

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
TECHNICIANS, ENGINEERS AND :
ARCHITECTS OF MILWAUKEE :
COUNTY (TEAMCO) : Case XXIX
Involving Certain Employes of : No. 12393 ME-406
MILWAUKEE COUNTY : Decision No. 8765-G

Appearances:

Mr. Thomas McAleese, President, and Mr. James R. Eaton, TEAMCO, Airport Engineering, General Mitchell Field, 5300 South Howell Avenue, Milwaukee, Wisconsin 53207, appearing for the Petitioner.
Podell, Ugent & Cross, S.C., Attorneys at Law, Suite 315, 207 East Michigan Street, Milwaukee, Wisconsin 53202, by Ms. Nola J. Hitchcock Cross, appearing on behalf of the Intervenor.
Mr. Patrick J. Foster, Corporation Counsel, Milwaukee County, Milwaukee County Courthouse, 901 North 9th Street, Milwaukee, Wisconsin 53233, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Technicians, Engineers and Architects of Milwaukee County, a/k/a TEAMCO, filed a petition on March 26, 1984, with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing collective bargaining unit represented by TEAMCO so as to include the position of Architectural Technician within said unit. A hearing was held on May 17, 1984, in Milwaukee, Wisconsin, before Hearing Examiner Christopher Honeyman. At the hearing, District Council 48, AFSCME, AFL-CIO, was permitted to intervene on the basis that it had represented the employes now classified as Architectural Technicians prior to their reclassification to that position. A stenographic transcript was made of the hearing and post-hearing briefs were received through July 6, 1984. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Milwaukee County is a municipal employer with its offices in Milwaukee, Wisconsin, and operates various departments. Among them is the office of the County Architect, in which are employed two individuals, Randy Crawford and Terry Krell, who are presently classified as Architectural Technicians.

2. Technicians, Engineers and Architects of Milwaukee County, referred to herein as TEAMCO, is a labor organization and is the certified bargaining representative of:

All Engineers, Environmental Engineers, Engineering Technicians III, IV and V, Energy Technicians, Architects, Landscape Architects, Architectural Draftsmen, Design Draftsmen, Estimator and Specification Writer, Construction Superintendent, Assistant Construction Superintendents and Draftsmen III (Civil Engineering) as included within the Engineering Group defined in Section 17.32(2) of the General Ordinances of Milwaukee County, excluding all other employes, supervisory and confidential employes and executives.

3. District Council 48, AFSCME, AFL-CIO, referred to herein as AFSCME, is the certified bargaining representative of a unit consisting of:

All regular full-time and regular part-time employees of the County of Milwaukee, excluding fire fighting classifications, and other craft employees, registered nurses and other professional employees, confidential employees, supervisors, department heads and exempt positions.

4. On January 20, 1983, the County Board of Supervisors approved an ordinance reclassifying the employees referred to in Finding of Fact 1 above from Drafting Technician III (Architectural) to Architectural Technician. The reclassification of both positions was sought by AFSCME, which represented both individuals as part of its bargaining unit referred to above. Upon reclassifying these positions, the County declined to place them in either TEAMCO's or AFSCME's bargaining unit.

5. Randy Crawford and Terry Krell are engaged in work which is predominantly intellectual and varied in character and which results in an output which cannot be standardized in relation to a given period of time. Their work, however, does not involve the consistent exercise of discretion and judgment, and does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

Based on the above Findings of Fact, the Commission issues the following

CONCLUSION OF LAW

Randy Crawford and Terry Krell, occupying the positions of Architectural Technician, are not professional employees within the meaning of Sec. 111.70(1)(1) of the Municipal Employment Relations Act and are, therefore, appropriately placed not in the professional bargaining unit represented by Petitioner but rather in the non-professional bargaining unit represented by Intervenor.

Based on the above Findings of Fact and Conclusion of Law, the Commission issues the following

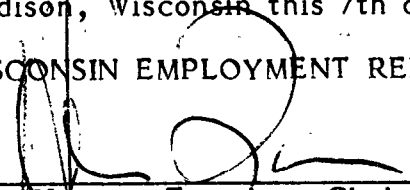
ORDER CLARIFYING BARGAINING UNIT 1/

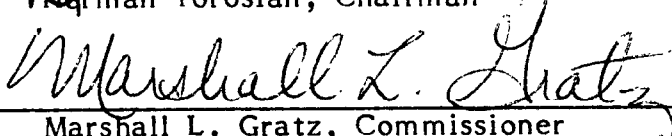
That the bargaining unit described in Finding of Fact 2 above and represented by Intervenor AFSCME is clarified as including the position of Architectural Technician.

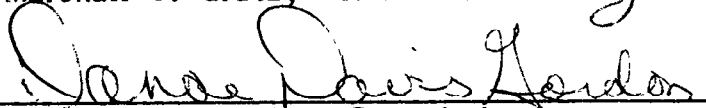
Given under our hands and seal at the City of
Madison, Wisconsin this 7th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.
(Continued on Page 3)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

TEAMCO contends that the position of Architectural Technician, in which the two incumbents are Randy Crawford and Terry Krell, is a professional position within the meaning of Sec. 111.70(1)(1) of the Municipal Employment Relations Act and should therefore be included in the professional bargaining unit which it represents. Should these employees be determined not to be professional, TEAMCO states that it will concede those positions to AFSCME's bargaining unit.

AFSCME contends that the positions at issue are not professional and should be included in its bargaining unit; in the alternative, AFSCME contends that even if these positions are found to be professional they should still be included within AFSCME's bargaining unit.

The County takes no position with respect to bargaining unit placement of these positions except to request that no separate bargaining unit be found appropriate for these positions.

On June 21, 1977, TEAMCO previously filed a petition for unit clarification, in which, among other positions, it sought the inclusion of certain employees classified as Drafting Technician III (Architectural). One of these employees was Crawford and another was Earl Harr, who is still employed by the County in the same position. In our decision finding both positions to be non-professional, we stated as follows: 2/

Randy Crawford and Earl Harr - Drafting Technician III
(Architectural)

Randy Crawford and Earl Harr are employed in the position of Drafting Technician III (Architectural) for the Department of Public Works, Architectural and Engineering Division, Crawford for about a year and Harr for 2 1/2 years. (Footnote omitted) Work orders for construction of new buildings or remodeling are received by the division from various other County departments, such as the Park Commission or Institutions. Projects are assigned to either Architectural Designers, represented by TEAMCo, or the above Drafting Technicians. In general, the Technicians handle projects which are less complex and costly than the Designers. The Technicians are responsible for designing a project, drafting the construction plans, getting input from people who will use the space, preparing preliminary cost estimates and inspecting the on-site construction work. Their work is reviewed by Designers, Engineers and/or Architects. Both Crawford and Harr work closely with numerous individuals who are represented by TEAMCo.

The most recent job announcement (March 11, 1975) states that the minimum education qualifications are "graduation from high school; accredited college or university training in architecture preferred" and that the minimum experience needed is "four years experience as an architectural draftsman; accredited college or university training in architecture may be substituted for the required experience on a year-to-year basis to a maximum of two years." Crawford has taken architectural courses at Milwaukee Area Technical College while Harr has taken architectural and engineering courses there but neither has a degree.

2/ Decision No. 14786-B (WERC, 4/80).

The Commission has concluded that Crawford and Harr are not professional employees because their work does not involve to a sufficient degree the consistent exercise of discretion and judgment.

The record herein shows that the description above of the work of Drafting Technician III (Architectural) remains essentially true for Crawford's and Krell's work as Architectural Technicians. Crawford testified that since 1977, changes in his work have resulted from staff cuts in the County Architect's office. Crawford stated that his work is now assigned by the County Architect or Assistant County Architects, while previously it was assigned by Architectural Designers or the Drafting Supervisor, and that he now acts as Construction Inspector and approves certificates of payments and change orders to a greater degree than he did at that time. Crawford testified that he is now involved in final approvals of construction, but admitted that the County Architect normally is present for a final inspection and does not routinely leave this work to him. Crawford further testified that he is now responsible for more coordination and scheduling of construction projects, and has more individual input into the drawings and bid specifications which continue to absorb approximately 60 percent of his working time. Crawford does not, however, have authority either to accept a price for a change order or reject a bid; these decisions are made by the County Architect or the Assistant County Architects. Moreover, Crawford cannot design a project without close inspection of the drawings by the Assistant County Architect. Most significantly, there has been no new job announcement for the position of Architectural Technician, nor any other County act requiring a higher degree of training or education than that quoted above from 1975. The reclassification of these positions to Architectural Technician was made after the original request by AFSCME that the positions be designated "Assistant Architectural Designer" was denied by the County.

The record shows that Crawford and Krell have been given somewhat greater responsibilities because of the cutbacks in staff in the County Architect's office. But the record fails to establish that the work has changed to the point that it now involves to a sufficient degree the consistent exercise of discretion and judgment. Further there is no evidence to show that the new responsibilities of the job require "a prolonged course of specialized intellectual instruction." 3/ In fact, Crawford testified that his principal training was obtained through on the job training, as well as by taking architectural courses at Milwaukee Area Technical College.

TEAMCO's claim is apparently based partly on the reclassification, which AFSCME argues was simply a device to acquire higher pay for these individuals, and partly on the fact that Crawford and Krell are now supervised by higher-level supervisors. But Crawford testified that the amount of supervision he received was approximately the same as in 1977, and it is clear from the record that critical decisions as to designs, payments and construction approvals are in the vast majority of cases closely supervised by the County Architect or Assistant County Architects. To the extent that Crawford and Krell are now involved to a greater degree in job scheduling and coordination, as well as in inspection of completed instruction work, we must note that these types of work are commonly performed by employees with craft rather than professional training.

Although in our 1980 decision referred to above we did not specifically identify the level of training customary for the Drafting Technician positions as showing them to be non-professional, we must note here that we have rarely found a position to be professional which requires only a high school graduation and allows credit for only two years of college towards an experience requirement. Both because of the level of education required and because we find that the discretion and judgment required by the position of Architectural Technician is not significantly greater than that of Drafting Technician III (Architectural), we

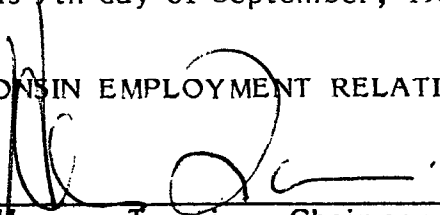
3/ Section III.70(1)(1)1.d.

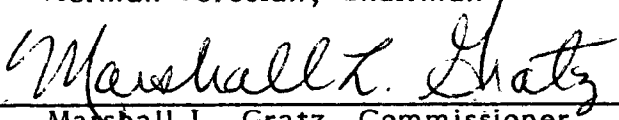
conclude that these positions are not professional. As the incumbent employees were previously included in the AFSCME bargaining unit and we have found that their duties have not changed significantly, it follows that we find them still to be appropriately included in that unit. We therefore clarify the AFSCME bargaining unit accordingly.


Dated at Madison, Wisconsin this 7th day of September, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner