

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of
LOCAL NO. 24, SHEET METAL WORKERS
UNION, AFL-CIO
Involving Certain Employes of
CITY OF MILWAUKEE employed in the
FIRE DEPARTMENT

Case L
No. 11023 ME-268
Decision No. 7885

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, for the Petitioner.
Mr. John J. Fleming, City Attorney, by Mr. John F. Kitzke, Assistant City Attorney, for the Municipal Employer.
Mr. Robert L. Engel, President, for the Intervenor, Local 215, Milwaukee Fire Fighters' Association, AFL-CIO

DIRECTION OF ELECTION

Local No. 24, Sheet Metal Workers' Union, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Board requesting the Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of the City of Milwaukee Fire Department; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, on October 4, 1966, Howard S. Bellman, Examiner, being present; and during the course of said hearing, Local 215, Milwaukee Fire Fighters' Association, AFL-CIO, having been permitted to intervene on its claim that it represents certain employes in the employ of the Municipal Employer; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED


That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within thirty (30) days from the date of this directive in the collective bargaining unit consisting of all Fire Equipment Repairmen II who

perform sheet metal work more than fifty (50) per cent of their working time, excluding supervisors and all other employes, who were employed by the Municipal Employer on January 26, 1967, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Local No. 24, Sheet Metal Workers' Union, AFL-CIO, for the purposes of conferences and negotiations with the above-named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 26th day of January, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

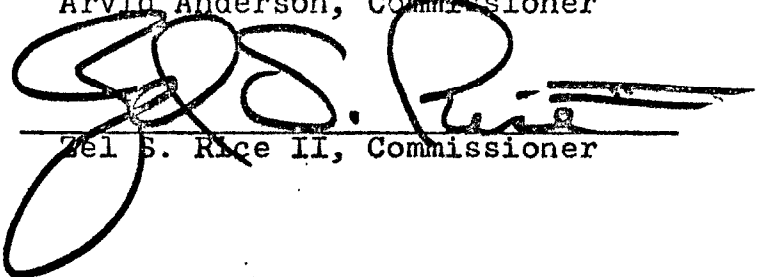
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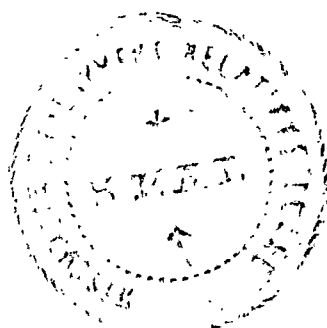
Morris Slavney, Chairman



Arvid Anderson, Commissioner



Tel S. Rice II, Commissioner



STATE OF WISCONSIN

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Local No. 24, Sheet Metal Workers Union, AFL-CIO, hereinafter referred to as the Petitioner, filed a petition with the Board requesting that an election be conducted, pursuant to Sec. 111.70, Wisconsin Statutes, among Fire Equipment Repairmen II in the employ of the City of Milwaukee, hereinafter referred to as the Municipal Employer. At the hearing the Petitioner amended the description of the unit to include all Fire Equipment Repairmen II who do sheet metal work, employed in the Fire Department of the Municipal Employer. As of the date of the hearing, Robert H. Batzler was the only employe in the claimed unit.

Subsequent to the hearing and the receipt of the transcript by the parties, the Petitioner submitted its final argument in the form of a brief on December 23, 1966, pursuant to an arrangement made at the hearing.

On August 30, 1963 and October 2, 1963, respectively, this Board issued a Direction of Elections (Decision No. 6476) and an Amended Direction of Elections (Decision No. 6476-A) involving certain employes of the Municipal Employer. Those Directions were the result of a petition by Milwaukee Fire Fighters Association, Local 215, AFL-CIO, hereinafter referred to as the Intervenor.

The Amended Direction ordered inter alia an election in a collective bargaining unit including "all regular employes employed in the various bureaus of the Fire Department of the City of Milwaukee, excluding craft employes, confidential employes, supervisors and executives", and also certain other exclusions not material herein. This voting group included, according to the first Direction, certain employes in the Bureau of Machinery and Apparatus of the Municipal Employer.

That sub-group was the subject of agreements by the parties to that proceeding with respect to the inclusion and exclusion of the various employe classifications assigned to the Bureau. The present Petitioner was not such a party. It was agreed at that time that the classification, "Fire Equipment Repairman II" would be included within the unit in which voting was to occur, and no evidence was taken or was a finding made in support of that agreement.

Subsequent to the issuance of the aforementioned Directions, and before any election was conducted, the Municipal Employer granted, and the Intervenor accepted, voluntary recognition of the Intervenor as the representative of the employes in the bargaining unit described by the Board as appropriate in its Directions, which unit included the position of Fire Equipment Repairman II in the Bureau of Machinery and Apparatus. The Municipal Employer and the Intervenor then entered a "Memorandum of Understanding" covering the terms and conditions of employment of such employes, including the Fire Equipment Repairman II, which Memorandum extended in effect to December 31, 1966. Thus, it is noted, the Memorandum was in effect at the time of the filing of the petition in this proceeding.

Section 111.70(4)(d) declares that:

"Where the board finds that a proposed unit includes a craft the board shall exclude such craft from the unit."

This is an absolute mandate to the Board which the Board recognized in the aforementioned Directions as evidenced by the explicit general exclusion of craft employes. If the Directions were inconsistent in thus excluding craftsmen and simultaneously including the Fire Equipment Repairman II, the inconsistency, which may have been based upon the absence of contentions or evidence on the point, must be resolved in favor of the exclusion of the craftsman as required by the Statute.

Thus, if the employe whose status is now in question, and who was in his present position during the pendency of the earlier case, is a craft employe, he was improperly included in the bargaining unit found appropriate in the earlier case. It follows also that such an improper inclusion makes his representation by the Intervenor, as well as his coverage by the "Memorandum of Understanding" improper. Therefore, the Memorandum does not serve as a bar to the present proceeding under the "contract bar" doctrine, as the Municipal Employer now contends, if the employe is a craftsman.

The Municipal Employer also objected to this proceeding on the ground that no service of the petition or notice of hearing was made upon the Intervenor prior to the hearing. This objection is held to be invalid particularly because, in fact, the Intervenor did appear at such hearing whereat its motion to intervene was granted. It is noted that the hearing officer extended to the Intervenor an opportunity to delay the proceeding to overcome any prejudice it may have suffered due to inadequate notification. This opportunity was declined and the Intervenor participated in the hearing and has filed no post-hearing objections to the procedure.

At the hearing the Intervenor stated that it disclaimed any representation rights it might have with respect to the position in question, and further stated that, should an election be directed as requested, it does not wish to appear on the ballot. The Municipal Employer contended that such disclaimer was improper and ineffective because the "Memorandum of Understanding" and its administration by the Intervenor, as well as then current negotiations for an agreement for 1967, constituted conduct inconsistent therewith.

However, if the Memorandum was a nullity with respect to the position now under discussion for the reasons stated above, such Memorandum shall not be considered as effective in counteracting the disclaimer of the Intervenor. Equally ineffective, contrary to the position of the Municipal Employer, is any bargaining between it and the Intervenor with respect to a new agreement covering the position in question. If the position is not properly within the unit represented by the Intervenor, bargaining cannot operate to vitiate the statutory right to separation.

The Municipal Employer further objects to this proceeding on the basis that the Petitioner is not a proper party. The Decision (No. 6476-D) of this Board in the matter of Fire Department, City of Milwaukee is cited in support of the proposition that only an employer or a certified labor organization are proper parties to such a proceeding. In the cited case the petition, which was dismissed, was filed by a group of Fire Department Lieutenants seeking to amend a certification which established a certain labor organization as the representative of a unit of

employees including the Lieutenants. The Lieutenants requested that they be excluded from the unit covered by the certification. The Board held that such a petition to amend a certification could be filed properly only by the labor organization or the employer subject to the certification.

The instant case does not involve a petition to amend a certification. There is no certification in the present situation. The present petition is construed to request an election in a certain specified bargaining unit to determine whether or not the employe in that unit wishes to be represented by the Petitioner. The present petition seeks only indirectly to remove the pertinent employe from an established unit which unit, it is contended, is erroneously constituted. The case cited is inapposite and, therefore, the Municipal Employer's objection is rejected. X

It is recognized by this Board, as well as the National Labor Relations Board (See Waterman Steamship Corp., 78 N.L.R.B. 20 /1948/) that sheet metal workers may practice such a craft as will allow or require their segregation into a separate craft unit. The Petitioner herein is a labor organization that traditionally concerns itself with the special problems of just such craft employes. The Petitioner, it is noted, conducts a five-year apprenticeship program preparatory for journeyman status which program is approved by the Wisconsin Industrial Commission.

Practice of the sheet metal craft includes the laying-out, assembling, forming, fabricating, installing and repairing of pipe, equipment, and accessories made from light-guage metals, screens and metal substitutes.

There are four employes of the Municipal Employer in its Bureau of Machinery and Apparatus who are classified as "Fire Equipment Repairman II". They work at the same location and under the same supervision, but each is somewhat specialized and generally they work together only on such relatively infrequent projects as require their respective specialties. This proceeding is concerned only with one of these employes, Robert H. Batzler, whose specialty is sheet metal work. The other three employes specialize in leather and canvas work, machinery, and breathing equipment maintenance, respectively.

Batzler was hired by the Municipal Employer into his present position on March 11, 1963. Prior to that he had been employed in private industry as a sheet metal worker for seven or eight

years. He had become a journeyman after serving the required apprenticeship. Before Batzler's hire his position was held by Bruno Geschrei, who is presently his immediate supervisor. Geschrei, too, came to the position after many years as a sheet metal worker in private industry.

Geschrei interviewed Batzler around the time that the latter was hired and told Batzler that the position in question required a journeyman sheet metal worker. At that time the Municipal Employer's official job description of the position, which was issued on July 26, 1962, stated that the duties and responsibilities of the position were to:

"Plan design, layout, fabricate and install sheet metal for fire apparatus and fire fighting equipment.

"Repair fire apparatus bodies and fire equipment, such as fire extinguishers, through welding, brazing, and other methods used in the sheet metal trade."

The description further stated that the work "is performed without supervision", and that "work demands are critical in terms of accuracy, strength, appearance, etc." Among the qualifications required for the position, according to the job description were:

"Complete knowledge and skill, involving at least five years experience, in the sheet metal trade.

"Must have general knowledge of the other trades, to work with others in fabricating, planning and installation of sheet metal."

Another job description sheet issued by the Municipal Employer on September 30, 1966 indicates that Batzler spends about one-half of his time in the repair of copper portable hand pumps, about 15 per cent fabricating metal floor pans for oil and grease drippings and 25 per cent fabricating metal racks and bins, installing minor duct work, shearing metal for signs and making minor repairs on boilers. This description also states that the employe, in carrying out these assignments, uses the techniques of welding, soldering and riveting which are generally employed by sheet metal craftsmen.

Testimony at the hearing substantially supported the accuracy of the issued job description sheets. It also indicated that Batzler has been assigned to design and fabricate extensive and elaborate pieces of equipment and that he usually works without close supervision. At times he works from plans or specifications,

but he also is assigned to some projects and told only what is needed, with the method and specifications left to him. The employe has, when requested, estimated the cost to his employer of his doing certain work which estimates were compared with others submitted by private contractors.

The repair of hand pumps which occupies the greatest portion of Batzler's work involves not only the repair of punctured and dented metal pump casings, but also the replacement of hoses and the repair or replacement of the internal mechanisms of the pump. In his work, Batzler uses the usual tools of the sheet metal trade. He supplies some of these tools as is customary in the trade. At times he is provided with a helper who assists in the handling of heavy and cumbersome articles. The helper is not a skilled sheet metal worker or apprentice.

The job description and the testimony indicate that Batzler devotes about 12 per cent of his working time to miscellaneous, non-sheet metal duties. These functions do not require his craft skills and are also performed by other employes. Included in this category of jobs is unloading trucks, cleaning the working area, operating apparatus at the scenes of fires and other situations to which the Department responds, and driving Department vehicles both to and from fires and in the performance of his sheet metal functions. As a Fire Department employe, Batzler is expected to be ready to play certain roles in certain emergencies. This general requirement accounts for some of the above miscellaneous functions that he performs. There is also evidence that some of Batzler's sheet metal work, particularly repairing pumps and cutting signs, may be assigned to other employes. However, such assignments are made in Batzler's absence or in peculiarly urgent situations.

Based upon the foregoing and the record as a whole, it is concluded that the employe in question is a craft employe.

The Municipal Employer cites Milwaukee Board of Vocational and Adult Education (Decision No. 6343) as holding that to be considered as a craft employe for purposes of unit separation, an employe must spend at least 50 per cent of his working time doing craft work. It is contended that Batzler does not meet that test, although it is admitted that he is a skilled sheet metal worker. It is found, based upon the entire record, however, that Batzler does perform craft work during more than half of his working time.

Actually, the cited case held that school teachers were professional employes, and thus of course craft employes, and that those teachers who taught less than 50 per cent of a full teaching schedule should not be included in a unit with those teachers who taught 50 per cent or more of a full schedule. The separation in that case was based upon a different community of interest among employes engaged in the same craft.

Citing City of Wausau (Decision No. 6276) the Municipal Employer contends that Batzler cannot be found to be a craft employe in view of his functions having been, at times, assigned to non-craft personnel. It is concluded that such assignments have not occurred with sufficient regularity or frequency to bring this case with the holding of City of Wausau. As noted above, the assignments referred to were, in most cases, made when Batzler was absent or when the situation was unusually urgent.

The Municipal Employer cites the Board's decision in Winnebago County Hospital (Decision No. 6043) wherein in defining craft status we spoke in terms of a group of employes working together with their apprentices and/or helpers. Apparently, it is the Municipal Employer's contention, based upon the cited decision, that craft status requires more than one employe in the craft category. This contention is without merit and the Board has found appropriate craft units including only one employe where it was satisfied that such single employe was a craftsman. (See City of Wauwatosa, Decision No. 7679.)

In a somewhat similar case the National Labor Relations Board separated sheet metal workers into a craft unit where they were in a department with, and under the same supervision as, machinists and maintenance men. In that case (Armstrong Tire & Rubber Co. 104 N.L.R.B. 892 /1953/), as in the present one, the employer stated that while the employes may be highly skilled they were not required to use all their skills. There, as here, years of experience in the trade was a prerequisite to hiring.

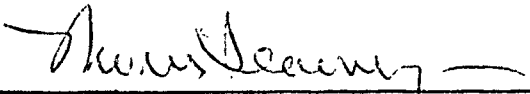
The position now held by Batzler has for many years, even preceding the enactment of Section 111.70, been among the positions for which the Intervenor has negotiated with the Municipal Employer. It is concluded that, in view of the weight of other factors favoring separation and the present disclaimer by the Intervenor, the historical integration of the position

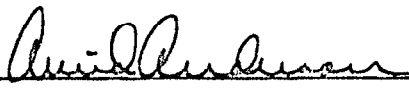
is not a sufficient basis for denying craft separation. It is emphasized that craft separation is mandatory according to the above quoted statutory subsection and not pursuant to any desire of the Board to fragmentize the present unit.

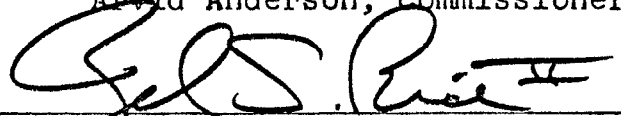
Finally, the Municipal Employer emphasizes that certain techniques employed and general functions performed by Batzler are also found in the performance of tasks assigned to employes who are not considered craftsmen. Thus, it is pointed out, that welding is done by non-craft employes and that certain non-craft mechanics do work generally referred to as the repair of truck bodies. Batzler does welding and also performs repair work on trucks. An isolated tool or technique does not determine whether or not a craft is being practiced. Neither is a broad generalization material in view of specific situations which are distinct.

Dated at Madison, Wisconsin this 26th day of January, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By 
Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner