

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE - (BUREAU OF
STREET SANITATION)

Mr. Emil Muelver, Staff Representative of District Council 48, and Mr. Kenneth Mandt, President of Local 33, appearing on behalf of District Council 48, AFSCME, AFL-CIO, Intervenor.

No. 9646

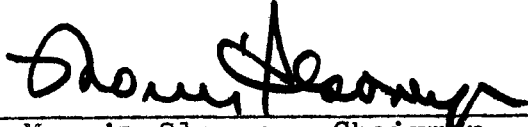
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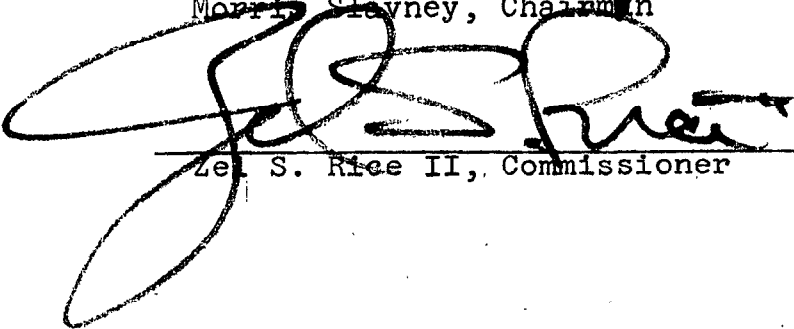
That the petition filed in the above entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 15th
day of May, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XCI
No. 13491 ME-520
Decision No. 9646

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

In its petition for election, City and County Public Service Employees' Union requested that an election be conducted in a bargaining unit consisting of Labor Foreman I in the Bureau of Street Sanitation of the City of Milwaukee. The petition also stated that a question of representation has arisen in the claimed unit in that "The Labor Foremen I have put in requests for reclassification and salary reallocations which have been ignored by the Finance Committee" and that "Under the new Merit System these employees are not considered part of management and were again passed up on salary requests."

At the hearing Milwaukee District Council 48, AFSCME, AFL-CIO, was permitted to intervene because it currently has a contractual relationship with the Municipal Employer covering the positions involved in the petition. The collective bargaining agreement is effective from January 1, 1969, through December 31, 1969, and upon readoption of the terms of the agreement, from January 1, 1970, through December 31, 1970.

City and County Public Service Employees' Union argues that the Commission should direct an election because "even though they [Labor Foreman I's] may be considered as part of this bargaining unit, they are not members of that particular union [District Council 48] and have not been properly represented and they are seeking proper representation through this means because of the failure to be properly represented up to this time . . ."

Milwaukee District Council 48, on the other hand, argues that the petition should be dismissed because (1) the unit being petitioned for is not an appropriate unit and cannot be "carved out" of the

overall bargaining unit, and (2) a contract is in force covering the classifications being petitioned for, and because of that contract the petition is untimely filed.


We find that the first argument of the Intervenor is controlling here, and the petition will be dismissed on the ground that the collective bargaining unit sought is not appropriate under the Act. Section 111.70(4)(a), Wisconsin Statutes, provides that proceedings in representation cases in municipal employment shall be in accordance with Sections 111.02(6) and 111.05 insofar as applicable, with an exception not relevant here. Section 111.02(6) provides that the collective bargaining unit shall consist of all of the employees of the Employer, except that a majority of the employees in a separate division or department may vote by secret ballot to constitute such group a separate bargaining unit. In order for Labor Foreman I's to have an opportunity to constitute themselves a separate bargaining unit the Petitioner must demonstrate that Labor Foreman I's constitute a separate division or department. There was no such demonstration in the instant case. The sole basis for desiring an election is the alleged inadequate representation by the current collective bargaining representative, and this contention, even if true, does not provide the basis for permitting the Labor Foreman I's to vote to constitute themselves a separate bargaining unit.

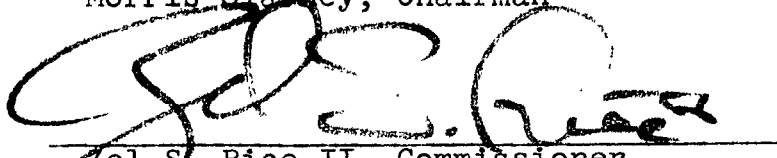
We concluded in City of Milwaukee (Department of Public Works), Dec. No. 6215, 1/63, at pages 39 and 40, that persons employed in the position of Labor Foreman I in the Bureau of Street Sanitation were working foremen and included in the overall unit of the Department of Public Works. We see no reason for revising this earlier determination, and we are therefore dismissing the instant petition.

Dated at Madison, Wisconsin, this 15th day of May, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner