

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case III  
No. 8597 ME-7  
Decision No. 6705-D

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Petitioner.  
Mr. Nicholas M. Sigel, Assistant City Attorney, appearing on behalf of the Municipal Employer.  
Mr. Charles J. Kersten, Attorney at Law, and Mr. Gilbert Vosswinkel, President, Technicians, Engineers and Architects of Milwaukee, appearing on behalf of the Intervenor.

District Council 48, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to clarify the bargaining unit set forth in the Certification of Representatives issued by the Commission on April 30, 1964, in the above entitled matter, specifically with respect to whether employees occupying the positions of Building Construction Supervisor, Electrical Inspection Supervisor, Plan Examiner II, Engineering Technician VI, Assistant Building Construction Supervisor, and Assistant Electrical Supervisor, all employed by the City of Milwaukee in its Department of Building Inspection and Safety Engineering should or should not be included within the certified bargaining unit; and hearing on such petition, as amended, having been conducted at Milwaukee, Wisconsin, on June 9, June 26 and July 2, 1969, before Robert B. Moberly, Examiner; and during the course of the hearing Technicians, Engineers and Architects of Milwaukee, an employe organization, having been permitted to intervene in the proceeding on its claim that certain of the employees set forth in the petition are included in a bargaining unit represented by it; and the Commission, having considered the evidence and briefs of Counsel, and being fully advised in the premises, makes and issues the following

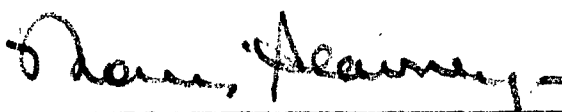
DECLARATORY RULING

1. That the positions of Building Construction Inspection Supervisor, Assistant Building Construction Inspection Supervisor, Electrical Inspection Supervisor, and Assistant Electrical Inspection Supervisor are supervisory positions, and are therefore excluded from all bargaining units involving employees of the City of Milwaukee.

2. That the positions of Plan Examiner II and Building Materials Research Analyst, employed in the Department of Building Inspection and Safety Engineering of the City of Milwaukee, are professional engineering positions, and therefore, said positions are included in the existing collective bargaining unit, consisting of all regular professional engineering and architectural employees, including Engineering Technicians IV, V and VI, in the employ of the City of Milwaukee, excluding all other employees, confidential employees, supervisory employees and executives, for which Technicians, Engineers and Architects of Milwaukee is the certified collective bargaining representative.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 8th  
day of January, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
William R. Wilberg, Commissioner

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On April 30, 1964, following an election conducted by it, the Commission certified District Council 48, AFSCME, AFL-CIO, as the collective bargaining representative of "all regular employees employed by the City of Milwaukee in Building Inspection and Safety Engineering, excluding the following supervisory employee classifications: Inspector of Buildings, Deputy Inspector of Buildings, Planning Analyst III, Administrative Assistant I, Structural Engineer III, Plan Examiner II, Building Inspection Supervisor, Assistant Building Inspection Supervisor, Electrical Inspection Supervisor, Assistant Electrical Inspection Supervisor, and Mechanical Engineer IV, and also excluding Clerk Stenographer III (Rettig), a confidential employee."1

The instant petition of District Council 48, as amended, states that the following positions in the Department of Building Inspection and Safety Engineering should be included in the above described bargaining unit: Building Construction Supervisors, Electrical Inspection Supervisor, Plan Examiner II, Engineering Technician VI, Assistant Building Construction Supervisors and Assistant Electrical Supervisor.

Technicians, Engineers and Architects of Milwaukee, hereinafter referred to as TEAM, was permitted to intervene on the basis of its claim to represent certain employees referred to in the petition who

1/ City of Milwaukee (Building Inspection & Safety Engineering),  
Dec. No. 6705-A.

TEAM alleges are "of the engineering class." TEAM, since May 1965, has been the certified bargaining representative for "all regular professional, engineering and architectural employees including Engineering Technicians IV, V and VI, employed by the City of Milwaukee," with certain exclusions.<sup>2/</sup> TEAM subsequently amended its petition to intervene by limiting its claim to the Engineering Technician VI referred to in District Council 48's petition for clarification. However, during the course of the hearing TEAM moved to withdraw said amendment and stand on its original request that the Commission find that any employees involved in the proceeding, insofar as they are Engineers or Engineering Technician IV through V, should be included in the bargaining unit represented by TEAM. TEAM's motion to stand on its original petition and to withdraw the amendment was taken under advisement. It is herewith granted, since all issues were fully heard and to require another petition would be a duplicative and unnecessary procedure.

In its brief, District Council 48 concedes that employees in the classifications of Building Construction Inspection Supervisor and Electrical Inspection Supervisor are supervisors and therefore properly excluded from any bargaining unit. However, District Council 48 still contends that the Assistant Building Construction Inspection Supervisor and Assistant Electrical Inspection Supervisor are nonsupervisory positions. The City contends that such positions are supervisory, and TEAM takes no position on the supervisory issue.

The Engineering Technician VI referred to in the petition of District Council 48 has been reclassified as Building Materials Research Analyst, and this position, as well as the position of Plan Examiner II, claimed by both District Council 48 and TEAM, should be included in their respective collective bargaining units. All parties agree that both positions are nonsupervisory.

#### SUPERVISORY QUESTIONS

The Commission has thoroughly examined all of the testimony and the numerous documentary evidence introduced, including job description sheets. There are two positions in question here, the Assistant Building Construction Inspection Supervisor and the

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<sup>2/</sup> City of Milwaukee, Dec. No. 6960-A.

Assistant Electrical Inspection Supervisor. Both positions were excluded in 1964 from the overall departmental bargaining unit represented by District Council 48. However, such exclusions resulted from a stipulation of the parties and not from a Commission determination. Moreover, the Building Inspection and Safety Engineering Department was reorganized in 1968. Because of these circumstances we will make a formal determination of the issue.

One of the goals of the recent reorganization carried out by the department was to provide sufficient supervision over the inspection functions carried out by the department, and it is apparent from the record that the placement of assistant supervisor positions was an important ingredient in achieving sufficient supervision. Although some of the assistants at times perform some inspectional tasks as well as tasks relating to supervision, and although some of the assistants perform more supervisory duties than others, all of the assistants have sufficient supervisory responsibilities so as to exclude them from the bargaining units of either labor organization involved here. They have been given the designation of supervisor in their job title, and they are associated generally with the Municipal Employer's supervisory team. For example, it was testified that the department head conducts regular weekly or biweekly supervisory staff meetings which are attended by assistants to the department head, supervisors and assistant supervisors. At these meetings management and supervisory employees discuss problems experienced since the last meeting and supervisors make suggestions and provide advice for management on policy questions. In addition, supervisors and assistant supervisors receive instructions from management at these meetings.

In general, the assistant supervisors assign cases and provide directions to inspectors working under them. The assistant supervisors keep account of the work performance of men under their direction, and they have authority to recommend disciplinary action if it is believed warranted. They frequently participate in interviewing prospective job candidates. With regard to overtime, department rules and regulations provide that working hours for inspectors and other department employees end at 4:45 p.m., but that office hours for supervisors and assistant supervisors extend "to any hour of the day as the work load requires." Thus supervisors and assistants do not receive the time and one-half compensatory time received by other departmental employees for overtime.

On the basis of the above facts and the record as a whole, we sustain the Municipal Employer's contention that the assistant supervisor positions are supervisory and properly excluded from either bargaining unit involved herein.

#### UNIT PLACEMENT

This dispute concerns two positions, Plan Examiner II and Building Materials Research Analyst. TEAM contends that these are basically engineering positions and should be included in the unit represented by it. District Council 48, on the other hand, argues that these positions should be included in the overall departmental unit represented by it.


There are two employees holding the position of Plan Examiner II, located in the Administrative Division of the department in the Safety Engineering and Plant Examination Section. We have examined the testimony and the job description sheet with regard to the qualifications required and the duties and responsibilities of this position. Both employees holding the position of Plan Examiner II are registered engineers, and we conclude on the basis of the record that the position is basically an engineering position and should be included in the unit represented by TEAM consisting of "all regular professional, engineering and architectural employees, including Engineering Technicians IV, V and VI employed by the City of Milwaukee . . ."

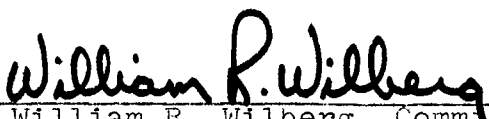
We reach a similar conclusion upon considering the testimony and job description sheet with regard to the position of Building Materials Research Analyst, involving one employee. This position has an interesting history. Prior to 1967, the position was classified as Planning Analyst III, which was a position excluded in 1964 from the unit represented by District Council 48. In 1967 this position was reclassified to that of Engineering Technician VI, a classification which would place the employee holding the position in the bargaining unit represented by TEAM. In June of 1969 the Municipal Employer re-evaluated the position and determined to upgrade the position by again reclassifying it to the position of Building Materials Research Analyst. According to the job description sheet, the qualifications of this position include a college degree in Architecture or Engineering, and registration with the Wisconsin Board of Architects and Engineers. The duties and responsibilities of this position include engineering research and analysis. The

person holding this position also acts as a technical adviser and code consultant and has certain administrative tasks. The person presently holding the position does not have the educational qualifications stated in the job description sheet, but it is clear from the record that his duties and responsibilities place him in the engineering unit represented by TEAM. Until his promotion he had the duties and responsibilities of Engineering Technician VI, which clearly was included in the bargaining unit containing engineers, and his present position requires an even greater application of engineering principles.

Dated at Madison, Wisconsin, this 8th day of January, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
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