

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MENOMONEE FALLS PUBLIC EMPLOYEES,	:	
LOCAL NO. 31, AFSCME, AFL-CIO	:	Case I
	:	No. 8936 ME-82
Involving Employes of	:	Decision No. 6218-B
	:	
VILLAGE OF MENOMONEE FALLS, WISCONSIN,	:	
Employed in its PUBLIC WORKS DEPARTMENT	:	
	:	

Appearances:

Mr. Arthur Wells, District Representative, for the Petitioner.
Quarles, Herriott, Clemons, Teschner & Noelke, Attorneys at Law,
 by Mr. Laurence E. Gooding, Jr., for the Municipal
 Employer.

ORDER OF DISMISSAL

The Wisconsin Employment Relations Commission, pursuant to Section 111.70 of the Wisconsin Statutes, having heretofore certified 1/ Menomonee Falls Public Employees, Local No. 31, AFSCME, AFL-CIO, as a collective bargaining representative for employes of the Village of Menomonee Falls employed in the following appropriate collective bargaining unit:

"All regular full time and regular seasonal employes of the Village of Menomonee Falls, Wisconsin, employed in its Public Works Department, excluding supervisors, Engineering Department employes, building inspectors, temporary seasonal employes, office clerical and custodial employes",

and said labor organization having petitioned the Wisconsin Employment Relations Commission for clarification of said appropriate collective bargaining unit with regard to whether or not the position presently occupied by Lester Herden is within said appropriate collective bargaining unit; and a hearing on such petition having been conducted at Menomonee Falls, Wisconsin, on February 19, 1971, before Howard S. Bellman, Hearing Officer; and the parties having been afforded the opportunity to present evidence and arguments; and the Commission

1/ Decision No. 6128 (2/63)

having considered said arguments and being satisfied that there is insufficient evidence upon which the Commission may base a determination of the aforesaid issue, makes and files the following


ORDER

That the petition in the above captioned matter be, and the same hereby is, dismissed.

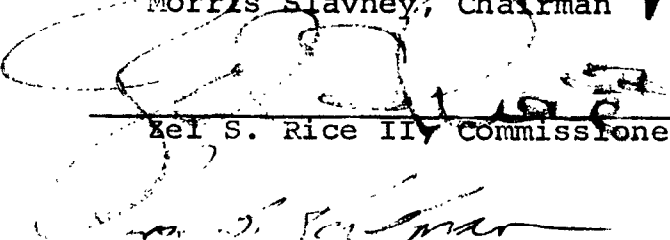
Given under our hands and seal at the City of Madison, Wisconsin, this *22nd* day of April, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

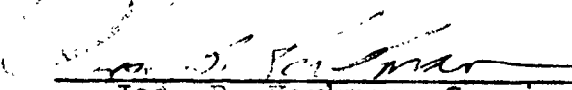
By



Morris Slavney, Chairman



Mel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner

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MEMORANDUM ATTACHED TO ORDER OF DISMISSAL

On February 2, 1971 a petition for clarification of the collective bargaining unit previously established in this proceeding, and described in the attached order, was filed by the Petitioner. Based on said petition, a hearing was held and post-hearing briefs were filed by both parties. At the hearing the Petitioner alleged that a position held by an employe of the Municipal Employer, Lester Herden, was improperly deleted from the aforesaid bargaining unit and contended that the Commission should order that that employe's position continues to be within said unit. Further, the Petitioner alleges that Herden is and has been a "mechanic", a position which both parties agree is included in the unit.

The Municipal Employer contends that Herden is a "supervisor" as that term is used in the pertinent unit description and by title conferred by the Municipal Employer, and furthermore that disputes over whether or not an individual is or continues to be a supervisor, and therefore should be excluded from a certified unit, is not properly determined by this Commission pursuant to a petition for unit clarification. It is the Municipal Employer's position that it is appropriate in a unit clarification proceeding to determine whether or not a classification of employes should or should not be included in the bargaining unit but not whether or not an employe is within such a classification when, as here, that classification, i.e., supervisor, has already been ruled upon.

The Municipal Employer's contention regarding our jurisdiction is rejected. It is within our jurisdiction under Section 111.70 to determine not only what categories of employes are eligible for coverage by that Statute, but which individual employes are within such categories. It is recognized that at times contractual and other procedures may be available for determining substantially identical types of disputes, but there is no indication or request herein that any other such procedure should be deferred to in this case. (The record discloses that the parties have entered a series of collective bargaining agreements since the original certification and that the dispute in this matter which arose during the negotiations for their 1971 agreement has precluded their ability to arrive at such a contract.)

At the hearing, however, the Petitioner failed to present any evidence upon which the Commission may base a determination as to whether or not the position in question is within the bargaining unit. It is on the basis of this total lack of evidence that the petition is dismissed. It is recognized that the instant proceeding is an integral part of the representation proceeding which resulted in the certification of the Petitioner and that representation proceedings are non-adversary and investigative in nature. Therefore, the considerations of burden of proof which are necessary to other types of proceedings are inappropriate here, but it is nonetheless required that the moving party present some evidence in support of its position prior to any responsibility for adduction of evidence being properly placed upon either the Commission or the other party to the case.

Dated at Madison, Wisconsin, this 22nd day of April, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Zel J. Rice II
Zel J. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner