

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VII
No. 14664 ME-659
Decision No. 10389-C

Case IX
No. 14890 ME-692
Decision No. 10620

Case XI
No. 14892 ME-694
Decision No. 10621

Case XIV
No. 14895 ME-697
Decision No. 10622

Case XIX
No. 14900 ME-702
Decision No. 10623

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (PLANNING DEPARTMENT)

Case XXI
No. 14902 ME-704
Decision No. 10624

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (FINANCE DEPARTMENT)

Case XXII
No. 14903 ME-705
Decision No. 10625

SUPPLEMENTAL DIRECTION OF ELECTIONS

On July 28, 1971, the Wisconsin Employment Relations Commission conducted an election among certain employees of the City of Racine, Wisconsin, in the following collective bargaining unit, stipulated by the parties as being appropriate:

"All regular full-time and all regular part-time employees (averaging 20 hours per week or more) of the City of Racine, including employees in the Assessor's Office, City Attorney's Office, DPW, Cemetery, Personnel, Finance, Engineering, Memorial Hall, Health Department, Planning, Purchasing, Police Department, Library, Fire Department, WPCD, and all other City of Racine employees, but excluding all professional employees in the City Hall, law enforcement personnel in the Police Department, firefighters in the Fire Department, craft employees, employees represented by Local 67, AFSCME, and Local 63, AFSCME, confidential and supervisory employees."

Following the conduct of the election the Commission, on August 21, 1971, issued a Certification of Representatives, wherein it certified that a majority of the employees had selected the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as their collective bargaining representative. Following the conduct of said election, but prior to the issuance of the certification of results, which certification was delayed as a result of a proceeding to determine challenged ballots, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO on August 19, 1971, filed separate petitions with the Wisconsin Employment Relations Commission requesting that separate elections be held among professional employees of the City of Racine employed in the following separate departments: Purchasing, Personnel, Traffic, Assessor's, Planning and Finance; and hearing on said petitions having been conducted at Racine, Wisconsin, on September 13, 1971, and

October 25, 1971, by Herman Torosian, Hearing Officer; and the Commission having reviewed the evidence and being fully advised in the premises and being satisfied that none of the employees involved in said petitions constitute employees engaged in any professions; and further being satisfied that said employees should have been included among the eligibles in the unit involved in the election conducted on July 28, 1971;

NOW, THEREFORE, it is further

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of the date of this Directive among assistant purchasing agent (Purchasing Department), deputy city clerk (Personnel Department), assistant traffic engineer (Traffic Department), assessors (Assessor's Office), assistant planning director and associate planner (Planning Department), program operator, program operator-timekeeper and assistant analyst (Finance Department), and sanitarian aide (Health Department), excluding all other employees of the City of Racine, who were employed on September 13, 1971, except such employees as may prior to the election quit their employment or be discharged for cause for the purpose of determining whether said employees desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the City of Racine on wages, hours and working conditions.

IT IS ALSO FURTHER DIRECTED that the results of said elections be included in the results of the election conducted on July 28, 1971, and that a new amended tally of ballots be issued reflecting the combined results of both elections, and to that extent the Certification of Representatives issued by the Commission on August 21, 1971, be, and the same hereby is, set aside.

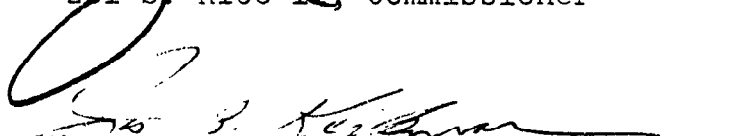
Given under our hands and seal at the
City of Madison, Wisconsin, this 10th
day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE

Case VII
No. 14664 ME-659
Decision No. 10389-C

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (PURCHASING DEPARTMENT)

Case IX
No. 14890 ME-692
Decision No. 10620

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (PERSONNEL DEPARTMENT)

Case XI
No. 14892 ME-694
Decision No. 10621

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (TRAFFIC DEPARTMENT)

Case XIV
No. 14895 ME-697
Decision No. 10622

In the Matter of the Petition of
WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
Involving Certain Employees of
CITY OF RACINE (ASSESSOR'S OFFICE)

Case XIX
No. 14900 ME-702
Decision No. 10623

 In the Matter of the Petition of
 WISCONSIN COUNCIL OF COUNTY AND
 MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO
 Involving Certain Employees of
 CITY OF RACINE (PLANNING DEPARTMENT)

Case XXI
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 CITY OF RACINE (FINANCE DEPARTMENT)

Case XXII
 No. 14903 ME-705
 Decision No. 10625

MEMORANDUM ACCOMPANYING
SUPPLEMENTAL DIRECTION OF ELECTIONS

This Commission on July 28, 1971, conducted an election among employees in the following stipulated unit:

"All regular full-time and all regular part-time employees (averaging 20 hours per week or more) of the City of Racine, including employees in the Assessor's Office, City Attorney's Office, DPW, Cemetery, Personnel, Finance, Engineering, Memorial Hall, Health Department, Planning, Purchasing, Police Department, Library, Fire Department, WPCD, and all other City of Racine employees, but excluding all professional employees in the City Hall, law enforcement personnel in the Police Department, fire-fighters in the Fire Department, craft employees, employees represented by Local 67, AFSCME, and Local 63, AFSCME, confidential and supervisory employees."

On August 21, 1971, the Commission certified the following results of said election:

"1. Total number claimed eligible to vote.....	151
2. Total ballots challenged.....	12
3. Total challenged ballots sustained.....	10
4. Total number eligible to vote.....	141
5. Total ballots cast.....	131
6. Total valid ballots counted.....	119
7. Ballots cast for the above named Union.....	62
8. Ballots cast against the above named Union.....	57" <u>1/</u>

1/ City of Racine (10389-B) 8/71.

On August 19, 1971, the above named Union filed separate petitions requesting elections for separate alleged professional employees employed in the following departments of the City of Racine:

Case IX	-	Purchasing Department
Case X	-	Weights and Measurers Office
Case XI	-	Personnel Department
Case XII	-	Police Department
Case XIII	-	Health Department
Case XIV	-	Traffic Department
Case XV	-	Library
Case XVI	-	Plumbing Inspectors
Case XVII	-	Carpenter Inspectors
Case XVIII	-	Electrical Inspectors
Case XIX	-	Assessor's Office
Case XX	-	Engineering Department
Case XXI	-	Planning Department
Case XXII	-	Finance Department
Case XXIII	-	Waste-Water Treatment Plant

During the course of the hearing held on such petitions on September 13, 1971, the parties agreed to dismiss the petitions filed in Cases X and XII, on the basis with respect to Case X, that the only employee involved was a supervisor and with respect to Case XII, on the basis that the employee involved was already included in the unit certified in Case VII. For said reason the Commission has today dismissed Cases X and XII.

With respect to the remaining stipulations the Commission on September 21, 1971, by a letter, informed the parties that the mere fact that the parties stipulated that employees are professional and craft employees, does not make them so within the meaning of the statute. The Commission stated therein that it was satisfied that the plumbers (Case XVI), the carpenters (Case XVII) and the electricians (Case XVIII) are employed in separate crafts, as stipulated by the parties, and therefore entitled to constitute separate craft units. The Commission has today directed elections in those units.

The Commission also stated in said letter that it was satisfied that librarians (Case XV), the engineers employed in the Engineering Department (Case XX), and the public health nurses employed in the Health Department (Case XIII) ^{2/} are engaged in separate professions and therefore constitute separate units. The Commission, therefore, has directed elections in those separate units.

In its letter the Commission questioned the professional status of the assistant purchasing agent in the Purchasing Department (Case IX), the deputy clerk in the Personnel Department (Case XI), the assistant traffic engineer in the Traffic Department (Case XIV), the assessors in the Assessor's Office (Case XIX), the assistant planning director and associate planner in the Planning Department (Case XXI), the program operator, program operator-timekeeper and assistant analyst in the Finance Department (Case XXII), the chemist in the Waste-Water Treatment Plant (Case XXIII), the sanitarians and sanitarian aides in the Health Department (Case XIII) and the laboratory technologists in the Health Department (Case XIII).

^{2/} At the hearing the parties stipulated to three units in the Health Department consisting of (1) all sanitarians, (2) all public health nurses, and (3) all laboratory technologists.

The Commission further stated in its letter of September 21 that those positions which are neither professional nor craft should have been included among the eligibles in the overall unit in Case VII and that if the Union desires to represent the additional non-professional employees, the Commission would have no other alternative than to set aside the Certification issued in Case VII and include among the eligibles in that case the latter positions and thereafter conduct another election in the "overall unit." The parties were requested to advise the Commission of their position in regard thereto.

Pursuant to a request by both parties, a second hearing was held on October 25, 1971. The parties did not dispute the Commission's determination as stated in its September 21 letter in regard to Cases IX, XI, XIV, XIX, XXI and XXII. Both parties, however, contend that the sanitarians (Case XXIII), laboratory technologists (Case XXIII), and the chemists (Case XXIII) are professionals and presented evidence in regard thereto.

This Commission, in establishing the criteria to be used in determining whether a given occupational position was a "craft" or "professional" within the meaning of Section 111.70(4)(d), has stated:

"We shall consider professional employees falling within the definition of 'craft' if such employees have a substantial period of study and training to qualify for their professional status. Matters to be taken into consideration in determining whether or not an employee is a professional employee will be determined on a case to case basis. The nature of the profession, training, and duties performed by the individual employees will be considered, as well as the extent to which the skills performed by them differ from the duties performed by other employees of the employer." 3/

The evidence establishes that sanitarians make sanitary surveys of facilities such as food service and processing establishments, markets, dairy farms and plants, schools, etc., inspect private water supplies and sewerage systems, investigate public health nuisances, animal and food sources of infection, air pollution sources and accident hazards, determine extent of compliance with established laws and regulations in the field of sanitation, collect samples for laboratory analyses, perform physical and chemical tests, recommend appropriate action on basis of surveys, investigations and analyses of collected samples. Although there are some routine manual and mechanical type of work required, said work is usually performed by sanitarian aides. Sanitarians perform some of these tasks, but they must also be able to interpret the laboratory results and make recommendations based on said surveys and tests. The public health commissioner testified that the City now hires only college graduates who have had major courses in public health sanitation. The job qualification does state, however, that one could be hired with a minimum of five years employment as a sanitarian.

3/ Winnebago County Hospital, (6043) 7/62.

Laboratory technologists make a variety of chemical bacteriological, serological and cytological tests. Not only must these tests be performed, which in many cases is nothing more than routine laboratory work, but the laboratory technologist must also be able to evaluate and interpret said tests and know how to improve upon them. At present the minimum qualifications for said job require graduation from a college of recognized standing with major courses in chemistry and biological sciences or graduation from high school, some college or equivalent courses in chemistry and biological sciences and four years experience under close supervision in laboratory techniques applicable to recognition of diseases in the human family and in health and sanitary problems, or equivalent educational experience.

The chemist makes a variety of chemical and bacteriological tests and analyses of waste water and industrial wastes, furnishes professional and technical information to various city officials and to the public, assists with a variety of waste water treatment problems. The employee occupying this position is a graduate of the University of Wisconsin with a major in chemistry. The chemist must run tests and be able to evaluate and interpret the results of said test. The minimum qualifications required are five years of experience in laboratory work involving a chemical analysis, or any equivalent combination of experience and training. Graduation from a college or university of recognized standing with major courses in chemistry, bacteriology or medical technology is treated as equivalent to four years of experience.

Based on the substantial period of study and/or training required to qualify for the above positions and duties and responsibilities in addition to routine manual work requiring analyses, evaluations, interpretations and recommendations requiring independent judgment, the Commission concludes the above positions to be professional. For said reason the Commission has today directed separate elections for the sanitarians, laboratory technologists and chemists.

The City also takes the position that inasmuch as the employees covered by Cases IX, XI, XIV, XIX, XXI and XXII have been found by the Commission not to be professional, the Commission should now set aside the results of the election conducted in an "overall unit" (Case VII) on July 28, 1971, and conduct a new election, thereby allowing the above-mentioned employees an opportunity to participate in the overall election where they properly belong.


The Union argues that it was the City who claimed said employees to be professionals and the Union, for said reason, stipulated with the City to exclude said employees from the overall unit. Now that the Commission has set aside those stipulations and found said employees not to be professionals, the Commission should not set aside the results of the overall election, but instead should give the employees involved herein an opportunity to determine whether they desire to be represented by the Union. The Union desires that should a majority of said employees select the Union as their bargaining representative, said employees should be included in the overall unit certified by the Commission on August 23, 1971. The second alternative proposed by the Union would permit the employees in question to vote on whether they desire to be represented by the Union, and that their ballots should then be included in the result of the balloting conducted on July 28, 1971, and that the Certification of Representatives issued on August 23, 1971, should then be amended to reflect the result of the combined balloting.

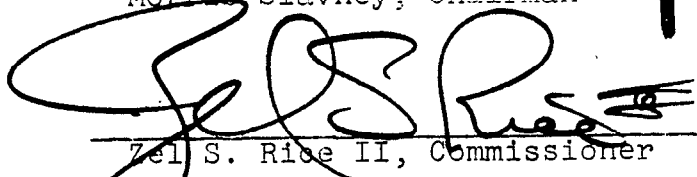
The Commission sees no valid reason for setting aside the result of the election conducted on July 28, 1971, because of a mutual mistake made by the parties in excluding certain employees on the basis that they were professional. However, since said employees in question should have been properly included in the overall unit and thus should have been allowed to vote in the election conducted on July 28, the Commission will now conduct a vote among said employees and will include their ballots in the result of the previously conducted election, and thereafter certify the results thereof.

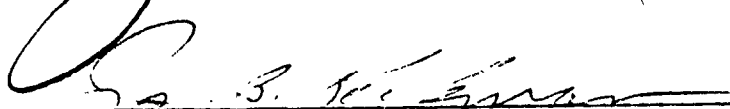
Dated at Madison, Wisconsin, this 10th day of November, 1971.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. E. Kerkman, Commissioner