STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of WAUPUN CITY EMPLOYEES UNION LOCAL 1112, AFSCME, AFL-CIO Involving Employes of CITY OF WAUPUN	Case I No. 8651 ME-31 Decision No. 6086-C

ORDER CLARIFYING BARGAINING UNIT

On September 21, 1962, following an election conducted by the Wisconsin Employment Relations Commission, Waupun City Employees Union Local 1112, AFSCME, AFL-CIO, was certified as the exclusive collective bargaining representative of all employes employed in the Waupun Public Utility, excluding supervisors and executives, and also excluding all other employes of the City of Waupun; and the Commission having been advised on July 22, 1968, that there presently exists a dispute between said Labor Organization and said Municipal Employer as to whether working foremen in the employ of the Waupun Public Utility are included in the collective bargaining unit; and pursuant to an order, the Commission having conducted a hearing in the matter on August 7, 1968, at Waupun, Wisconsin, Herman Torosian, Hearing Officer, being present; and the Commission having considered the evidence and arguments of counsel, and being fully advised in the premises, and being satisfied that the positions of Line Foreman, previously occupied by Homer Lamphear, and Water Foreman, presently occupied by Albert Leu, are not such supervisory positions so as to be excluded from the existing collective bargaining unit;

NOW, THEREFORE, it is

ORDERED

That the collective bargaining unit consisting of "all employes employed in the Waupun Public Utility, excluding supervisors and executives, and also excluding all other employes of the City of Waupun" includes the positions of Line Foreman and Water Foreman.

Given under our hands and seal at the City of Madison, Wisconsin, this 27th day of November, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

_____
Zel S. Rice II, Commissioner

No. 6086-C

STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

On September 17, 1962, pursuant to a Direction issued by it, the Wisconsin Employment Relations Commission conducted an election among all employes employed in the Waupun Public Utilities, excluding supervisors and executives and all other employes of the City of Waupun, wherein a majority of the employes in said unit selected Waupun City Employes Union Local 1112, AFSCME, AFL-CIO as their bargaining representative. Subsequent to the issuance of the Certification of the results of said election, representatives of said Union and representatives of Waupun Public Utilities executed successive bargaining agreements for the years 1963 through 1967, covering the wages, hours and working conditions of the employes employed by said Municipal Employer in the aforementioned collective bargaining unit. In the wage schedules attached to said agreements the positions of E-1 and W-1, commonly known as Line Foreman and Water Foreman, occupied by Homer Lamphear and Albert Leu respectively, were included in said wage schedules.

Lamphear and Leu had occupied such positions since prior to the election conducted by the Wisconsin Employment Relations Commission on August 29, 1962, and had, in fact, been included on the eligibility list utilized in that election and had, in fact, cast ballots therein without challenge or objection.

In the spring of 1968, during negotiations toward a collective bargaining agreement for the year 1968, representatives of the Union and Municipal Employer became involved in a dispute as to whether the conditions of employment with respect to Lamphear and Leu should be

covered by the collective bargaining agreement. The Municipal Employer contended that said two individuals were supervisors and therefore outside the unit. The Union contended otherwise. In May 1968 the parties reached an agreement with respect to the wages, hours and working conditions of employment of individuals employed in the unit. The names of Lamphear and Leu were stricken from the wage schedule of the agreement.

Following the conclusion of negotiations on the 1968 agreement, and on July 22, 1968, the Union, through one of its representatives, in writing, requested the Wisconsin Employment Relations Commission to resolve a dispute existing between the Union and Municipal Employer on the question as to whether "working foremen were to be included in the bargaining unit." The Union representative in said letter indicated that the Municipal Employer and Union during their negotiations had agreed to hold the issue in abeyance until the Commission could determine same, and the Union requested the Commission to institute a proceeding in the matter. Pursuant to said request the Commission, on July 29, 1968, ordered hearing in the matter. Hearing was held on August 7, 1968, where the parties were given an opportunity to present evidence and arguments with respect to the issue.

During the hearing evidence was adduced with respect to the past collective bargaining history, as indicated heretofore herein, with respect to the inclusion of the two positions in issue in the previous collective bargaining agreements.

Lamphear died prior to the conduct of the hearing herein, however, the latter's duties as the Line Foreman were described by the Superintendent. Lamphear's responsibilities consisted of being in charge of a line crew of three regular employes and on occasion, certain extra help. At the commencement of the work day the Line Foreman conferred with the Superintendent with respect to the work to be performed by the line crew each day. At the conclusion of each day the Line Foreman would make out reports with respect to the costs of the materials and labor utilized each work day, as well as the maintenance of daily time records for employes. In emergencies the Line Foreman made decisions with respect to working overtime. He made arrangements for holes to be dug, for material to be transported from the warehouse to the work sites and was responsible for the proper performance of work by the crew. He also physically assisted the crew in performing their work when necessary. The Superintendent could not estimate the percentage of time spent by Line Foreman Lamphear in performing manual tasks as

compared with supervisory tasks. However, the Superintendent did testify that Lamphear did operate certain equipment, such as the hydraulic derrick truck and a truck with a boom attachment. On occasion the Superintendent would inspect the work performed by the line crew, and the Superintendent normally was in contact with the Line Foreman twice during the work day. On occasions the Superintendent would confer with Lamphear on the efficiency and work performance of the individuals on the line crew.

After Lamphear's death the Municipal Employer posted the vacancy in the position as follows:

"NATURE OF WORK

This is skilled and supervisory work in the construction, maintenance, and repair of overhead electrical systems and equipment.

Employees are responsible for supervising the activities of a crew of skilled and semi-skilled workers engaged in the construction and maintenance of power lines. Work includes the operation of trucks and attached equipment, and the performance of any of the duties performed by linemen. Since much of the work is done with high voltage wires and equipment, the employee has an added responsibility for the safety of his crew and the public. Work assignments are received from the superintendent in the form of charts, prints, or verbal instructions and the employee is responsible for obtaining necessary materials, assigning men to tasks, and in carrying the job through to completion. Work is reviewed through the submission of written job reports and occasional inspections of a superior.

EXAMPLES OF WORK (Any one position may not include all of the duties listed, nor do the examples cover all duties which may be performed.)

Supervises and participates in the construction, maintenance, and repair of overhead electrical systems and equipment by placing and removing crossarms, stringing wires, tapping wires, repairing crossarms and wires, placing and replacing insulators and setting transformers.

Directs the installation of and installs street lights and street lighting transformers.

Directs the setting of poles, anchors and guys, and the trimming of trees and branches.

Does trouble shooting on the lines and repairs and re-fuses transformers.

Investigates short circuits and grounds in the street lighting system and makes repairs.

Checks on methods used by the linemen to insure their safety and sees that protective devices and equipment are used where indicated.

Prepares job reports and time sheets.

May do other work such as blasting, thawing out frozen water pipes, mains and hydrants.

Performs related work as required.

REQUIREMENTS OF WORK

Thorough knowledge of methods, materials, and tools used in line construction and maintenance work.

Thorough knowledge of the occupational hazards and safety precautions of the trade.

Knowledge of the principles of electrical theory as applied to electrical circuits and wiring systems, and ability to apply this knowledge to work problems.

Knowledge of first aid including artificial respiration.

Ability to lay out, assign and supervise the work of others.

Ability to work from sketches, blueprints, and oral and written instructions.

Ability to climb poles and work at moderate heights with high voltage wires.

Good physical condition and health and sufficient physical strength and agility to perform heavy manual tasks relating to line construction and to work under any type of weather conditions.

Skill in the use and care of the tools and equipment of the trade.

DESIRABLE EXPERIENCE AND TRAINING

Considerable experience as a journeyman lineman in the construction and maintenance of overhead electrical systems; and graduation from a standard high school or trade school."

The record discloses that during five months of the year Leu directs the work of the water pipe line crew, consisting of three regular employes and two seasonal employes. While performing such duties, prior to the commencement of the day's work, Leu meets with the Superintendent and obtains instructions for the day. He then proceeds to the job site or job sites during the day and directs work of those in the crew. During the pipe-laying season, Leu spends at least 25% of his time performing many of the tasks that might be performed by those in the crew. The remaining 75% of his time appears to be spent in keeping records and supervising and directing employes as to their work.

During the remainder of the year, that is from October to the following May, Leu works alongside members of the regular crew in maintenance and repair work. He also spends considerable time alone in making rough charts and maps of water lines. From October to May he spends very little time, approximately 10%, in performing supervisory duties.

Both Lamphear and Leu were hourly paid employes, as are other employes of the line and water crews, and like other employes, when working overtime, they received overtime pay. Lamphear's rate of pay was $4.59 per hour. Those employes working in the line crew received $3.95, $3.90 and $2.93 per hour. Leu's hourly rate was $4.03 per hour. The rates of the employes working in the water crew were $2.97, $2.80

and $3.80 respectively. It can be seen that both Lamphear and Leu were earning considerably more per hour than the other employes. The differential in pay rates or wage rates received by Lamphear and Leu and the employes in the respective crews was based on greater skills of Lamphear and Leu, their length of employment and their "supervisory" duties. While the Superintendent testified that both Lamphear and Leu had the authority to recommend discipline, they were, at least since the existence of the bargaining relationship, not involved in the exercise of such recommendations to any significant extent.

The grievance procedure in the collective bargaining agreements executed by the parties since the certification reflects that in the first step of the grievance procedure the Union Grievance Committee "shall attempt to resolve the nature of the grievance with the foreman. If not resolved within two working days, the grievance shall be reduced to writing and submitted to the superintendent." Only one grievance has been processed since the bargaining relationship has existed and said grievance was initially taken up with the Superintendent.

DISCUSSION

During the course of the hearing the Municipal Employer moved for the dismissal of the instant proceeding on the basis that the parties, on May 22, 1968, reached an agreement on the collective bargaining agreement and that such an agreement included the elimination of the two working foremen from the unit, and that the present collective bargaining agreement was executed by the Municipal Employer with such an understanding.

The Union contends that it did not agree to eliminate Lamphear and Leu from the unit but that an understanding was reached between the parties during negotiations to the effect that their inclusion or exclusion from the bargaining unit should be determined by the Commission. Both parties adduced evidence with respect to their versions of the "agreement or understanding" with respect to Lamphear and Leu at the time of the execution of the bargaining agreement.

We do not deem it necessary to determine the agreement or understanding reached by the parties with respect to the exclusion or inclusion of the positions occupied by Lamphear and Leu from or in the bargaining unit. Once the Commission has made a determination with respect to the appropriate collective bargaining unit and an election has occurred among the employes in that unit, wherein they have selected a bargaining representative, the only manner in which the content of the bargaining unit can be changed is by an action of the Commission in amending said

unit or clarifying same. Assuming the parties herein agreed to exclude the positions occupied by Lamphear and Leu from the bargaining unit, they could not properly have done so since those positions were included in the bargaining unit involved in the certification. Therefore, the only proper method to seek a change in an existing certified unit is to seek a clarification of said unit from the Commission.

As indicated earlier in this memorandum, Lamphear and Leu had been considered eligible to vote in the election originally conducted to determine the bargaining representative. They voted without challenge. A review of the transcript of the hearing preceding the direction of that election indicates that evidence was adduced with regard to the duties of Lamphear. No evidence was adduced with regard to Leu. Furthermore, in that proceeding the then City Attorney filed a brief on behalf of the Municipal Employer on an issue as to whether the Water Utility constituted a separate unit and in said brief he stated, in part, as follows:

> "The Public Utility is managed by Mr. Robert Doan, its Superintendent, under the supervision of the Common Council of the City of Waupun. The testimony bears out that Mr. Doan is in complete charge of the Utility and that there are no supervisors."

The testimony adduced at the most recent hearing, where Superintendent Doan was also a witness, indicates that the duties of Lamphear and Leu had not changed since the date of the original hearing. It should also be noted that since Lamphear's death, his vacant position has not been filled, which leads us to believe that the position was not considered primarily that of supervision.

On the basis of the duties of Lamphear and Leu as described herein and the time spent in performing those various duties, we conclude that the positions in question are not supervisory to such an extent that they should be excluded from the bargaining unit. We conclude that Lamphear and Leu performed their duties as working foremen, since a majority of their time during the year is spent in performing non-supervisory duties. Lamphear, because of his advanced age and physical condition, did not perform physical tasks to the

extent that Leu performed such tasks. However, this fact, in itself, is insufficient to persuade us to find that Lamphear was a supervisory employe. We, therefore, conclude that the positions of Line Foreman and Water Foreman are within the certified collective bargaining unit.

Dated at Madison, Wisconsin, this 27th day of November, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Morris Slavney, Chairman

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Zel S. Rice II, Commissioner