

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of

ASSOCIATION OF GRADUATE AND REGISTERED
ENGINEERS OF MILWAUKEE

For Determination of Bargaining
Representatives for Employees of

CITY OF MILWAUKEE

Case VI

No. ~~6533~~ 8633

ME-21

Decision No. 6960

DIRECTION OF ELECTION

Petition having been filed by the Association of Graduate and Registered Engineers of Milwaukee, hereinafter referred to as the Association, to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among all professional engineering personnel in the employ of the City of Milwaukee, to determine what representation, if any, said employees desire for the purposes of conferences and negotiations with said Municipal Employer on questions of wages, hours and conditions of employment; and hearing on said petition having been conducted by the Board on various dates at Milwaukee, Wisconsin; and during the course of said hearing, Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as District Council 48, on behalf of its local affiliate, Local 1238, having been permitted to intervene in the instant proceeding on its claim that it represents, and has among its membership, certain professional engineering personnel in the employ of the Municipal Employer; and on January 18, 1963, the Board having issued a Direction of Elections involving employees of the Municipal Employer in the Department of Public Works^{1/} wherein, in addition to directing elections in various voting groups and bargaining units, the Board, without directing an election involving engineers and architects, found that engineers and architects were professional employees engaged in the "craft" of engineering and were to be included in a "city-wide" unit of engineers and architects, and further that the "Engineering Technician" classifications IV through VI were to be included in the same unit for the reason that the incumbents thereof were performing duties requiring an experience equivalent to

^{1/} Decision No. 6215.

the formal training of the engineers, and in the same Memorandum the Board concluded that individuals occupying various engineering and architectural classifications were supervisory employees and therefore were to be excluded from the eligibles in any collective bargaining unit; and that following such determination, further hearing having been held in the matter to determine whether the Association could qualify as a representative of employees as contemplated in the Statute, since the supervisory employees as found by the Board constituted approximately 57% of its membership, and since under the terms of its constitution the Association admitted to its membership only individuals who were graduates of an accredited school of engineering or architecture or were registered as engineers or architects by the Wisconsin Registration Board of Architects and Professional Engineers; and the Board having reviewed the entire record herein and having reconsidered its previous determination with respect to the supervisory status of various individuals occupying certain engineering and architectural classifications, and further having considered whether the Association is an organization qualified to participate in an election proceeding pursuant to Section 111.70 of the Wisconsin Statutes; and the Board, being fully advised in the premises, hereby amends the Direction of Elections issued by the Board in the City of Milwaukee, III, on January 18, 1963 as such Direction pertained to the determination of supervisory employees in the "city-wide" unit of engineers and architects, as reflected in the Memorandum attached hereto; and further the Board having concluded that the Association of Graduate and Registered Engineers of Milwaukee has a right in this proceeding to appear on the ballot in the election being directed herein;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60) days from the date of this Directive among all regular professional engineering and architectural employees, including Engineering Technicians IV, V and VI, employed by the City of Milwaukee, excluding all other employees, confidential employees, supervisory employees and executives who were employed by the City of Milwaukee on December 28, 1964, except such employees as may prior to the election quit their employment, or be discharged for cause, for the purpose of

determining whether or not a majority of such employees desire to be represented by the Association of Graduate and Registered Engineers of Milwaukee, or by Milwaukee District Council 48, American Federation of State, County and Municipal Employees, AFL-CIO (and its affiliated local, Local 1238), or by neither, for the purposes of conferences and negotiations with the City of Milwaukee on the questions of wages, hours and working conditions.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of December, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Zel S. Rice II
Zel S. Rice II, Commissioner

STATE OF WISCONSIN

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For Determination of Bargaining
Representatives for Employees of

CITY OF MILWAUKEE

Case VI

No. ~~6833~~ 5623

ME-21

Decision No. 6960

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

On various dates in March through June, 1962, various organizations filed petitions with the Wisconsin Employment Relations Board requesting elections among employees employed in various departments of the City of Milwaukee. Among said organizations were Milwaukee District Council 48, American Federation of State, County, and Municipal Employees, AFL-CIO and its affiliated Local No. 1238, hereinafter referred to as District Council 48, and Association of Graduate and Registered Engineers of Milwaukee, hereinafter referred to as the Association. District Council 48 requested an election among all of the eligible employees employed in the Department of Public Works. The Association had requested an election in a unit composed of professional engineers and architects employed by the City of Milwaukee in its various departments. On January 18, 1963, the Board issued a Direction of Elections involving employees in various voting groups and collective bargaining units involving employees in the Department of Public Works. In said Direction, the Board determined that engineers and architects, as well as Engineering Technicians IV, V and VI were to be included in a city-wide unit consisting of professional engineers and architects because of their specialized and professional training. The Board, however, did not, at that time, direct that an election be conducted in said unit. It did, however, make a determination as to what positions in that unit were supervisory and confidential. The Board concluded that 53^{2/} positions were to be excluded as supervisory,

2/ Erroneously noted as 39 in the Memorandum accompanying the Direction of Elections.

among them being the classifications of Civil and Mechanical Engineers III and IV.

At the time of the Direction, there also appeared to be a question as to whether the Association could qualify as a labor organization under the Statute since approximately 57% of its membership held supervisory positions, as then determined by the Board, and further that supervisors held offices in the organization and that certain of the employees eligible in the unit could not become members of the Association because they had neither received a college degree nor had been registered as engineers or architects with the Wisconsin Registration Board of Architects and Professional Engineers. In an effort to qualify as a labor organization within the meaning of Section 111.70 the Association filed with the Board proposed amendments to its constitution and by-laws which would permit employees not so qualified to become associate members if their training and experience qualified them to hold positions equal to that of Engineer I or Architect I. Such proposed amendments would extend voting rights to said associate members except on constitutional matters and they further would not be eligible to hold office or to serve on the Board of Directors. The Association indicated that it would amend its constitution and by-laws only if it were officially recognized by the Board as a labor organization within the meaning of the Statute. The Board has been further advised that the current President of the Association, Herman Zanoni, holds the classification of "Engineer-in-Charge", a supervisory position, and further that two of its Board of Directors are also supervisors.

Supervisory Determination

Since the issuance of the Direction of Elections on January 18, 1963, the Board has reconsidered its policy determinations with respect to supervisors and in that light we have reviewed our original determination of the supervisory status of the positions which were in issue.

In its previous exclusion of supervisory employees, the Board had noted that the Statute did not expressly exclude supervisors from the definition of employees. However, we reiterate our previously stated position that we do not believe that supervisors can be included in the same bargaining unit as the employees whom they supervise because of the conflict of interest.^{3/} Good faith bargaining.

^{3/} Wausau Public Works, Decision No. 6276, 3/63.

requires that there be two parties confronting each other on opposite sides of the bargaining table. Supervisory personnel, because of their status with the municipal employer, are the agents of the municipal employer and thus find themselves in a position of conflict with respect to the discipline, supervision and direction of the work force as well as to the matters of wages, hours and working conditions sought by the employees. Our review of the administration of the Employment Peace Act and our review of the history of the status of supervisors under our federal labor statutes assures us of the wisdom of our decision to exclude supervisors from the bargaining units established under Section 111.70, Wisconsin Statutes.

A study of the decisions of the U. S. Supreme Court and the National Labor Relations Board illustrate the reasoning for the ultimate legislative decision to expressly exclude supervisors from the Taft-Hartley Act in 1947.^{4/} While it may be argued that the legislature's failure to exclude supervisors from the definition of employees implies that they are employees under the statute and must be included, we believe such consideration to be unrealistic as applied to a statute which encourages a pattern of collective bargaining akin to that which exists for private employees. Municipal employers perform their functions and services through elected and appointed officials and by employees hired by the municipal employer. While broadly speaking, any employee receiving compensation for services performed by him on behalf of a municipal employer can be said to be an employee of the municipal employer, such interpretation would encompass a Mayor or a City Manager, aldermen and department heads, and would result in a situation where no one could represent the municipal employer or be its agent in carrying out its administrative, managerial and necessary supervisory functions.

In determining whether an employee is a supervisor, the Board considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees.
2. The authority to direct and assign the work force.

^{4/} Packard Motor Car Company vs. National Labor Relations Board, 330 U.S. 485; Maryland Dry Dock, 49 NLRB 733.

3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.
7. The amount of independent judgment and discretion exercised in the supervision of employees.

Considering the above factors, where applicable, we have reviewed the job descriptions and related materials furnished by the City of Milwaukee covering the engineering and architectural positions and we now conclude that a number of individuals, whom we previously determined to be supervisors, not to be included as eligibles in the appropriate collective bargaining unit, are in fact working supervisors, who, while they are assigned and perform very responsible duties, do not exercise such a degree of direction and control over employees so as to exclude them from the eligibles as supervisors. They are primarily paid for their professional skills and not for their supervisory function. Although they may make recommendations regarding job performances of employees employed in lower classifications in their department or division, they primarily supervise work activities rather than employees.

