

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO  
Involving Certain Employees of  
BOARD OF EDUCATION, JOINT SCHOOL DISTRICT  
NO. 1, CITY OF GREEN BAY et al,  
Green Bay, Wisconsin  
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Case II  
No. 12173 ME-382  
Decision No. 8667

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, filed a petition requesting the Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes in a claimed appropriate unit consisting of

"all maintenance employees of the Green Bay District Schools, excluding professional teachers, supervisors, department heads, craft employees, elected or appointed officials, cooks, clerical and confidential employees."

At the outset of the hearing, Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereinafter referred to as the Intervenor, was permitted to intervene in the proceedings on the basis of its claim to be the present bargaining representative and party to an existing collective bargaining agreement covering the same employees as described in the petition of Petitioner. At the outset of the hearing the Municipal Employer contended that the appropriate collective bargaining unit should consist of all the non-professional employees in its employ, including, in addition to maintenance employees, cooks and clericals, consisting of instructional secretaries, vocational education employees, matrons, teacher aides, Title I - ESEA personnel, attendance officer and director of public relations, but excluding supervisors, craft, confidential, elected and appointed officials. During the course of the hearing the Petitioner and Intervenor indicated that they had no objections to the Commission finding appropriate a "maintenance" unit which included cooks, but both organizations contended that "clerks"

should be excluded. The Municipal Employer maintained its position that clerks as well as cooks should be included on the basis that "all of the non-professional employees" should be deemed appropriate.

In addition to the question of unit, issues regarding eligibility and craft were raised, the Municipal Employer contending that two employees, namely, George Bunker and Robert Duchateau, are supervisors and should be excluded. The Petitioner and Intervenor both contend that said employees are working foremen and should be included as eligibles. The Intervenor contends that three employees in a group described as "maintenance mechanics" should be excluded as craft employees, since one specializes in a sheet metal craft, and two others perform craft work of plumbers. The Municipal Employer takes no position on the question, but the Petitioner contends that said employees are not functioning at separate crafts and should be included with other maintenance personnel. The parties agreed that "electrician", a craft not otherwise covered by a separate petition, should be excluded from the unit.

#### Issues with Respect to Supervisors

George Bunker, foreman of the custodial staff, in thirty-one school buildings directs approximately one hundred custodial personnel throughout the school system and is assisted in such direction by a head custodian at each building. He may reassign employees from school to school or to different tasks to cover emergencies. Though normal promotions and transfers are governed by a job posting procedure, Bunker may effectively recommend as to which employees are qualified to perform the vacant tasks. Bunker may also recommend to his supervisor, Nick Dallach, the Director of Building and Grounds, the hiring or discipline of employees. Bunker instructs new personnel and works with each principal, as administrative head of each school building in the assignment of tasks. Bunker received a salary of \$714 per month, an amount which is \$109 per month more than that paid to the Building Engineer, the highest paid classification subject to his direction. Bunker performs no work along side employees subject to his direction.

Robert Duchateau, foreman of the maintenance crew, including the carpentry, painter and electrical craftsmen, directs some twenty-two maintenance mechanics and craftsmen and also reports to Dallach. After receipt of work orders from Dallach, Duchateau makes job assignments to craft and ground crews, according to his own determination of the skills and crew size required. Duchateau may make recommendations to Dallach

involving the hire, discipline and promotion of employees; Dallach makes recommendations to the Board of Education. Though Duchateau formerly performed the duties of a heating and plumbing mechanic, he presently only performs same occasionally but otherwise does not perform work along side any mechanic crews. Duchateau is paid \$714 per month, an amount in excess of the non-craft mechanics' salary by \$109 per month, but only \$16 per month greater than that received by an electrician. Both Bunker and Duchateau have been covered by the existing collective bargaining agreement and classified as Foremen.<sup>1/</sup>

Though both Bunker and Duchateau were treated as unit employees by the terms of the labor agreement between Teamsters and the School District, and though both have not participated in the processing of grievances, the Commission is satisfied that the duties of both employees are supervisory in nature because they effectively direct and assign the employees in their respective areas, exercising independent judgment in doing so. They are given charge of crews comprising a substantial number of employees and both individuals receive a substantial salary increment over and above employees subject to their direction. We are therefore excluding Bunker and Duchateau from the eligibles.

#### Craft

During the course of the hearing the Intervenor contended that Herman Burkard should be excluded as "craft" because he exclusively performs duties as a sheet metal craftsman and that Norbert McHugh and Louis Walenski should similarly be excluded on the basis that they spend nearly all of their time performing duties of craft plumbers.

The Commission, in the Winnebago County<sup>2/</sup> case, discussed the criteria in distinguishing a "craft" from a mere occupational grouping when we declared:

"We shall consider employees to be engaged in a single craft when they are a distinct and homogeneous group of skilled journeymen craftsmen working as such together with their apprentices and/or helpers. To be a journeyman craftsman, an individual must have a substantial period of apprenticeship or comparable training. An excellent rule of thumb test of a worker's journeyman standing is the number of years apprenticeship he has served--the generally accepted standard of which varies from craft to craft. We will, however, recognize an experience equivalent where it is clearly demonstrated to exist. All employees included in the unit must be practitioners of the same allied craft and must be similarly engaged in the performance of tasks requiring the exercise of their craft skills..."

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<sup>1/</sup> No previous determination of their supervisory status has been made by this agency.

<sup>2/</sup> Decision No. 6043, 7/62.

The record discloses that Burkard works out of a special shop in the mechanics' garage, specializing in roof-flashings and gutter repair, and repairing and making extensions to the existing ventilating systems in the school buildings. He fabricates and repairs flashings, ventilators and exhausters, utilizing his own small hand tools and working with the employer-owned forming machine for larger unit work in the shop. No other employees perform any sheet metal work, but on occasion a helper is assigned with Burkard to help lift and move heavy material. Burkard spends seventy-five per cent of his time specializing in sheet metal work, spending the remaining portion of his time performing roof patching and occasional welding not connected with sheet metal work. At the time of hire, Burkard had acquired fifteen years experience as a sheet metal craftsman with a private heating contractor, and at the time he was a member of a local sheet metal craft union. There is no classification for a sheet metal man in either the existing labor agreement or in the Municipal Employer's classification system. Burkard receives the maintenance-mechanic salary of \$605.00 per month, which is less than the electrician craft but more than the painter craft. He reports to Robert Duchateau, foreman of the mechanic crew.

Louis Walenski and Norbert McHugh maintain the heating and plumbing systems in the schools, which entails repairing faucets, controls, piping, including minor extensions to drinking water systems, repairing stokers, traps, valves and the heat distribution systems in the classrooms. They occasionally disassemble or rebuild a fixture in the shop area. The heating systems are low-pressure steam or hot water. Neither individual is a licensed plumber. Under State Board of Health Rules the Municipal Employer is required to secure outside contractors with licensed plumbers to alter or extend a sanitary system. Neither employee ever served an apprenticeship, their training consisting of performing such maintenance duties on the job. Both individuals report to Robert Duchateau and are classified as maintenance mechanics at \$605.00 per month. There is no plumber classification in the agreement.

Some five years ago, just prior to assigning McHugh to plumbing maintenance, the Superintendent of building and grounds indicated on a posting that said position was available to an individual with plumbing experience. At no time, in fact, has the Employer required a licensed plumber or journeyman plumber to fill either position. No other employees engage in plumbing repair except Building Engineers who may repair faucets. There are no helpers regularly assigned to assist either man.

The Commission concludes that maintenance mechanics McHugh and Walenski, notwithstanding their specialties of exclusively maintaining plumbing and heating systems, are not craft employees since no evidence indicates that they served an apprenticeship or formal training program which would be the equivalent thereto and their work doesn't present the opportunity to exercise the gamut of skills of the plumber craft, since they are unable to alter or extend sanitary systems.<sup>3/</sup> We will therefore include them among the eligibles.

