction or other acquisition of additions or improvements to, or alterations in, such hospital and the equipment or furnishing of any such addition.

(c) To employ a manager of the hospital and other necessary personnel and fix their compensation.

(d) To enact, amend and repeal rules and regulations, not inconsistent with law, for the admission to, and government of patients at, the hospital, for the regulation of the board's meetings and deliberations, and for the government, operation and maintenance of the hospital and the employes thereof.

(e) To contract for and purchase all fuel, food, equipment, furnishings and supplies reasonably necessary for the proper operation and maintenance of the hospital.

(f) To audit all accounts and claims against the hospital or against the board, and, if approved, pay the same from the fund specified in subsection (10). All expenditures made pursuant to this section shall be within the limits of the ordinance.

(g) To sue and be sued, and to collect or compromise any and all obligations due to the hospital; all money received shall be paid into the joint hospital fund.

(h) To make such studies and recommendations to the county board and city council or city councils relating to the operation of the hospital or the building of facilities therefor as the board may deem advisable or said governing bodies request.

(i) To employ counsel on either a temporary or permanent basis.

. . .

(11) CORRELATION OF LAWS (a) in any case where a bid is a prerequisite to contract in connection with a county or city hospital under Section 66.29, it shall also be a prerequisite to a valid contract by the board; and for such purpose the board shall be deemed a municipality and the contract a public contract under Section 66.29.

(b) All statutory requirements, not inconsistent with the provision of this section, applicable to general county or city hospitals shall apply to hospitals referred to in this section. [Emphasis supplied]

. . ."

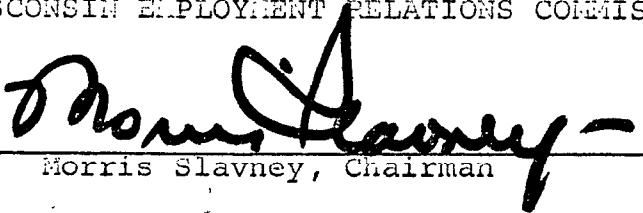
was held not to be a political subdivision, the provisions of 111.70 would still apply since the City of Menomonie and Dunn County are both Municipal Employers and this Commission has previously held that two or more Municipal Employers can act as a joint employer under the provisions of Section 111.70. 4/

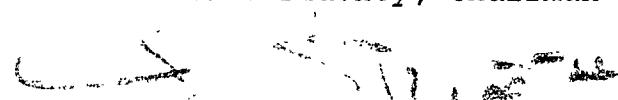
Therefore, the Commission concludes that the Memorial Hospital and Nursing Home is an entity or political subdivision of the state within the meaning of Section 22.20(2)(e) and a Municipal Employer within the meaning of Section 111.70(1)(a) and the Commission has today directed an election to be conducted among the employes in the petitioned for unit pursuant to Section 111.70 of the Wisconsin Statutes.

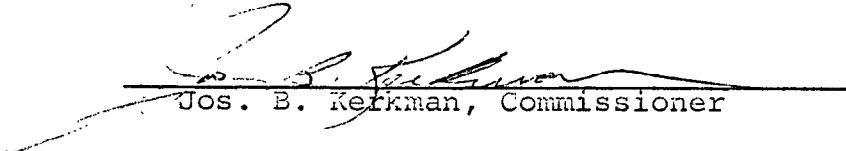
Dated at Madison, Wisconsin, this 12th day of January, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

4/ City of Glendale et al d/b/a North Shore Water Commission (7158)
5/65.