The determination of the Board in Case III with respect to supervisory employees in the professional "engineering" unit employed in the Department of Public Works is hereby deemed to be amended, and further, the Board herein has made a determination of similar classifications employed in the remaining departments of the City of Milwaukee. Appendix "A", attached hereto, reflects the positions found to be supervisory, and therefore, these positions will be excluded from the eligibles in the unit. Appendix "B", also attached hereto, reflects the positions to be included in the unit and the incumbents thereof are eligible to participate in the election.

Effect of Supervisory Employees as Members of Employee Organization

The Board is confronted herein with a problem as to whether it should permit an employee organization to be on a ballot in an

election proceeding which organization has a substantial number of supervisors among its membership. In Joint School District No. 1 of the City of West Allis, etc.,^{5/} the Board stated:

"The fact that supervisory personnel are members of, or any hold office in, any labor organization subject to the provision of Section 111.70 may raise a suspicion, but does not in itself establish domination or interference with the organization by the Municipal Employer employing such supervisory personnel. The number of supervisors among the members of the organization and the ratio of supervisors to other members are factors to be evaluated in each case. Likewise, the office held by supervisors and the extent to which they formulate the bargaining policy and programs of their labor organizations will also be scrutinized in each case."

In said case the issue of participation by supervisors, as members, in a labor organization was raised in a prohibitive practice proceeding before the Board and not in a representation case. The function of the Board in a representation proceeding is to determine whether or not a question of representation exists, to take evidence with respect to the appropriate collective bargaining unit and with respect to the employees eligible to participate in the election if one is ordered by the Board. It is now our opinion that the Board should not, in a representation proceeding, question the internal affairs of an organization, which the Board is satisfied exists for the purpose of representing municipal employees in conferences and negotiations with municipal employers on matters pertaining to wages, hours and conditions of employment. Therefore, in a representation proceeding, we do not believe that we should impose conditions on any organization seeking to represent municipal employees, which conditions would limit the right of such organizations to establish rules for the acquisition, retention and rejection of membership. To do so in a representation proceeding would impinge on the voluntary nature of such organizations. If the rules of such an organization permit supervisors to membership and/or excludes classes of employees from membership, the employees involved have a right to refuse to become members thereof, and if said organization is seeking to represent the employees in an election proceeding before this Board, the employees can vote to reject such organization as their collective bargaining representative. If it can be established, in a prohibitive

^{5/} Decision No. 6544.

practice proceeding, that any labor organization which has been selected as the collective bargaining representative of municipal employees in an election conducted by the Board, that the rules and regulations of such an organization interfere with the rights of employees under Section 111.70 or that supervisory employees have dominated that organization and thus interfered with the rights granted to the employees, we will, among other remedies, set aside the certification.

We have held that supervisory employees should be barred from the collective bargaining unit since we do not consider them to be employees within the meaning of Section 111.70.^{6/} Since supervisors are not employees within the meaning of the Statute then they should not participate in the activities of an employee organization concerned with wages, hours and conditions of employment.

As noted previously herein, the inclusion of supervisors in the same bargaining unit with employees would create a conflict of interest since supervisors are agents of the municipal employer. Where supervisory employees are members of the rank and file employee organization, the fact that they are not included in the appropriate collective bargaining unit would not eliminate the possible conflict of interest above noted. Supervisors who are members of an employee organization, with rights and privileges extended to employee members, could exercise a voice and vote in the administration and in the deliberations of the affairs of that employee organization. Their membership in the employee organization would permit them to run for office, to nominate candidates for office, to vote on candidates for office, to act on committees meeting in conferences and negotiations with the municipal employer on questions concerning hours, wages and conditions of employment and to vote and participate in such matters. By such membership they could actively exercise an interest in conflict with that of the employees and thereby dominate or interfere with the internal affairs of the employee organization. The active participation by supervisory employees in the affairs of an employee organization could result in impeding and defeating the primary purpose of the employee organization - that of representing municipal employees in conferences and negotiations concerning their wages, hours and conditions of employment. Since supervisors are the agents of the municipal

^{6/} Outagamie County Hospital & Home, Decision No. 6076, 8/62.

employer, a municipal employer, by permitting supervisory employees to participate actively, in any manner similar to that described above, in the affairs of an organization representing employees for the purposes set forth in Section 111.70, could, in the proper proceeding, be found to have committed prohibitive practices by interfering, restraining and coercing its employees in the exercise of their rights granted to them under the law. As previously noted in this case, the president of the Association and two members of its Board of Directors have been found to be supervisors by the Board. Whether the activities of supervisors as members of a labor organization constitute prohibitive practices under Section 111.70 will be determined by the Board in formal complaint proceedings before the Board and by the facts established in each case.

Effect of Limiting Membership to Certain Employees

As noted above, during the hearings in the matter, a question arose as to whether or not the Board would consider the Association as a qualified labor organization under Section 111.70 since it admitted to membership only registered engineers and architects, or those who had obtained a degree in their respective fields. The Board has found the unit appropriate here not only to include certain classifications of engineers and architects, but also the Engineering Technician IV, V and VI classification, the incumbents of which, although not degreed or registered, are performing duties identical to various degreed or registered employees employed in the engineering and architectural classifications.

Section 111.70(2) confers upon municipal employees the right to affiliate with employee organizations of their own choosing. In our view this provision does not limit employee organizations from adopting reasonable rules for the acquisition, retention or rejection of membership. As noted above, we have indicated that we will not, in a representation proceeding, prescribe or review the rules governing the internal affairs of labor organizations representing municipal employees and, therefore, the fact that the Association's constitution and by-laws do not provide membership for non-degreed or non-registered employees does not affect the right of the Association to appear on the ballot in this election proceeding. Any labor organization selected by a majority of employees in an appropriate collective bargaining unit has the duty and obligation to represent all of the

employees in the bargaining unit with equal vigor, whether members of the organization or not. If any labor organization certified by the Board as the exclusive bargaining representative for employees in an appropriate unit fails in that duty and obligation, the Board can, in a proper proceeding, vacate its certification and eliminate the right of such organization to continue as the exclusive collective bargaining representative of said employees.

Dated at Madison, Wisconsin, this 28th day of December, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By

Morris Slavney
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

Carl S. Rice II
Carl S. Rice II, Commissioner

APPENDIX A

SUPERVISORY POSITIONS

SAFETY COMMISSION

Managing Director (Wantoch)

CITY DEVELOPMENT

Development
Supervisor (Downing)

HARBOR COMMISSION

Civil Engineer IV (Krahn)

HEALTH DEPARTMENT

Sanitation Inspection
Supervisor (Penn)

BUILDING INSPECTION AND
SAFETY ENGINEERING

Deputy Inspector of
Buildings (Lewis)
Structural Engineer III (Schultz)
Mechanical Engineer IV (Zuetsmeyer)

DEPARTMENT OF PUBLIC WORKS

General Office

Commissioner of Public Works (Goetsch)
Deputy Commissioner of Public Works (Tacke)

Administrative Division

Supervising Engineer (Roethig)
Engineer In Charge,
Coordination (Vacant)

Special Assessments Division

Civil Engineer IV (Janicki)

BUREAU OF MUNICIPAL EQUIPMENT

Automotive Engineer and Maintenance Supervisor (Vacant)

BUREAU OF BRIDGES AND PUBLIC BUILDINGS

Superintendent of Bridges and Public Buildings (Ashton)
Assistant Superintendent of Bridges and Public Buildings (Heger)
Chief Structural Designer (Batalden)
Bridges Supervisor (Andrews)

BUREAU OF STREET AND SEWER MAINTENANCE

Superintendent of Street and Sewer Maintenance (Burmeister)

Sewer Maintenance Division

Assistant Superintendent of Sewer Maintenance (Harwood)
Sewer Supervisor II (Pfannerstill)

Street Maintenance Division

Assistant Superintendent of Street Maintenance (Anderson)
Street Repairs Supervisor (Hawley)

SUPERVISORY POSITIONS (Continued)

BUREAU OF TRAFFIC ENGINEERING AND ELECTRICAL SERVICES

Traffic Engineer and Superintendent of Electrical Services (Bruening)
Assistant Superintendent of Traffic Engineering
and Electrical Services (Leiser)

Engineering Division

Electrical Engineer V (Pleyte)
Traffic Control Engineer III (Lema)
Electrical Engineer IV (Vacant)
Electrical Engineer III (Gadomski)

Parking and Playground Division

Civil Engineer V (Plumb)

BUREAU OF ENGINEERS

City Engineer (McCullough)
Assistant City Engineer (Laszewski)

Engineering Division

Engineer In Charge (Klotz)

Maps and Plats Section

Civil Engineer IV (Vacant)
Civil Engineer III (Seehawer)

Field Engineering Section

Civil Engineer V (Heiser)

Central District

Civil Engineer IV (Johnson)

North District

Civil Engineer IV (Severson)

West District

Civil Engineer IV (Haas)

South District

Civil Engineer IV (Matzat)

Special Projects Section

Civil Engineer V (Vacant)
Civil Engineer IV (Kuemmel)

Laboratory Division

Materials Engineer V (Hahn)

Utilities and Reports Division

Utilities Engineer (Vacant)

Sewer Engineering Division

Engineer In Charge (Hirsch)

Engineering Design Section

Civil Engineer V (Prawdzik)

Design Group (South Side)

Civil Engineer IV (Wichman)

Design Group (North Side)

Civil Engineer IV (De Karske)

Design Group (Open Channel)

Civil Engineer IV (Vacant)
Civil Engineer III (Holley)

Construction Division

Engineer In Charge (Burmeister)
Civil Engineer V (Gerscke)
Civil Engineer VI (Joers)

Water Engineering Division

Engineer In Charge (Hammann)
Special Assisting Engineer In
Charge (Inling)
Plant Design Engineer (Kocal)
Civil Engineer IV (Colberg)
Civil Engineer IV (Schmitz)

SUPERVISORY POSITIONS (Continued)

WATER DEPARTMENT

Superintendent of Water Works (Becker)
Assistant Superintendent of Water Works (Miller)

Business Operations Division

Water Meter and Services Supervisor (Veitel)

Systems Operation and Maintenance Division

Water Works Operations Supervisor (Vacant)
Power Plant Engineer II (Wege)
Power Plant Engineer I (Wuendt)
Plant Maintenance Supervisor (Middlemas)

APPENDIX B

POSITIONS ELIGIBLE

CIVIL DEFENSE ADMINISTRATION

Engineering Staff

Civil Engineer III, II

SAFETY COMMISSION

Safety Engineer

CITY DEVELOPMENT

Community Conservation Division

Architect III

Architectural Designer II

Technical Maintenance Division

Technical Services Section

Mechanical Engineer II

Construction Section

Project Engineer
Civil Engineer III

HARBOR COMMISSION

Engineering Division

Civil Engineer III, II, I
Engineering Technician IV

CENTRAL BOARD OF PURCHASES

Buying Division

Specifications Engineer II

DEPARTMENT OF PUBLIC WORKS

Administrative Division

Civil Engineer IV

Special Assessments Division

Civil Engineer III

BUREAU OF BRIDGES AND PUBLIC BUILDINGS

Engineering and Construction

Civil Engineer IV, III, II, I

Architect IV

Architectural Designer III, II, I

Mechanical Engineer IV, II, I

POSITIONS ELIGIBLE (Continued)

BUREAU OF ENGINEERS

Engineering Division

Estimating Section

Civil Engineer II, I
Engineering Technician VI, IV

Maps and Plats Section

Civil Engineer II

Field Engineering Section

Civil Engineer III, II, I
Engineering Technician VI, V, IV

Special Projects Section

Civil Engineer III, II, I

Utilities and Reports Division

Civil Engineer III

Sewer Engineering Division

Civil Engineer III (Except Holley)
Civil Engineer III, I
Engineering Technician V, IV
Sewer Research Engineer

Construction Division

Civil Engineer IV, III, II, I

Water Engineering Division

Civil Engineer IV (Except Golberg
& Schmitz)
Civil Engineer III, II, I
Mechanical Engineer III, II, I
Electrical Engineer III
Engineering Technician VI, V, IV

Laboratory Division

Materials Engineer II
Civil Engineer I

BUREAU OF STREET AND SEWER MAINTENANCE

Sewer Maintenance Division

Civil Engineer II

Street Maintenance Division

Civil Engineer II

BUREAU OF TRAFFIC ENGINEERING AND ELECTRICAL SERVICES

Engineering Division

Traffic Control Engineer II, I
Electrical Engineer III (Except Gadomski)
Electrical Engineer II, I
Engineering Technician V, IV

Parking and Playground Division

Civil Engineer III
Traffic Control Engineer V
Engineering Technician V, IV