

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MADISON EMPLOYEES, LOCAL 60, WCCME
#40, AFSCME, AFL-CIO

Involving Certain Employes of

CITY OF MIDDLETON

Case I
No. 14628 ME-653
Decision No. 10381

Appearances:

Mr. George E. Lewis, Representative, appearing on behalf of
the Petitioner.

Mr. Warren D. Lucas, City Attorney, and Mr. George Kuepper, Chairman,
Finance Committee and Alderman, Fourth Ward, appearing on
behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

Madison Employees, Local 60, WCCME #40, AFSCME, AFL-CIO having
filed a petition with the Wisconsin Employment Relations Commission,
wherein said labor organization requested that the Commission conduct
an election, pursuant to Section 111.70 of the Wisconsin Statutes, among
certain employes of the City of Middleton, Wisconsin; and hearing on
said petition having been held at Madison, Wisconsin, on May 24, 1971,
and at Middleton, Wisconsin, on June 7, 1971, Howard S. Bellman,
Hearing Officer, being present; and the Commission having reviewed
the evidence and arguments of the parties, and being fully advised in
the premises, and being satisfied that questions have arisen concerning
the appropriate collective bargaining unit and concerning representation
for certain employes of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot be conducted under the direction of
the Wisconsin Employment Relations Commission among the employes employed
in the voting group consisting of all regular full-time and regular
part-time employes of the Department of Public Works of the City of
Middleton, excluding supervisors, confidential employes, seasonal
employes and craft employes who are employed on June 7, 1971, except
such employes as may prior to the election quit their employment or
be discharged for cause for the purposes of determining: (1) whether
a majority of such employes eligible in said voting group desire to
constitute themselves a collective bargaining unit separate and apart
from all other employes of the Municipal Employer; and (2) whether a
majority of such employes voting desire to be represented for the purposes
of collective bargaining by Madison Employees, Local 60, WCCME #40,
AFSCME, AFL-CIO.

Given under our hands and seal at the
City of Madison, Wisconsin, this 22nd
day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

No. 10381

STATE OF WISCONSIN

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MADISON EMPLOYEES, LOCAL 60, WCCME : Case I
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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

The Union seeks to represent all regular full-time and regular part-time employees employed by the Municipal Employer in its Department of Public Works, excluding supervisors, confidential employees, seasonal employees and craft employees, as well as all other employees of the Municipal Employer. The Department of Public Works is a distinct and separate department of the Municipal Employer and therefore, since the employees covered by the petition do not consist of all of the employees of the Municipal Employer, the Commission has no power to determine whether the Department of Public Works constitutes an appropriate bargaining unit. Pursuant to the statute, if the group of employees set out as being an appropriate bargaining unit does, in fact, constitute a separate department, the employees involved are given the opportunity to determine for themselves whether they desire to constitute a separate collective bargaining unit.^{1/} Therefore the Commission has directed a unit vote among the employees in said voting group in order to give the employees therein an opportunity to determine for themselves whether the Department of Public Works constitutes an appropriate bargaining unit.

The Department of Public Works is divided into a water and sewer utility division and a street division. These divisions are headed by a "utility foreman" and a "public works foreman" respectively. The City contends these foremen are supervisors, and therefore should not be included in the bargaining unit. The Union contends that they are in the nature of "leadmen" and should be included.

The record does not disclose that the foremen have any authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees, although they may verbally reprimand employees. The "utility foreman" has two employees under him, whereas the "public works foreman" has six. The City Engineer usually works through the foremen but, when they are not available, deals directly with the other employees.

The foremen receive substantially more pay than the other employees, however, they are also the most skilled and the most senior, in service, of the employees. In this respect, they are also the most experienced and expert of the employees and it is the conclusion of the Commission that they are primarily supervising their divisions' activities, rather than employees, by virtue of such expertise. They do, to some extent, assign and oversee the work of the other employees, however, the assignments which they make are based upon the regular routines of the work and the relative skills and availability of the men, and thus require the foremen to exercise a minimum of independent judgment and

1/ City of Evansville, (9334) 11/69.

discretion. Other assignments are based upon instructions from the engineer. The foremen's overseeing of the work also relates to their experience and expertise, and is sporadic because the other employees frequently work apart from the foremen.

Both foremen spend a majority of their working time performing the same work as the other employees, plus certain record keeping and other duties which the others do not do, but which are not indicative of supervisory status.

Based upon the foregoing, and the record as a whole, it is the conclusion of the Commission that the aforesaid foremen are not supervisors to be excluded from the unit.2/

The City contends that Leonard Sommer, classified as a Utility Maintenance Man and assigned to the water and sewer utility division, is a practitioner of the plumbing craft and should be excluded on that basis. That contention is rejected because the record discloses that although Sommer is a licensed plumber, apparently possessed of the skills of that craft, he rarely practices it as part of his job as a Utility Maintenance Man, but normally does essentially the same work as another unit member who is not a plumber. Furthermore, there is no evidence that being a plumber was a requirement of Sommer's obtaining his position.3/

Finally, the City contends that employee Larry Fass, of the public works division, is ineligible because, while he is currently a full-time employee, he intends to resign in the fall in order to continue his education. We accept this contention because, under the facts, Fass is, in effect, a temporary employee with no expectancy of continued employment and temporary employees are generally excluded from voting eligibility.


At the hearing testimony indicated that there are two regular part-time "engineering technicians" employed in the pertinent department. Neither party desires their inclusion in the unit, but no basis for excluding them has been presented. Therefore, it is the Commission's conclusion that they should be included as part of the petitioned for department-wide unit.

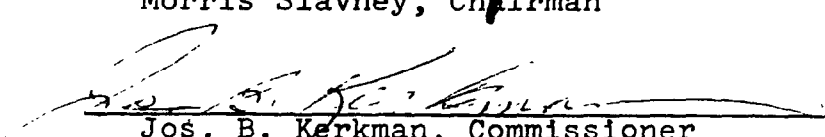
It is noted that the parties stipulated that the secretary to the City Engineer should be excluded based upon confidential status.

Dated at Madison, Wisconsin, this 22nd day of June, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

2/ Wauwatosa Board of Education, Dec. No. 6219-D, 9/67.

3/ Joint School District No. 1, City of Green Bay, et al, Dec. No. 8667, 8/68.