

2. That the position of Street Construction Technician, located in the Bureau of Engineers, Department of Public Works of the City of Milwaukee, is not a professional engineering position and is not included in the certified collective bargaining unit consisting of professional engineering and architectural employes; and that, therefore, said position is included in the bargaining unit represented by Milwaukee District Council 48 consisting of all regular employes, with certain exceptions, employed by the City of Milwaukee in its Department of Public Works.

3. That the position of Traffic Control Engineer IV, located in the Traffic Engineering Division, Bureau of Traffic Engineering and Electrical Services, Department of Public Works of the City of Milwaukee, is a supervisory position; and that said position is therefore excluded from the certified collective bargaining unit consisting of all regular professional engineering and architectural employes, including Engineering Technicians IV, V and VI, employed by the City of Milwaukee, excluding all other employes, confidential employes, supervisory employes and executives.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of October, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
TECHNICIANS, ENGINEERS & ARCHITECTS : Case VI
OF MILWAUKEE : No. 8633 ME-21
 : Decision No. 6960-H
For Clarification of Bargaining Unit :
Involving Certain Employes of :
CITY OF MILWAUKEE :

MEMORANDUM ACCOMPANYING ORDER OF CLARIFICATION

The Petitioner, Technicians, Engineers & Architects of Milwaukee, hereinafter referred to as T.E.A.M., is the certified bargaining representative for all regular professional engineering and architectural employes including Engineering Technicians IV, V and VI, employed by the City of Milwaukee, excluding all other employes, confidential employes, supervisory employes and executives.^{1/}

In its petition, T.E.A.M. requests that the following positions be included in its bargaining unit: (1) Street Construction Technician, located in the Bureau of Engineers, Department of Public Works; (2) Traffic Control Engineer IV, located in the Bureau of Traffic Engineering and Electrical Services, Department of Public Works; and (3) Plan Examiner I, located in the Department of Building Inspection and Safety Engineering.

The petition set forth the following facts in support of its contentions:

- "1. The positions were classified and/or created by the City Service Commission after investigation of duties and technical requirements of the jobs.
2. The investigation determined that the work and background were of such a technical nature that the positions warranted engineering and/or technical titles.
3. That positions of Plan Examiner I are technical engineering positions in pay ranges covered by our unit and directly related to Plan Examiner II titles included in our bargaining unit under Declaratory Ruling and Accompanying Memorandum dated January 8, 1970, Case III, No: 8597, ME7.
4. That the position of Traffic Control Engineer IV is similar to an Engineer IV position in our bargaining unit.
5. That the position of Street Construction Technician is similar in duties and responsibilities to an Engineering Technician V position included in our bargaining unit under Declaratory Ruling and Accompanying Memorandum dated January 8, 1970, Case VI, No. 6833, ME21, Decision No. 6960-F.

^{1/} City of Milwaukee, Dec. No. 6960-A, 5/65.

6. That at the time of the certification election, all Technicians IV through VI and a majority of the Engineer and Architect I through IV positions were certified as belonging to our unit."

At the hearing, Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as District Council 48, was permitted to intervene on its claim to represent the employes involved. District Council 48 is the certified collective bargaining representative of "all regular employes employed in the various bureaus in the Department of Public Works of the City of Milwaukee," excluding engineers and architects and certain other employes,^{2/} and is also the certified collective bargaining representative for "all regular employes employed by the City of Milwaukee in Building Inspection and Safety Engineering," with certain exclusions.^{3/} District Council 48 initially contended that the Street Construction Technician and the Traffic Control Engineer IV are included in its bargaining unit of Department of Public Works employes, and that the Plan Examiner I is included in its bargaining unit of employes in Building Inspection and Safety Engineering. It later withdrew its claim with respect to the Traffic Control Engineer IV.

The City of Milwaukee, hereinafter referred to as the Municipal Employer, initially contended that the positions of Street Construction Technician and Traffic Control Engineer IV are supervisory positions and should not be included in either the unit represented by T.E.A.M. or the unit represented by District Council 48. With respect to the position of Plan Examiner I, it agreed with District Council 48 that the position should be included in the unit represented by District Council 48 in Building Inspection and Safety Engineering. The Municipal Employer subsequently withdrew its claim that the position of Street Construction Technician was supervisory, and urged that it be included in the unit represented by T.E.A.M.

Plan Examiner I

As noted above, the position of Plan Examiner I is located in the Department of Building Inspection and Safety Engineering. T.E.A.M. contends that this position is a professional engineering position and should be included in the unit represented by it, while District Council 48 and the Municipal Employer contend that the position is not an engineering position and should be included in the bargaining unit represented by District Council 48.

None of the three employes holding the position of Plan Examiner I are registered engineers or hold engineering degrees. The single Plan Examiner I who testified was not a high school graduate although he passed an equivalency test at a vocational school. Prior to his employment with the Municipal Employer, the witness had worked for 20 years in construction work, in positions varying from laborer to supervisor. The job description of Plan Examiner I, not disputed at the hearing, describes his duties as follows:

^{2/} City of Milwaukee, Dec. No. 6215-J, 5/63.

^{3/} City of Milwaukee (Building Inspection & Safety Engineering)
Dec. No. 6705-A, 4/64.

"Examine plans for minor construction and process application for permits and see that the plans as prepared will be in compliance with both building and zoning code regulations. For compliance with zoning regulations, check that the use if permitted, the required parking is provided, and the building is properly located on the lot. For compliance with building code regulations check that the building is structurally safe, has adequate and proper exits, sufficient sanitary facilities, correct windows, etc.

Answer telephone inquiries and inquiries made in person relative to the zoning of specific premises and the applicable building and zoning regulations.

Keep zoning maps and maps showing the location of proposed public improvements up-to-date.

Maintain files on inquiries and replies relating to proposed construction which is in conflict or in the path of proposed public improvements.

Assist applicants in the preliminary steps required in the filing of appeals with the Board of Zoning Appeals or the Board of Standards and Appeals."

On the basis of the entire record, we conclude that the position of Plan Examiner I is not a professional engineering position. Neither the extent of his formal education nor his job duties would justify the exclusion of this position from the overall unit as a professional engineer. T.E.A.M. argues that the Plan Examiner I should be included in its unit because of our earlier decision to include the position of Plan Examiner II in its unit of professional engineers.^{4/} However, the duties of Plan Examiner II require a considerably greater exercise of engineering skills. In addition, in including the Plan Examiner II in the unit of professional engineers we gave weight to the fact that "both employees holding the position of Plan Examiner II are registered engineers." This factor is not present in the instant case.

Accordingly, we are today issuing an order to include the position of Plan Examiner I in the certified collective bargaining unit of all regular employes in the Department of Building Inspection and Safety Engineering, with certain exclusions, represented by District Council 48.

Street Construction Technician

During the course of the hearing the Municipal Employer withdrew its initial contention that the Street Construction Technician, located in the Construction Division of the Bureau of Engineers, Department of Public Works, is a supervisory position. Thus the only remaining question is whether this position is a professional engineering position. If so, it should be included in the unit represented by T.E.A.M. If not, it should be included in the overall unit of Department of Public Works employes represented by District Council 48.

The position of Street Construction Technician is held by one employe, who formerly was classified as a Public Works Inspector II. The person holding the position is not an engineer. It appears that he has approximately two years of college education, and this education was not with emphasis on engineering.

^{4/} City of Milwaukee (Building Inspection & Safety Engineering), Dec. No. 6705-D, 1/70.

The job description of the Street Construction Technician, which is uncontradicted, provides that the position has the following duties and responsibilities:

"Under administrative direction to supervise and be responsible for keeping of records relating to the construction activities of the Street Construction Section of the Construction Division, Bureau of Engineers.

The above includes the compilation of office records and procedures, as follows:

15% Disseminate official notices regarding bid dates, contractors, and plans to area supervisors and coordinators; collect contract data e.g. notice of contract starting date for the Department of Public Works, street and alley guarantee by projects for guarantee engineer, joint seal notice for Bureau of Street Maintenance, requests to City of Milwaukee Testing Laboratory to core pavements, contract data listing pavement types and depth for road life study engineer, order needed material and equipment for office and field. Maintain other office records and prepare reports as necessary.

10% Is responsible for seeing that coordinators and supervisors are advised of changes in the paving program related specifically to location, pavement type, public hearing date, committee and common council action, bid date, contractors, etc.

30% Is responsible for checking inspector's daily reports for accuracy, daily progress and work days used on the contract."

Further evidence with respect to the duties of the Street Construction Technician as compared to engineering functions is contained in the classification report discussing the reclassification of the position from Public Works Inspector II to Street Construction Technician, dated October 3, 1969, in a submission to the City Service Commission. The report also discussed a prior reclassification request to Engineering Technician V. It stated:

"In 1967, the reclassification request was based primarily on a comparison to an Engineering Technician V position assigned to the Sewer and Water Construction Section of the Construction Division. It was contended that the basic assignments of both of these positions were similar and that, therefore, they should be equated. A detailed analysis at that time, however, showed several basic differences, and it was determined that equation of the two positions could not be justified. That analysis remains valid today.

The position's duties seem to be a combination of clerical and 'office engineer' type duties. It is contended by the department, however, that it is necessary for the incumbent of this position to possess a broad knowledge of inspectional and construction activities in order to function effectively. Further, it is contended that this incumbent's background and office experience have combined to strengthen the position to the point where it entails a level of responsibility above that of a field inspector. These contentions appear to be reasonably accurate."

In view of the lack of formal engineering training required for the position, and in view of the administrative and clerical functions performed, as opposed to engineering functions, we find that the Street Construction Technician is not a professional engineering position and should not be included in the bargaining unit of professional engineers represented by T.E.A.M. Rather said classification should be, and in the accompanying Order is, directed to be included in the certified collective bargaining unit of all regular employes in the various bureaus in the Department of Public Works, represented by District Council 48.

