

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

VINCENT L. HUNTINGTON, EMPLOYE OF CITY :
OF MENASHA, DEPARTMENT OF PUBLIC WORKS :

Involving Certain Employees of :

CITY OF MENASHA :
----- :

Case VIII

No. 12512

ME-420

Decision No. 8989

Appearances:

Schaller & Geise, Attorneys at Law by Mr. W. R. Geise, for
the Petitioner

Mr. Richard J. Steffens, City Attorney and Mr. John L. Klein,
Mayor, for the Municipal Employer; Mr. Robert J. Oberbeck,
Executive Director, Wisconsin Council of County and
Municipal Employees, AFSCME, AFL-CIO, for the Intervenor.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Vincent L. Huntington, an individual and an employe of the above named Municipal Employer, requesting the Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, to determine what, if any, representation may be desired by certain employes of the City of Menasha; and hearing on such petition having been conducted at Menasha, Wisconsin, on January 9, 1969, before Robert M. McCormick, Hearing Officer; and during the course of hearing, Menasha City Employees, Local 1035, AFSCME, AFL-CIO, having been permitted to intervene in the matter based upon its claim to be the current bargaining representative for the employes in the bargaining unit described in the petition of the Petitioner; and the Commission having considered the evidence and arguments of Counsel, and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer;

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 employes of the Department of

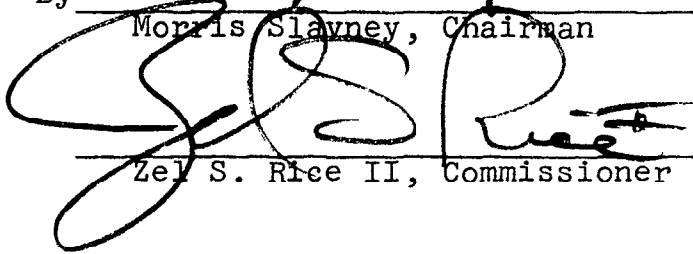
Public Works and Park Department, excluding elected and appointed officials, supervisors and confidential employees, who were employed by the Municipal Employer on April 10, 1969, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether or not a majority of such employees desire to be represented by Menasha City Employees, Local 1035, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal
at the City of Madison, Wisconsin,
this 10th day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Zel S. Rice II, Commissioner

STATE OF WISCONSIN

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CITY OF MENASHA, DEPARTMENT OF
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Case VIII
No. 12512 ME-420
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Involving Certain Employees of
CITY OF MENASHA

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

A petition was filed with the Commission, pursuant to Section 111.70(4)(d), Wisconsin Statutes, by Vincent L. Huntington, an individual employee of the Municipal Employer, requesting that a representation election be conducted among certain employees of the Department of Public Works and Park Department of the City of Menasha to determine whether they desired to continue to be represented by Menasha City Employees Union, Local 1035, AFSCME, AFL-CIO. The Petitioner represents no particular organization seeking a place on the ballot, but in effect seeks a representation election so that the employees in the claimed bargaining unit may have an opportunity to vote as to whether they would choose to decertify said labor organization as the bargaining representative.

At the outset of hearing the Executive Director of Wisconsin Council of County and Municipal Employees, AFSCME, moved to intervene in the proceeding on behalf of Menasha City Employees Union, Local 1035, AFSCME, AFL-CIO, on the grounds that said organization was presently the collective bargaining representative for the employees in question and claimed that it was also party to a bargaining agreement effectuated with City of Menasha on March 21, 1968, and though never signed by the parties, its terms were nevertheless implemented by the Municipal Employer in the form of an ordinance which was in full force and effect from January 1, 1968, at least through December 31, 1968.^{1/}

^{1/} The Intervenor does not claim the agreement constitutes a bar to an election.

During the hearing the Intervenor contended that the petition in question was "tainted" and that the Commission should refrain from directing a representation election at this time because the Municipal Employer allegedly engaged in certain unfair labor practices immediately prior to and coincidental with the circulation of Huntington's petition. During the course of hearing all of the parties, including the Intervenor stipulated that the record could be confined to the question of whether the petition did raise a question of representation, including the question as to whether or not Vincent Huntington, the Petitioner, is in fact a supervisor.

Proceedings involving a representation election petition filed pursuant to either Sections 111.70(4)(d) or 111.05(4) are non-adversary in nature, and the Commission has adopted a policy of declining to inquire into the internal affairs of the petitioning labor organization, or of employees in concert so petitioning, to determine allegations of employer domination of such petitioners as being violative of either Section 111.70(3)(a)2, or of Section 111.06(1)(b), Wisconsin Statutes.^{2/} However, such policy does not mean that the Commission is prevented from inquiring into the validity of the petition itself, namely, as in this situation, to determine the question raised by the Intervenor as to whether the individual petitioner, at the time of his filing of the petition, was, in fact, a supervisor and therefore not an employee within the meaning of Section 111.70. The Commission is directed by statute, namely, Section 111.70(4)(d), to dispose of representation petitions in municipal employment "in accordance with the provisions of Sections 111.02(6) and 111.05 insofar as applicable." It is clear that the Commission may process a petition for election involving employees of a municipal employer filed by either a labor organization, a municipal employer or an individual employee, as is the case in private employment. (See Section 111.05, Wis. Stats.) The record here discloses that the Municipal Employer does not seek a representation election but is merely prepared to abide by the Commission's determination as to whether it should continue to bargain with the Intervenor, in the event the Commission concludes that the petition raises no question of representation; or it will so abide by the results thereof in the event the Commission directs that an election be conducted among the employees in question.

2/ City of Kenosha, Dec. No. 7529-A, 6/66; Milwaukee County, Dec. No. 8765, 11/68; City of Milwaukee, Dec. No. 6960, 12/64; Madison Telco Credit Union, Dec. No. 7440, 1/66.

Determinative of whether the petition raises a question of representation is whether Huntington is an "employee" within the meaning of the statute. If we conclude otherwise, namely, that he is a supervisor and as such allied with the Municipal Employer,^{3/} he could not here raise the question for the Employer because of the Employer's disclaimer to raise a question of representation. The Commission deems it proper in such circumstances to determine the integrity of the petition just as it will inquire into the integrity of the "authorization of membership cards" in an unfair labor practice proceeding where a labor organization seeks a bargaining order based in part upon its claimed majority status established by authorization cards which have been solicited by a supervisor.^{4/}

The record discloses that the Municipal Employer and Intervenor, in administering their classification and wage schedule established by their accord and by the existing ordinance, have established the position of Senior Equipment Operator at a wage rate of \$3.13 per hour. Huntington has occupied said position in the Street Department (a subdivision of the overall Department of Public Works) since November 1967. Prior to that time he was employed as a Heavy Equipment Operator, the next subordinate position in the Street Department, according to said classification schedule. The record further discloses that the only times that Huntington may have exercised such a degree of direction and control over other employees in the unit so as to be adjudged supervisory, was on three occasions where he replaced a Mr. Straehlow, the Assistant Street Superintendent for three separate weeks in the months of September, November and December of 1968. On all of such occasions the Street Superintendent was on sick leave recuperating from a heart attack, with the Assistant Street Superintendent functioning as Acting Street Superintendent. Huntington otherwise performed the duties of a Senior Equipment Operator, a non-supervisory classification clearly within the bargaining unit. Prior to 1967, during periods when the Assistant Street Superintendent was on vacation, the Municipal Employer assigned an individual other than Huntington to replace the Assistant Superintendent, such replacee then being an occupant of the Heavy Equipment Operator classification.

^{3/} Wausau Public Works, Dec. No. 6276, 3/63.

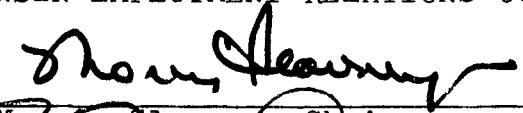
^{4/} Doyle Lithographing and Printing Company, Dec. No. 8126-C, 5/68.

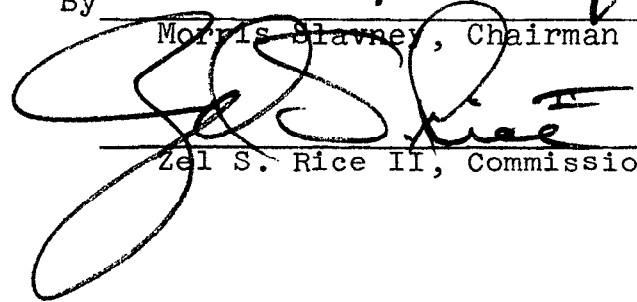
The Commission concludes that the occasional assumption of supervisory duties by Huntington for short periods when the individual who normally functions as the supervisor happens to be on vacation, is of insufficient regularity to constitute Huntington supervisory, and at most he is deemed to be a working foreman,^{5/} and since he is not a supervisor may properly file the petition.

Dated at Madison, Wisconsin, this 10th day of April, 1969.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

^{5/} Village of Brown Deer, Dec. No. 6650, 2/64; City of Franklin, Dec. No. 6147, 10/62.