

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN STATE EMPLOYEES ASSOCIATION,
COUNCIL 24, and UNIVERSITY OF
WISCONSIN-MILWAUKEE EMPLOYEES,
LOCAL 82, AFSCME, AFL-CIO,

Case III
No. 11269 SE-3
Decision No. 8296

Involving Certain Employees of

UNIVERSITY OF WISCONSIN-MILWAUKEE

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Wisconsin State Employees Association, Council 24, and University of Wisconsin-Milwaukee Employees, Local 82, AFSCME, AFL-CIO, requesting that an election be conducted pursuant to Section 111.83, State Employment Labor Relations Act, among certain employees in the employ of University of Wisconsin-Milwaukee; and that hearing on such petition having been conducted by the Commission on March 22 and April 26, 1967, at Milwaukee, Wisconsin; and the Commission having considered the evidence and arguments of counsel, and being satisfied that a question has arisen concerning representation for certain employees of the University of Wisconsin-Milwaukee;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this directive in the collective bargaining unit consisting of all employees of University of Wisconsin-Milwaukee, including stock clerks and storekeepers, but excluding clerical employees, library assistants, supervisors, managerial and confidential employees, administrative assistants, professional and limited term employees, who were employed by the State Employer on November 30, 1967, 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 the

majority of said employees desire to be represented for the purposes of collective bargaining by Wisconsin State Employees Association, Council 24, and University of Wisconsin-Milwaukee Employees, Local 82, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 30th day of November, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slayney
Thomas Slayney, Chairman

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

William R. Wilberg
William R. Wilberg, Commissioner

STATE OF WISCONSIN

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In the Matter of the Petition of	:	
WISCONSIN STATE EMPLOYEES ASSOCIATION,	:	
COUNCIL 24, and UNIVERSITY OF WISCONSIN-	:	
MILWAUKEE EMPLOYEES, LOCAL 82,	:	Case III
AFSCME, AFL-CIO,	:	No. 11269 SE-3
	:	Decision No. 8296
Involving Certain Employees of	:	
UNIVERSITY OF WISCONSIN-MILWAUKEE	:	
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

In this matter petitions were filed by four labor organizations requesting that the Commission conduct representation elections among certain employees of the University of Wisconsin-Milwaukee, a State Employer. This State Employer, hereinafter referred to as UW-M, conducts its business and functions in some 35 divisions. The petitions filed herein affect employees employed in nine divisions, namely, Auxiliary Enterprises, Planning and Development, Physical Plant, Campus Services, Student Affairs, College of Letters and Science, College of Applied Science and Engineering, Instruction and Communications Center, and Library.

The Wisconsin State Employees Association, Council 24, and its affiliated local organization, UW-M Employees Local 82, AFSCME, AFL-CIO, hereinafter referred to as the WSEA, desires an election among "blue collar" employees employed by UW-M, and said employees are employed in said nine divisions, more specifically in a collective bargaining unit consisting of all employees of UW-M, including stock clerks and store keepers, but excluding clerical employees, library assistants, supervisors, managerial and confidential employees, administrative assistants, professional employees and limited term employees. International Brotherhood of Firemen & Oilers, Local 125, AFL-CIO, hereinafter referred to as Firemen & Oilers, requests a unit of employees consisting of Boiler Operators and Operating Engineers employed in "Maintenance" of the Physical Plant division. Milwaukee Building and Construction Trades Council, AFL-CIO, and its appropriate affiliated local unions, hereinafter referred to as the Trades Council, requests a unit of building trades craftsmen also employed in "Maintenance" in the Physical Plant.

UW-M Maintenance Local No. 1, an unaffiliated labor organization, seeks to represent employees occupying the classifications of Building Maintenance Helpers I, II and III, employed in the Physical Plant only, and employees occupying similar classifications employed in Auxiliary Enterprises and Student Affairs.

UW-M contends that the employees covered by the petitions should be included in one overall unit consisting of all employees with the exception of supervisors, professionals, managerial and administrative assistants, confidential employees, limited term employees, and clerical employees. UW-M agrees with the WSEA that the unit should also include stock clerks and store keepers on the basis that in the latter two classifications a community of interest of the employees occupying same is more closely identified with that of so-called "blue collar" employees than with the "white collar" office and clerical employees.

The UW-M employs between 280-290 employees who are in various classifications and who are engaged in "blue collar" duties. While the unit claimed to be appropriate by WSEA consists of "blue collar" employees employed in the nine divisions mentioned heretofore, the unit desired by Firemen & Oilers are employed only in the Physical Plant-Maintenance, and would include only the classifications of Operating Engineer I and Boiler Operator II employed in the subdivision of "Heating Plants". The unit sought by the Trades Council craft employees includes 7 Painters, 8 Carpenters, 9 Electricians, 3 Plumbers, 3 Steam Fitters, and 1 Sheet Metal Worker. In addition, there are also employed in the Physical Plant-Maintenance, 5 Maintenance Mechanic I's, 1 Mechanician II, and 1 Maintenance Man, all under the supervision of the Mechanical Engineer IV.

The employees occupying the classifications of Building Maintenance Helpers are primarily employed in Physical Plant-Operations, in House-keeping Services. Also employed in the Housekeeping Services, in addition to supervisory employees,^{1/} are 4 Window Washers. Other agreed upon eligible classifications in Physical Plant-Operations include 1 Gardener I, 1 Maintenance Man, 9 Laborer II's, 3 Motor Vehicle Operator I's, and 1 Upholsterer I. A Building Maintenance Helper II is also employed in the division of Student Affairs-Intercollegiate Athletics.

Certain classifications desired to be included in the various units involved herein are employed in Auxiliary Enterprises, consisting of the Student Union, Housing, and Book Store. These divisions are

^{1/} The Independent would include Building Maintenance Helpers III, while UW-M contends they are supervisors.

more-or-less self-sustaining, but otherwise are part and parcel of the UW-M. Said classifications consist of Building Maintenance Helpers and employees engaged in food production and service employed in the Student Union; Building Maintenance Helpers, a Housing Inspector, and food service employees employed in Housing; and Building Maintenance Helpers, Clerks, and Laborers employed in the Book Store.

While there is a common seniority system for all "blue collar" employees, seniority does not cross classification lines. There is a common grievance procedure applying to all employees of UW-M who are in the classified service in both the "white collar" and "blue collar" classifications. Sick leave benefits, as well as grievance procedures, are uniformly applied to all employees, whether "blue collar" or "white collar". Supervision of employees is on a divisional basis, with some delegation to lower supervisory classifications. The employees in the unit desired by Firemen & Oilers and the Trades Council are under the common supervision of the Mechanical Engineer IV. The employees in the unit desired by Firemen & Oilers are also separately supervised by an Operating Engineer IV, who is responsible to the Mechanical Engineer IV. The Building Maintenance Helpers in Physical Plant-Operations are supervised by supervisory employees who directly supervise them only, with the exception of one subdivision where a Building Maintenance Helper IV also supervises the Window Washers. The Building Maintenance Helper II in Student Affairs is the only "blue collar" employee employed in that division. The Building Maintenance Helpers in Auxiliary Enterprises, with the exception of two positions employed in food production and services, are separately directly supervised. Such is the case in Housing and in the Book Store.

There is some history of representation among various "blue collar" employees. The WSEA and its Local 82 has had employees as members prior to the enactment of the State Employment Labor Relations Act, and such organization has represented its members in processing of grievances. Such representation by WSEA and its Local 82 has been among employees in the unit contended by it to be the only appropriate unit. While the craft classifications are on the prevailing rate, there is no evidence of past representation for said employees other than by WSEA and its local. The same holds true for the Operating Engineers and Boiler Operators. There appears to have been past representation for certain Building Maintenance Helpers by Building Service Employees Union, which withdrew its petition after the commencement of the instant proceedings, and which organization apparently was succeeded by the Independent during the course of the proceedings.

Building Maintenance Helpers primarily perform custodial duties in the various buildings throughout the campus. They perform manual work, generally of a physical nature incidental to the cleaning and maintenance of the facilities. Their duties are described as those associated with janitorial duties in an office building, which include elevator operating, wet mopping, waxing, furniture moving, simple equipment operation, and some outside grounds work directly related to building maintenance. There are no special skills involved, although they are required to have knowledge of cleaning methods, materials, and equipment.

The classification of Boiler Operator II is described as requiring semi-skilled work in the operation of boilers, either in a large power plant or in charge of small power plants on a shift. In performing such work, the employee in the classification maintains correct water levels and steam pressures and operates various heaters and pumps and generating equipment. He may regenerate water softening equipment and make minor repairs throughout the power plant. He is required to have considerable knowledge with respect to heating equipment, pumps and fans. The Operating Engineer classification operates, services, and maintains power plants and performs duties similar to those performed by the Boiler Operators but at a higher level of skill. There are two main power plants and 16 or 17 satellite plants throughout the UW-M facility. The employees in the classifications of Boiler Operators and Operating Engineers are assigned to specific locations either in the main power plants or in the satellite power plants. As indicated previously herein, employees occupying said classifications, sought by the Firemen & Oilers in a separate unit, are separately directly supervised by an Operating Engineer IV, who supervises no other employees.

The craft classifications are engaged primarily in maintenance and some remodelling work in all buildings on the campus. On occasions craft employees may work together with laborers and other employees. As indicated previously, the craft employees have common supervision. The craft classifications require journeymen craft status. Craft employees receive the rate prevailing in the Milwaukee area, less deductions for fringe benefits granted to state employees. The prevailing rate changes when rates in private building trades are established in collective bargaining. When temporary craft employees are required, local craft trade unions are contacted and requests are made to them to furnish the necessary craft employees.

Under the labor relations statutes in private and municipal employment, where employees in a single department or division desire to constitute themselves a separate unit, the Commission has no other

alternative than to permit the employees their choice in that regard, and if a majority of the eligible employees vote in favor of constituting themselves a separate unit, they are so considered. The same opportunity is afforded craft employees under the Wisconsin Employment Peace Act. In the municipal labor relations law, craft employees constitute a separate unit consisting of the members of the same craft. The State Employment Labor Relations Law has changed the statutory concept with respect to the establishment of collective bargaining units. Under the latter law, the Commission is given the discretion to establish collective bargaining units. It may establish units of less than all the employees involved, with or without affording the employees who desire smaller units the opportunity to make this determination for themselves. In other words, if these proceedings were in municipal employment rather than state employment, the Commission's responsibility with respect to the units would be limited to determining whether the Building Maintenance Helpers constitute a separate division or department,^{2/} and also whether the employees in the heating plants, namely, the Boiler Operators and Operating Engineers, also constitute a separate division or department.^{3/} Likewise, under the municipal employment labor relations law, the various craft employees involved in the unit desired by the Trades Council would constitute separate and distinct collective bargaining units for each craft. In the exercise of its discretion in establishing bargaining units, the Commission must consider all relevant evidence which will affect the collective bargaining relationship which may be established as a result of representation elections.

The Independent would have the Commission establish either a separate unit of Building Maintenance Helpers or at least give the employees in those classifications an opportunity to determine for themselves whether they desire to constitute a bargaining unit separate and distinct from the other employees. It makes this contention on the basis that the duties performed by said employees are distinct from the duties performed by the other employees in the "blue collar" group.

The Firemen & Oilers desire a separate unit of heating plant employees on the basis that they are craft, and if not so found, that their duties are distinct to such an extent that the Commission should exercise its discretion and permit said employees to be included in a separate unit.

^{2/} We do not consider them "craft" employees.

^{3/} In previous cases in municipal employment, the Commission has held similar classifications not to fall within the craft concept.

The Trades Council seeks a separate unit of all craft employees on the basis of the fact that they are craft employees, and, further, that the organization which seeks to represent them traditionally represents employees in the building trades in the Milwaukee area.

The WSEA, in support of its contention that an overall unit of "blue collar" employees is an appropriate unit, rationalizes that all the employees therein have a significant community of interest. It further argues that it has a long-standing representation status with respect to the processing of grievances for various employee members in the various classifications involved, including those sought by the other organizations in separate bargaining units. WSEA further contends that those matters subject to collective bargaining under the State Employment Labor Relations Act are common throughout the UW-M, and that the unit desired by it includes all those employees employed in the maintenance and operation of the physical facilities of this state employer and that such duties are interrelated and directed toward the same goal. It further emphasizes the fact that, except for immediate supervision of certain classifications, there is a common supervision of the employees in the unit sought by it, including the employees in the unit sought by the other organizations.

In support of its contention that all "blue collar" employees constitute a single appropriate bargaining unit, the UW-M argues that past representation indicates that WSEA has represented employees in all categories in the processing of grievances prior to the adoption of the State Employment Labor Relations Act. It opposes the establishment of a separate unit for craft employees on the basis that the permissible area of collective bargaining, as set forth in Section 111.91, does not include wages and fringe benefits, and that wages are the only condition of employment which distinguishes the craft employees from other employees engaged in the maintenance and operation of the facilities. UW-M contends that the permissible subjects for collective bargaining under the statute, such as work schedules, assignment of hours, sick leave, work rules, transfers, and health and safety factors, are established on a divisional basis rather than a craft or occupational basis. It emphasizes that a common seniority system, common ultimate supervision, and common grievance procedure support the conclusion that an overall "blue collar" unit is the appropriate unit.

We believe that excessive fragmentation of bargaining units in state employment collective bargaining will not effectuate the policies of the state employment collective bargaining law. However, this does not necessarily mean that the Commission will establish the largest

possible unit claimed to be appropriate by the party seeking to establish same. There must be such an existing separate community of interest among the employees in the desired unit as will persuade the Commission to permit the employees to determine for themselves whether they desire to constitute a separate unit or which the Commission itself will establish as being appropriate. This community of interest may be reflected in various ways, such as the nature of the function of the department or division of the State Employer in which the employees are employed, the nature of the duties performed by the employees in issue, the skills involved, separate supervision in significant levels of supervision, and the similarity or dis-similarity in conditions of employment.

We are satisfied that the craft employees, because of the nature of their specialized skills utilized in performing work characteristic of the craft performed by no other employees, and because of the fact that their wages are on prevailing rates, have a sufficient community of interest separate and apart from the remaining employees performing duties in the maintenance and operation of the facilities involved. Furthermore, one of the organizations seeking to represent said craft employees traditionally has represented building trade employees in separate and distinct bargaining units in private and municipal employment in this state, and in that regard, the prevailing rates being paid by UW-M to the craft employees in its employ were negotiated by such organizations in private employment negotiations. We conclude that craft employees, therefore, constitute a separate appropriate bargaining unit, and we are directing an election therein to determine whether said craft employees desire to be represented for the purposes of collective bargaining by the Trades Council (and its affiliated locals), or by the WSEA, or by no organization.

While Boiler Operators and Operating Engineers have been represented in private employment collective bargaining by the labor organization which seeks a separate unit of said classifications employed in the heating plants of the UW-M, said relationship, as it applies to the employees of this State Employer, has not contributed to the establishment of a separate community of interest among the classifications which it seeks to represent in an appropriate unit, and the conditions of employment which have existed for said employees, as well as the duties performed by them, do not establish a separate and distinct community of interest. Furthermore, except for their immediate supervision, they are supervised at a higher level of supervision by employees who supervise other employees engaged in the operation and maintenance of the physical plant of the State Employer. The same can be said of the Building

Maintenance Helpers, and, therefore, we are dismissing the petitions filed by the Firemen & Oilers and the Independent. We find that, with the exception of the craft employees, the unit desired by WSEA, and acquiesced in by UW-M, also constitutes an appropriate unit, and we are directing an election therein to determine whether the employees therein desire to be represented for the purposes of collective bargaining by the WSEA or by no organization.

During the course of the hearing, issues arose with respect to whether employees in certain classifications were supervisory and thus to be excluded from the eligibles in the bargaining units. Some of the classifications in issue were resolved prior to the close of the hearing. At the request of the parties, the classifications of Laboratory Technician III and IV employed in Student Affairs will be permitted to vote by challenged ballot and their eligibility will be subsequently determined.

The parties are not in agreement with respect to the issue as to whether Building Maintenance Helper III's are supervisors, and accordingly, on the issue as to whether they should be included in the collective bargaining unit. The record indicates that the Building Maintenance Helper III's primary responsibility is the supervision of Building Maintenance Helper I and II. Although the Building Maintenance Helper III's do perform some maintenance work, it would appear that most of their time is spent supervising the work of their subordinates. Building Maintenance Helper III's have the authority to make recommendations on continued employment for probationary employees, and are responsible for making recommendations for salary increments, raises and probationary increases. On the night shift the Building Maintenance Helper III is the only individual present who has supervisory authority. The Building Maintenance Helper III on the night shift has greater supervisory responsibility than the other Building Maintenance Helper III's, and accordingly, his rate of pay is greater than the other Building Maintenance Helper III's. Each Building Maintenance Helper III supervises the work of a crew of approximately eight to fifteen employees. The Building Maintenance Helper III receives \$65 a month more than the Building Maintenance Helper II, and \$175 a month more than the Building Maintenance Helper I. Although the Building Maintenance Helper III does perform some physical work, particularly in providing his crew its supplies and by substituting for employees in lower classifications when they are absent, we find, because of the wage differential, the authority to recommend personnel action, and the responsibility for supervision of

the employes in lower classifications, that the Building Maintenance Helper III is supervisory, and, therefore, the employes occupying such classification are not included in the "blue collar" unit.

The UW-M contended that the Motor Vehicle Dispatcher employed in the office of Campus Services performs supervisory duties over two employes in the Fleet Division thereof. At the most, said position is considered a "working foreman", and, therefore, this classification is included in the "blue collar" unit.

Those classifications eligible to vote in the "craft" unit are:

PHYSICAL PLANT

Carpenter	Plumber
Electrician	Sheet Metal Worker
Painter	Steamfitter

Those classifications eligible to vote in the "blue collar" unit are:

AUXILIARY ENTERPRISES

Student Union

Baker I	Cook I
Building Maintenance Helper II, I	Domestic Service Helper II, I
Clerk II	

Housing

Building Maintenance Helper II, I	Housing Inspector I
Cook II, I	Pastry Cook I
Domestic Service Helper II, I	Stock Clerk I

Book Stores

Building Maintenance Helper II, I	Laborer I
Clerk II	

PLANNING AND DEVELOPMENT

Draftsman II

PHYSICAL PLANT

Storekeeper I

Maintenance

Boiler Operator II

Operating Engineer I

Maintenance Man

Maintenance Mechanic I

Mechanician II

Operations

Building Maintenance Helper II, I Motor Vehicle Operator I

Gardener I

Upholsterer I

Laborer II

Window Washer

Maintenance Man

OFFICE OF CAMPUS SERVICES

Mail Room

Laborer II

Motor Vehicle Operator I

Campus Protection

Police Officers

Security Officer I

Fleet

Automotive Mechanic I

Laborer II

Motor Vehicle Dispatcher

Storekeeping

Clerk III

Photography

Photographer II

STUDENT AFFAIRS

Intercollegiate Athletics

Building Maintenance Helper II

COLLEGE OF LETTERS & SCIENCE

Botany

Gardener I

Laboratory Technician I

Chemistry

Laboratory Technician III
(Challenged)

Laboratory Technician I

Geology

Laboratory Technician IV
(Challenged)

Geography

Laboratory Technician I

Physics

Laboratory Technician IV
(Challenged)

Mechanician I

Laboratory Technician II, I

Zoology

Animal Caretaker I

Laboratory Technician I

Laboratory Technician III
(Challenged)

COLLEGE OF APPLIED SCIENCE AND ENGINEERING

Electronics Technician I

Mechanician

INSTRUMENTAL COMMUNICATION CENTER

Laborer II

LIBRARY

Stock Clerk I

Dated at Madison, Wisconsin, this 30th day of November, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slayney
Morris Slayney, Chairman

Earl S. Rice II
Earl S. Rice II, Commissioner

William R. Wilberg
William R. Wilberg, Commissioner