

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

-----	:	
In the Matter of the Petition of	:	
ASSOCIATION OF MUNICIPAL ATTORNEYS	:	Case LII
OF MILWAUKEE	:	No. 11169
Involving Certain Employes of	:	ME-281
CITY OF MILWAUKEE	:	Decision No. 8100
-----	:	

Appearances:

Mr. Ewald L. Moerke, Jr., President, for the Petitioner.  
Mr. Herbert P. Wiedemann and Mr. David W. Croysdale,  
Attorneys at Law, for the Municipal Employer.

DIRECTION OF ELECTION

The Association of Municipal Attorneys of Milwaukee having petitioned the Wisconsin Employment Relations Board to conduct an election, pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of the City of Milwaukee; and a hearing on such petition having been conducted by the Board at Milwaukee, Wisconsin, on January 5, 1967; and the Board having considered the evidence in arguments of counsel and being satisfied that question has arisen concerning representation for certain employes of said 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 sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all of the attorneys employed by the City of Milwaukee in the office of the City Attorney excluding confidential and supervisory employes, who were employed by the Municipal Employer on July 10, 1967, except such employes 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 employes desire to be represented by the Association of Municipal

Attorneys of Milwaukee, for the purposes of conferences and negotiations with the City of Milwaukee on questions of wages, hours, and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 12th day of July, 1967.

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  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of	:	
ASSOCIATION OF MUNICIPAL ATTORNEYS	:	Case LII
OF MILWAUKEE	:	No. 11169
Involving Certain Employes of	:	ME-281
CITY OF MILWAUKEE	:	Decision No. 8100
	:	

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Association of Municipal Attorneys of Milwaukee, hereinafter referred to as the Association, filed a petition pursuant to Section 111.70, Wisconsin Statutes, requesting the Board to conduct a representation election among "all of the attorneys in the Office of the City Attorney of the City of Milwaukee, except the City Attorney and Deputy City Attorney." The petition was supported by signatures of 17 of the 22 Assistant City Attorneys. The City of Milwaukee, hereinafter referred to as the City contends (1) that the employes claimed to constitute an appropriate unit are "managerial employes" and therefore should not be considered to be "employes" within the meaning of Section 111.70(1) (b), (2) that the only exception, if any, to the managerial function performed by the Assistant City Attorneys are those performed by four Assistant City Attorneys employed in the safety building, who primarily prosecute violations of city ordinances, and in the alternative that (3) certain Assistant City Attorneys should be excluded as confidential employes.

The City contends that the Assistant City Attorneys are managerial employes and therefore should not be considered as falling within the definition of the term municipal employe. The City in support of its position cites the Board's decision in the City of Wausau<sup>1/</sup> wherein the Board indicated that it would exclude managerial and supervisory personnel from collective bargaining units because they are agents of the municipal employer in the performance of the employer function and since the Assistant City Attorneys act as legal advisors and give legal opinions to the Mayor, the Common Council and to various department and bureau heads, they participate in the management function and therefore should be excluded from any

1/ (6276) 3/63.

unit. The Board's determination to exclude supervisors and managerial personnel from collective bargaining units established under Section 111.70 is on the basis that they are agents of the municipal employer with respect to employment relations. Therefore, assuming, without conceding, that the Assistant City Attorneys can be considered as being part of the "management" team, the Assistant City Attorneys do not participate as "managerial employes" in any employer-employee relationship and therefore we reject the City's argument in this regard.

By statute the City Attorney is required to furnish legal assistance and advice to the Milwaukee Sewerage Commission, the Milwaukee Board of School Directors, and the Milwaukee Vocational School Directors. Said Commission and School Boards are municipal employers separate and apart from the City. The Assistant City Attorneys presently assigned to said municipal employers are Ewald Moerke, who is assigned to the Milwaukee Sewerage Commission, and Carl Kinnel, who is assigned to both school boards. The evidence discloses that Moerke and Kinnel in addition to giving legal advice to said municipal employers on many matters also act in the same capacity with respect to collective bargaining matters involving their respective clients and the labor organizations representing employes of said municipal employers. They have also attended negotiation meetings and have given legal advice to their principals with respect to their duties and obligations under Section 111.70, as well as the various statutes and ordinances pertaining to the management and operation of the municipal employer involved. As a result of such relationship Moerke and Kinnel are privy to the positions taken by their various clients in collective bargaining, and thus have access to confidential information with respect to those matters. They also represent such clients in matters pertaining to grievances of employes and in various proceedings before the Board involving proceedings under Section 111.70. We recognize that, although the Milwaukee Sewerage Commission and the two School Boards are municipal employers separate and apart from the City, there is more than a casual connection between the City and said municipal employers in the furnishing of legal advice by the City Attorney and his staff, and there is a definite and intimate relationship in the matter of the revenue and taxing programs of the City and said municipal employers. The representatives of said municipalities exchange information and data relating to labor negotiations involving their respective employes

and thus the assistant city attorneys assigned to the respective municipal employers in the area of labor negotiations have an opportunity for access to such information.

However, although confidential information concerning labor relations is exchanged between the attorneys representing the Sewerage Commission, the two school boards, and the city, the information exchanged is primarily related to the labor relations policies of these separate municipal employers, more specifically, the school boards and the Sewerage Commission. In the Board's opinion, the labor relations policies of the Sewerage Commission and the two school boards are distinguishable from the labor relations policies of the City with respect to the bargaining unit of city attorneys. In making such a distinction, the Board considers significant the fact that a bargaining unit of attorneys will undoubtedly present unique labor relations issues which will require a labor relations policy adapted to the professional and functional characteristics of the employes in the unit. In addition, the Board considers the fact that the attorneys will be represented by an organization which is not affiliated with any labor organization representing employes of the Sewerage Commission or the school boards involved herein as another significant distinguishing characteristic. Because of these distinctions the Board concludes that the inclusion of Moerke and Kinneil in the bargaining unit does not create any serious conflict of interest. Although the Assistant City Attorneys do act in a confidential capacity with respect to the determination and implementation of management policies in the field of labor relations, the information available to these attorneys is not directly related to the relationship between the City and their representative. Employes who have access to confidential labor relations information of other employers, unrelated to the relationship between the employer and the employes included in the unit in question, does not mean that such employes should be excluded from one unit because they are "confidential employes."

Therefore, those assistant city attorneys assigned to give legal opinions and advice to the Milwaukee Sewerage Commission, the Milwaukee Board of School Directors, and the Milwaukee Vocational Directors are to be included among the eligibles in the unit.

The position of Assistant City Attorney, John Kitzke, is not identical to that of Moerke and Kinnel. Kitzke is an active and participating member of the office of the Labor Negotiator of the City. He not only gives legal opinions and advice to that office but he also actively participates in bargaining sessions. He represents that office as well as department heads of the City in proceedings pending before the Board. He thus is an active component of the City's management team. If the Association is selected as the bargaining representative of the Assistant City Attorneys, then said organization will no doubt bargain with the City through the office of the Labor Negotiator. The office of the Labor Negotiator in the latter's bargaining relationship with the Association is the representative of the City. Kitzke cannot possibly serve both parties. His relationship with the office of the Labor Negotiator is too intimate to permit him to be included in the unit. Therefore, Kitzke as well as any other assistant City Attorney who may be regularly assigned to the office of the Labor Negotiator is not to be included in the unit.

We conclude that neither Assistant City Attorney Cornelius Merten who administers the City's workmen's compensation program nor Assistant City Attorney Richard Maruszewski the City's legislative representative, are to be excluded from the unit. Neither of said individuals perform duties which would be in any serious conflict with the employer-employee relationship.

An issue arose as to the supervisory status of Patrick J. Madden, an Assistant City Attorney who is in charge of four other Assistant City Attorneys in a "branch" office located in the Safety Building, separate and apart from the building where the City Attorney has its general office. While Madden does exercise some supervisory responsibility in the assignment of cases and with respect to the performance of the duties of the four assistants, he spends a majority of his time performing similar duties such as conducting conferences with respect to alleged ordinance violations and in prosecuting such violations. We conclude that Madden is a working supervisor and therefore eligible to be included in the unit. It is conceded that Attorney Fleming and Assistant Attorney Slater are supervisory employes and therefore are not to be included in the unit.

The Association contends that since the petition was supported by the signatures of a majority of employes involved, that an election should be merely pro-forma and that therefore the Board should certify the Association is the representative without an election. The Board will not certify any organization as the collective bargaining representative of any municipal employes unless such representative has been selected in an election conducted by the Board in accordance with the statute and the Board's rules. To do otherwise would prevent the employes from exercising their rights established in Section 111.70.

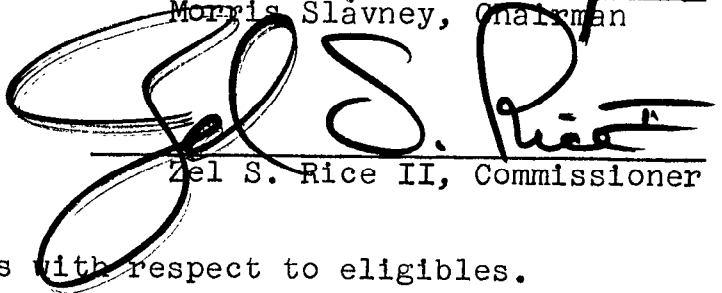
Dated at Madison, Wisconsin, this 10th day of July, 1967.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner

Commissioner Anderson dissents with respect to eligibles.

DISSENTING OPINION WITH RESPECT TO ELIGIBLES

I concur in the Direction of Election herein, but dissent from the majority's determination with respect to the eligibility of two Assistant City Attorneys with labor relations responsibilities, Mr. Moerke and Mr. Kinnel, whom I would exclude as confidential and managerial.

The majority Memorandum describes the duties and activities of Mr. Kinnel on behalf of the Vocational School Board and the Milwaukee Board of School Directors, and the duties and activities of Mr. Moerke as Counsel for the Milwaukee Sewerage Commission. The majority opinion recognizes that the Assistant Attorneys assigned to these departments give legal advice with respect to collective bargaining matters and have access to the labor relations positions of all the municipal employers involved.

The City, the Milwaukee Board of School Directors, the Vocational School Board, the Milwaukee Sewerage Commission and the County of Milwaukee comprise a group known as the Five Taxing Units, which exchange information and data relating to labor relations negotiations with the respective unions representing their municipal employes. The Five Taxing Units also deal with some of the same labor organizations. The Chief Labor Negotiator for the City testified that he participated in conferences with the other taxing units and exchanged information relating to the collective bargaining strategy and tactics and that from time to time he had revealed to representatives of the other taxing units "intimate secrets in the City's bargaining position" as to what the City intended to do. It is my belief that knowledge of such labor relations policies places the labor relations attorneys in an incompatible position with respect to their inclusion in a collective bargaining unit affecting their own employment conditions.

The City, in its brief, points out the need for a strong labor-management team, and that in building such team it should not be deprived of some of its best talent. The City's brief acknowledges the possibility that the City's failure to recognize the need for a strong management team may have been a causal factor in the Attorneys forming an organization for bargaining. Our experience indicates that management's failure to take care of the personnel needs of key employes has often been a factor encouraging employe desire for recognition leading to organization and collective bargaining. Whatever the reason for the organization of the City Attorneys, I am satisfied that under the law they are entitled to form such labor organization,




but they cannot, in my opinion, include in such unit such employes as Mr. Kinnel and Mr. Moerke, who have labor relations responsibilities which I would find are confidential and managerial.

I agree with the statement in the majority opinion that the three Assistant City Attorneys are not managerial employes with respect to their own employment status, but in my view they are members of the City's management team in dealing with other city employes and, therefore, should be excluded as managerial and confidential employes. Some of the testimony indicates that the three City Attorneys involved have a somewhat limited voice in determining the labor relations policies of the respective taxing units, but it is nevertheless clear that they are privy to that policy and have actively participated in negotiations on behalf of the City. On the other hand, the record indicates that Mr. Moerke, as well as Mr. Kitzke have appeared on behalf of the Milwaukee Sewerage Commission and the City, respectively, before state legislative committees and the Governor and given testimony with respect to municipal labor legislation. I, therefore, feel that they are part of the City's management team and have a voice in determining, as well as carrying on, the labor relations policies of the respective municipal employers and thus, their inclusion in a collective bargaining unit of other city attorneys would be improper.

The majority opinion also relies on the fact that the proposed employe organization of city attorneys is not affiliated with other labor organizations representing other municipal employes. However, there is no way of assuring that such affiliation could not occur at some future date. The fact that the organization is not now affiliated should not be a reason for holding that the attorneys are not confidential employes.

Dated at Madison, Wisconsin this 12th day of July, 1967.



---

Arvid Anderson, Commissioner