

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
METROPOLITAN SUPERVISORY AND TECHNICAL	:	Case XXI
EMPLOYEES UNION, AFL-CIO, LOCAL 481	:	No. 11726 ME-343
	:	Decision No. 8219-C
Involving Employes of	:	
	:	
MILWAUKEE COUNTY	:	
	:	

ORDER DISMISSING IN PART PETITION FOR ELECTION

Metropolitan Supervisory and Technical Employees Union, AFL-CIO, Local 481 having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among all supervisory and technical employes employed by Milwaukee County, excluding employes included in any certified collective bargaining unit and administrative, confidential, exempt and unclassified employes; and a hearing having been conducted on the question of whether supervisory employes are covered by Section 111.70 at Milwaukee, Wisconsin, on January 5, 1968, Howard S. Bellman, Hearing Officer, being present; and the Commission having considered the arguments of the parties and being fully advised in the premises;

NOW, THEREFORE, it is

ORDERED

That the petition filed in the above entitled matter be, and the same hereby is, dismissed with respect to any claim to represent supervisory employes; and that the Petitioner shall, within ten days of its receipt of this Order notify the Commission and the Municipal Employer of its intent with respect to its claim in the above entitled matter to represent non-supervisory employes.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of March, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
 Morris Slavney, Chairman

William R. Wilberg
 William R. Wilberg, Commissioner

STATE OF WISCONSIN

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 EMPLOYEES UNION, AFL-CIO, LOCAL 481 :
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 MILWAUKEE COUNTY :

Case XXI
 No. 11726 ME-343
 Decision No. 8219-C

MEMORANDUM ACCOMPANYING ORDER DISMISSING
IN PART PETITION FOR ELECTION

On July 21, 1967 the Petitioner filed its initial petition in which it requested an election among "all supervisory and technical employees" of the County, with certain exceptions. The Commission, on July 27, 1967, requested that the Petitioner supply the Commission with a list of the job classifications intended to be included in the proposed bargaining unit. This list was received by the Commission on October 9, 1967, and on October 11, 1967 the Commission issued an Order to Show Cause^{1/} (1) why the petition should not be dismissed for the reason that the bargaining unit claimed to be appropriate includes supervisors and for the further reason that such bargaining unit is not an appropriate unit within the meaning of Section 111.70, Wisconsin Statutes and (2) why the Petitioner has failed and refused to include a substantial number of supervisory classifications of employes in the proposed unit.

On October 24, 1967 an Order Extending Time for Filing Response to Order to Show Cause^{2/} was issued, and on November 7, 1967 the Petitioner filed an amended petition and a request for a hearing on the Order to Show Cause. The amended petition described the claimed appropriate collective bargaining unit as "all supervisory and technical employees employed by Milwaukee County but excluding all other Milwaukee County employees included in any certified collective bargaining unit, administrative, confidential, exempt and unclassified employees".

The Commission on December 4, 1967, ordered^{3/} a hearing in the matter, specifying in a letter to the parties that such hearing was to

^{1/} Decision No. 8219.

^{2/} Decision No. 8219-A.

^{3/} Decision No. 8219-B.

be limited to those matters which pertain to the determination of whether supervisors are to be included in appropriate units and are entitled to be represented for the purposes of collective bargaining under Section 111.70, Wisconsin Statutes. Such hearing was held on January 5, 1968.

The Commission has held^{4/} that although the Statute does not expressly exclude supervisors from the definition of "employee", the Statute does not provide its protection or processes to such individuals or their organizations. Thus, supervisors cannot be included in an appropriate bargaining unit with other employees, nor can they constitute an appropriate bargaining unit. However, a municipal employer may voluntarily recognize and bargain with a supervisor's organization despite the lack of compulsion to do so or protection for such process.^{5/}

We stated in City of Milwaukee, supra:

"Good faith bargaining 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.^{6/} 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."

^{4/} Outagamie County Hospital, Decision No. 6076 (8/62); Wausau Public Works, Decision No. 6276 (3/63); City of Milwaukee, Decision No. 7069 (3/65).

^{5/} City of Milwaukee, supra.

^{6/} Packard Motor Car Co. v. NLRB, 330 U.S. 485, 19 LRRM 2397 (1947).

The argument made by the Petitioner, for which the Packard Motor Car Co. case, supra, is cited as authority, is that, unless expressly excluded by statutory language, all individuals coming within the broadest definition of the term are employees covered by the Statute. The predicament thus produced with respect to who would represent the municipal employer in bargaining with such officials makes the position untenable. Perhaps such considerations were among those that led to the amendment of the federal legislation following the Packard decision.

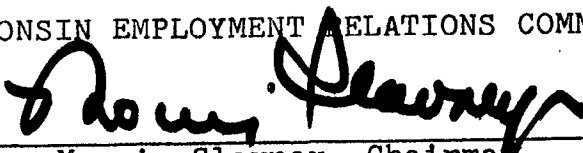
The Petitioner also contends that inasmuch as the legislature expressly exempted supervisors from the processes of the Wisconsin Employment Peace Act and the State Employment Relations Act, it is proper to conclude that it would have done likewise in Section 111.70 if such were its intent. It is also proper to conclude, as we do, that if the legislature found that the pertinent decisions of this Commission were erroneous in this regard, it would have acted accordingly during the intervening years.

Thus it is the Commission's conclusion that its established policy of excluding supervisory employees from the processes and protections of Section 111.70 is proper and should be maintained. It was agreed at the hearing that should such conclusion be reached, the Petitioner would inform the Commission and the Municipal Employer of its desire with respect to the representation of the non-supervisory employees, if any, included in the claimed unit. The attached Order provides a ten-day period in which such desires may be communicated. Failure to notify the Commission in that regard will result in the dismissal of the petition.

Dated at Madison, Wisconsin, this 11th day of March, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



William R. Wilberg, Commissioner