

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	Case III
MILWAUKEE DISTRICT COUNCIL 48,	:	No. 8597 ME-7
AFSCME, AFL-CIO	:	Decision No. 6705-E
	:	
Involving Certain Employes of	:	
	:	
CITY OF MILWAUKEE	:	
	:	

Appearances:

Podell, Ugent & Cross, S.C., Attorneys-at-Law, by Ms. Nola J. Hitchcock Cross, appearing on behalf of the Petitioner.
 James B. Brennan, City Attorney, by Nicholas M. Sigel, Principal Assistant, City Attorney, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS
 OF LAW AND ORDER CLARIFYING
 BARGAINING UNIT

Milwaukee District Council 48, AFSCME, AFL-CIO, filed the instant petition with the Wisconsin Employment Relations Commission, wherein it requested that the positions of Assistant Supervisor of Training and Technical Services, and the Training and Technical Services Advisor II be included in the existing collective bargaining unit in the Building Inspection and Safety Engineering Department of the City of Milwaukee. Hearing in the matter was held in Milwaukee, Wisconsin on March 18, 1979 before Sherwood Malamud, Examiner. A transcriptual record of the hearing was prepared and counsel for the Union filed a brief. The record in the matter was closed on April 2, 1979. The Commission having considered the evidence, arguments of the parties contained in the transcript and Union's brief, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and maintains its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.
2. The City of Milwaukee, hereinafter referred to as the City, is a municipal employer, maintains its offices at City Hall, Milwaukee, Wisconsin 53202.
3. In 1964, the Commission certified the Union as the exclusive collective bargaining representative of employes employed in a unit consisting of all regular employes employed by the City of Milwaukee in Building Inspection and Safety Engineering, excluding the following supervisory employe classifications: Inspector of Buildings, Deputy Inspector of Buildings, Planning Analyst III, Administrative Assistant I, Structural Engineer III, Plan Examiner II, Building Inspector Supervisor, Assistant Building Inspection Supervisor, Electrical Inspector Supervisor, Assistant Electrical Inspection Supervisor, and Mechanical Engineer IV,

and also excluding Clerk Stenographer III (Rettig), a confidential employe. 1/

4. In its petition the Union seeks the inclusion of the Training and Technical Services Advisor II (or the Advisor II) position and also the position of Supervisor of Training and Technical Services and the Assistant Supervisor of Training and Technical Services. Prior to the learning the Union withdrew its request to include the Supervisor of Training and Technical Services. During the hearing the Union acknowledged the supervisory status of the Assistant Supervisor of Training and Technical Services, and it withdrew its request that the Commission clarify the status of that position as well.

5. The Training and Technical Services Division of the Building Inspection and Safety Engineering Department was formed in 1968, and since its formation it has been staffed with a Supervisor, Assistant Supervisor and three Advisor II positions. At the time of the hearing herein, two of the Advisor positions were vacant, however, the City intended to fill those vacancies. The Advisor II's are primarily responsible for, and spend a majority of their time in, the training of new employes and the continuing training of the 245 employes, inclusive of 145 inspectors who work in the Building Inspection and Safety Engineering Department. And in that function, the Advisor II's evaluate the training needs of individual inspectors; evaluate and recommend changes in the inspection procedures employed by the department; double check inspection made by other inspectors; plan training programs, recommend training procedure policies; devise new inspection procedures, and report on the efficiency of departmental units and operations. They investigate citizen complaints of alleged inadequate inspection, which findings they report to supervision. They investigate alleged falsification of records and employe problems with departmental record keeping and mailing procedures. The Advisor II's participate in monthly meetings, attended solely by supervisory and managerial personnel, and their performance is evaluated in accordance with a "management by objectives" program.

6. The incumbent Advisor II, Ben Murray, in addition to the above duties, supervises "CETA" employes engaged in the microfilming of all the Department's permit records, a project which at the time of the hearing was scheduled for completion in November, 1979. Murray checks the attendance of the CETA employes, evaluates their job performance, investigates their grievances, and approves vacation, sick leave and other leave requests. He initiates disciplinary action against CETA employes, as well.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following:

CONCLUSIONS OF LAW

1. Advisor II, Ben Murray, exercises supervisory authority over CETA employes engaged in the microfilming of records and therefore, Murray is a supervisor within the meaning of Section 111.70(1)(0)(1) of the Municipal Employment Relations Act.

1/ City of Milwaukee (Building Inspection and Safety Engineering), WERC Dec. No. 6705A (April 30, 1964). In 1970, the Commission clarified the unit and excluded the Inspection Supervisor Assistant Building Construction Inspection Supervisor, Electrical Inspector Supervisor, and Assistant Electrical Inspection Supervisor on the basis of their Supervision status. City of Milwaukee (Building Inspection and Safety Engineering Department) (6705D) 1/70.

2. The Training and Technical Services Advisors II's are engaged in supervisory and managerial activities in sufficient combination and degree such that the occupants of said position are not municipal employes within the meaning of Section III.70(1)(b) of the Municipal Employment Relations Act.

ORDER CLARIFYING BARGAINING UNIT

The positions of Supervisor of Training and Technical Services, Assistant Supervisor of Training and Technical Services and the position of Training and Technical Services Advisor II, shall be and the same hereby are excluded from the bargaining unit described below: 2/

All regular employes employed by the City of Milwaukee in Building Inspection and Safety Engineering, excluding the following supervisory classifications: Inspector of Buildings, Deputy Inspector of Buildings, Administrative Assistant I, Structural Enginr III, Buidling Inspection Supervisor, Assistant Building Inspection Supervisor, Electrical Inspection Supervisor, Assistant Electrical Inspection Supervisor, Mechanical Engineer IV, Building Construction Supervisor, Assistant Building Construction Inspection Supervisor, Electrical Inspection Supervisor, Assistant Electrical Inspection Supervisor, Supervisor Training and Technical Services, Assistant Supervisor Training and Technical Servies, and the Training and Technical Services Advisor II's which are supervisory/managerial positions, and the Clerk Stenographer III (Rettig), a confidential employe, and excluding all other employes employed by the Employer and confidential and managerial employes.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

2/ This description of the unit reflects the Commission's decision today and all other amendments and clarifications made to the unit from the date of Certification in 1964.

MEMORANDUM ACCOMPANYING FINDINGS
OF FACT, CONCLUSIONS OF LAW AND
ORDER CLARIFYING BARGAINING UNIT

The Union initially sought the inclusion of the Supervisor of Training and Technical Services and the Assistant Supervisor of Training and Technical Services. Prior to and during the hearing, the Union conceded the supervisory status of these two positions and their exclusion from the unit.

The Union claims that the Training and Technical Services Advisor II position is not supervisory and should be included in the collective bargaining unit. The Union points out that the day to day work of inspectors is performed under the supervision of individuals other than Advisor II's. The Union also contends that Murray, the incumbent Advisor II, does not exercise supervisory authority over the 8 CETA employes involved in the microfilming of department records. Those employes work under the ultimate supervision of the Assistant Supervisor for Training and Technical Services, Matejka, who testified that 30% of his day is spent in supervision of Murray. The Union concludes there remains no one in the Training and Technical Services section for the Advisor II's to supervise.

The Union also argues that the Advisor II's are not a managerial position. The recommendation of the Advisor II relative to the interpretation of ordinances and the Building Code are reviewed thoroughly by the Supervisor and Assistant Supervisor of the section. Supervisor Matejka testified that he reviews the entire work product of the Advisor II's. Furthermore, the Advisors II can spend no more than \$10 of the City's funds without approval. The Union contends that the Advisors II's do not formulate or implement managerial policy nor do they have the authority to commit the resources of the employer, and therefore, the Advisor II's are not managerial employes.

The Commission finds that a combination of supervisory and managerial responsibilities and duties justify the exclusion of the position of Training and Technical Services Advisor II from the unit described above. The Advisor II's develop training programs for new and regular staff employes. They act on citizen complaints by double checking inspections made by staff inspectors. These field inspections may result in their providing additional training to an individual inspector, or it may result in the Advisor II making suggestions for changing the inspection procedures used by the department.

The Advisor II is not merely a technician who operates video equipment or presents pre-packaged training programs. The Advisor II is engaged in the planning of training programs which are tailored to the needs of individual employes and to the programs administered by the department. The "trouble shooting" performed by the Advisors II provides one significant avenue for the monitoring of the implementation of managerial policy and the identification of the need for internal change in the department. In addition, the fact that a relatively small number of employes are engaged in this training function, compared to the 248 employes in the department, coupled with the inclusion of the Advisors II in first level managerial and supervisory meetings and programs support the conclusion that the Advisor II position is managerial and supervisory and therefore the individuals filling that position are not employes under MERA.


Furthermore, the Commission finds that the one incumbent Advisor II (Murray) at the time of the hearing, in addition to the above duties, was vested with and exercised supervisory authority with regard to 8 CETA employes, 4/by evaluating their performance, making effective recommendations concerning their discipline, and making the first step response to their grievances. The Commission is well aware of the fact that the microfilming project may be completed in 1979, and that Murray may no longer exercise the supervisory authority described above. However, even if the supervisory duties of the Advisor II position were eliminated, the position would still be excluded from the unit on the basis of its other duties of a supervisory and managerial nature.


The Commission in its order clarifying the bargaining unit has amended the description to conform to its decision in City of Milwaukee (6705-D) 1/70 in which the Planning Analyst III and the Plan Examiner II were placed in professional unit and thus should be deleted from the unit description, and in which the Supervisors and Assistant Supervisors of Building Construction Inspection and Electrical Inspection were excluded from the unit herein on the basis of their supervisory status. In addition, the unit description was amended to reflect our decision today.

Dated at Madison, Wisconsin this 30th day of January, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

4/ CETA employe - refers to employes hired and paid with funds provided to local municipalities by the federal Comprehensive Employment and Training Act Program.