On the other hand we conclude that the evidence indicates that Burkard has the training and experience and does perform all of the traditional skills of a sheet metal craftsman, notwithstanding the lack of a substantial increment of salary, vis-a-vis other mechanics, and we have therefore excluded him from the unit as a craft employee pursuant to Section 111.70(4)(d), Wisconsin Statutes.

#### Appropriate Unit

The Municipal Employer, in contending that the cooks and clerks should be included, does claim that "all of the employees of the employer" constitute the appropriate unit, relying upon Section 111.70(4)(d) and Section 111.02(6), Wisconsin Statutes<sup>4/</sup> and the Commission's decision in Southern Door County School District #1.<sup>5/</sup>

Both Petitioner and Intervenor expressed positions in the alternative that cooks could be included, but otherwise contend that the unit petitioned for, namely, all the maintenance employees, excluding cooks and clerks, should be deemed appropriate since the existing collective bargaining agreement between the Intervenor and the Municipal Employer set forth such a unit.

Where a petition for an election is filed and issues arise as to the appropriateness of the unit, with the Petitioner requesting an election among certain employees not constituting all of the employees of the employer and the employer asserting that "all of his employees" should be deemed the appropriate unit, the Commission has no power to determine what constitutes an appropriate collective bargaining unit. The Commission does, however, answer the threshold question, namely, whether the group

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3/ Winnebago County Hospital, Dec. No. 6043, 7/62; Lincoln County, Dec. No. 6200, 1/63.

4/ "111.02(6) - The term collective bargaining unit shall mean all of the employees of one employer...except that where a majority of such employees engaged in a single..., division, department or plant shall have voted by secret ballot as provided in Section 111.05(2) to constitute such group a separate bargaining unit they shall be so considered..."

5/ Decision No. 8497, 4/68.

of employees claimed appropriate by the Petitioner and Intervenor does in fact constitute a separate department, division or plant. If we so determine that said group is a separate department, the employees therein are given the opportunity to determine for themselves whether they desire to constitute a separate bargaining unit.<sup>6/</sup>

The Commission in determining whether a separate division or department exists has followed the criteria set forth in Gimbel Brothers<sup>7/</sup> for both private and municipal employment. In that decision the Commission stated:

"It does not seem to us that in order to constitute a group of employees a separate department or division, that there necessarily must be a physical separation or that the employer must have set up in his business separate divisions or departments as such. The aim of the legislature, we feel, was to enable employees having similar problems and working under similar conditions, which problems and conditions differed from other employees of the employer, to bargain collectively as a separate collective bargaining unit. There must, however, be something more than an arbitrary division - either an actual physical separation or some difference in working conditions that will divide the employees into natural groups."

Here both employe organizations claim appropriate a unit consisting of "all maintenance employees but excluding professionals, supervisors, department heads, craft employees, elected or appointed officials, confidential employees, cooks and clericals" (emphasis supplied). The record discloses that this is in essence the same bargaining unit as that contained in the current agreement negotiated between the Intervenor and the Municipal Employer which was effective January 1, 1968, and is to expire on December 31, 1968. Under the terms of that agreement the Municipal Employer voluntarily recognized the Intervenor as the bargaining representative for employees occupying the several classifications set forth in the agreement, which encompasses the maintenance and custodial employees in the school system who are subject to the direction of the Superintendent of building and grounds. Both parties to the agreement deemed the unit consisting of the enumerated classifications as appropriate. The agreement was described and referred to by the parties thereto as the "maintenance employees agreement."

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6/ City of Green Bay, Dec. No. 6558, 11/63; Dodge County, Dec. No. 6067, 7/62.

7/ Gimbel Bros., Dec. No. 251, 4/41; City of Green Bay, Dec. No. 6558, 11/63.

The record discloses that the maintenance employes (including custodial) are directed by the Superintendent of building and grounds, Nick Dallach, who is assisted in supervision by Robert Duchateau, foreman of the mechanic crew, and George Bunker, foreman of the building custodial personnel. Though principals of each of the 31 schools are primarily responsible for all professional and non-professional personnel in each school, each principal has merely an incidental part in the direct control and assignment of custodians and mechanics, they being immediately supervised by Duchateau, Bunker and Bunker's head custodians as leadmen in each school. There is no interchange of duties or of employes between the maintenance employe group and either cooks or clericals. No other supervisor has responsibility for the direction and control of the maintenance group save the Superintendent of Schools, to whom Dallach reports. Though the maintenance employes enjoy no different fringe benefits from the cooks and clericals, their hours of work vary from those of the clericals and cooks. The maintenance employes are employed on a twelve-month basis. Some fifty of the sixty clericals employed throughout the 31 school buildings work from mid-August to mid-June on a ten-month basis. Food service personnel (cooks) are employed a little short of nine months each year. The sixty clericals employed in the separate school buildings are supervised by the principals, but for hiring and personnel matters, they are subject to the control of the Assistant Superintendent for Business. The remaining 34 clerks are employed in the Central Administration Office, in five sub-departmental groups, each directed by an intermediate supervisor, who all report to the Office Business Manager. The Assistant Superintendent for Business is responsible for food service management, but the cooks are subject to immediate supervision in separate schools through the principal and head cooks functioning as leadmen. There is no similarity between the duties of clerks and the duties of cooks with the mechanical and custodial duties of the maintenance employes. The Municipal Employer would have the Commission resolve the question of separateness here on the basis that the overall unit is appropriate since all of the employes in the several groups enjoy the same benefits and have common personnel problems, citing Southern Door County School District No. 1.<sup>8/</sup>

When viewing the facts in this case, Southern Door County may be distinguished. Here there exists a substantial difference in working conditions between maintenance employes and cooks and clericals. Each group is directed by separate supervision, notwithstanding the under-

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<sup>8/</sup> Ibid. No. 4


standable policy which places each principal in ultimate control of the physical and academic plant in each school. The Municipal Employer here, as in Superior Memorial Hospital,<sup>9/</sup> recognized the common skills and functions performed by certain of its employees as a group separate and distinct from the remaining employees when it voluntarily recognized the Intervenor in a unit of maintenance employees only and executed a labor agreement governing the wages and working conditions for said group. The Commission is satisfied that the maintenance employe group does have special interests and working conditions which differ from those of the remaining employees, namely, from the clericals and cooks, and therefore, we consider that the maintenance employees are employed in a separate department and entitled to a unit determination vote pursuant to Section 111.05(2), Wisconsin Statutes.


In view of the above determination, the Commission in its Direction of Election has provided the opportunity for the "maintenance employees" to determine for themselves whether they desire to constitute a collective bargaining unit separate and apart from other employees and to determine what, if any, representation said employees desire for the purposes of conferences and negotiations. The result of the unit vote will be tabulated first. If there is no question that the required number of employees voted in favor of a separate unit, then the ballots with respect to the selection of bargaining representatives will be tallied. However, if the results of the vote on the unit determination do not establish a separate unit, the Commission's agent conducting the election will immediately impound the ballots on the question of representation, and the results thereof will not be determined.

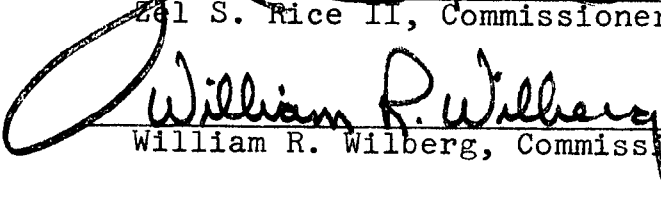
Dated at Madison, Wisconsin, this 29th day of August, 1968.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
William R. Wilberg, Commissioner

9/ Dec. No. 7791, 11/66.