Traffic Control Engineer IV

During the course of the hearing District Council 48 disclaimed an interest in representing this position when it was learned that the job requirements included a bachelor's degree in engineering. Thus the only question remaining is whether the position is supervisory, as contended by the Municipal Employer, or whether the position is nonsupervisory and should be included in the bargaining unit of professional engineers represented by T.E.A.M.

The position of Traffic Control Engineer IV is located in the Traffic Engineering Division of the Bureau of Traffic Engineering and Electrical Services, Department of Public Works. It was created in December of 1969 for the reason that the division head was in need of an assistant, and it was filled approximately two weeks prior to the hearing in the instant case. In a report to the Municipal Employer's Board of Estimates from the Civil Service Commission in December of 1969, the following was stated with respect to the creation of this new position:

"This Traffic Control Engineer IV position will function as the assistant division head to assist the Traffic Control Engineer V with the supervision and administration of the division and will be a supervisory position excluded from any bargaining unit. The requested position will also assist in coordinating traffic engineering activities; conduct efficiency studies; assist with budget preparation; and represent the Bureau on committees and at meetings concerning traffic matters. In view of the above, it is recommended that the position be approved at the level of Traffic Control Engineer IV, Pay Range M-18."

The job description sheet for the position was not disputed, and provides that the Traffic Control Engineer IV will have the following duties and responsibilities:

- "A. Act as assistant section head, to assist with the supervision, direction, control, and coordination of all traffic engineering activities carried on by the Traffic Engineering Division, including traffic signals, signs, pavement markings, on-street parking, traffic operations, mass-transit movements, and traffic research and survey activities, such as, vehicular and pedestrian volumes, classifications, speed data, and accident data.
- B. Represent the Bureau on traffic planning, control, and operational matters at meetings and conferences of Common Council Committees, Boards and Commissions, other City Departments and Bureaus, other Highway and Traffic Agencies, such as the Wisconsin Division of Highways, Milwaukee County Highway Division, County Expressway and Transportation Commission, Southeastern Wisconsin Regional Planning Commission, and those of Adjacent Municipalities, Aldermen, Citizen's Groups, Businessmen's Associations, Public Utilities, and Contractors.

- C. Assist with budget preparation and expenditure control in the following categories: Operation and Maintenance, Engineering and Drafting - \$100,000; Operation and Maintenance - Traffic Counts (Engineering Control) - \$50,000; Operation and Maintenance - Traffic Maintenance of Signals, Signs, Markings (Eng. Control) - \$330,000; Permanent Improvement - Traffic Expenditures - \$600,000. TOTAL -- \$1,080,000.
- D. Assist with supervision of both quantity and quality of work output, including checking and signing of completed work. Conduct efficiency studies of work methods in engineering, as well as Field and Shop Division, to make recommendations for efficiency improvements."

The job description sheet also provides that this position will exercise the following supervision:

"As assistant section head, the incumbent of this position assists with the supervision of the following, assuming control of the section in the absence of the section head:

- 3 - Traffic Control Engineer III or Engineering Technician VI - (P.R. 25)
- 5 - Traffic Control Engineer II or Engineering Technician V - (P.R. 21)
- 5-1/2-Traffic Control Engineer I, Engineering Technician IV or Engineering Driftsmn. IV - (P.R. 17)
- 11 - Engineering Technician or Engineering Draftsman III - (P.R. 13)


Supervision includes outlining assignments, checking completed work in general, coordinating activities, & exercising disciplinary action over such matters as attendance and work rules."

We conclude from the entire record that the position of Traffic Control Engineer IV exercises considerable supervisory functions. In addition to the undisputed job description sheet, the organizational chart of the Traffic Engineering Division clearly reflects that the Traffic Control Engineer IV is intended to serve as a primary assistant to the division head on supervisory as well as management functions of the division. Furthermore, the uncontradicted testimony of the Assistant Superintendent of the Bureau of Traffic Engineering and Electrical Services strongly reveals that the position is supervisory. It was testified that the Traffic Control Engineer IV directs and assigns the activity of all members of the division. He participates in management staff conferences, held approximately once a week and attended by division heads and their assistants. It is intended that this person make recommendations in the area of hiring, firing, discipline and promotion. He does not receive overtime pay for overtime work, and it appears that he is compensated at a higher pay range at least in part because of his management responsibilities. He exercises considerable independent judgment and discretion in the supervision of employes. For example, he will organize crews and working units of people in the division and determine when overtime will be worked, as well as who will work it.


It is apparent to the Commission that the position of Traffic Control Engineer IV was created for the purpose of providing management and supervisory support to the division head. Upon considering all the evidence and testimony, we conclude that the position should be excluded from the certified bargaining unit containing engineers because of its supervisory nature.

Dated at Madison, Wisconsin, this 13th day of October, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman

Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner