

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:
In the Matter of the Petition of :
:
DARNELL L. WAGNER : Case 6
: No. 49190 ME-3318
Involving Certain Employes of : Decision No. 10645-A
:
CITY OF HARTFORD :
:

Appearances:

Mr. Darnell L. Wagner, 2456 Lough Lane, Hartford, Wisconsin, 53027-9712, appearing on behalf of the Petitioner.
Mr. Laurence S. Rodenstein, Staff Representative, 5 Odana Court, Madison, Wisconsin, 53719, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.
Ms. Karen Christianson, City Attorney, 109 North Main Street, Hartford, Wisconsin, 53027, appearing on behalf of the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
DIRECTION OF ELECTION

On April 16 and June 3, 1993, Darnell L. Wagner filed petitions signed by himself and supported by other employes employed by the City of Hartford's Electric Utility in the classifications of Lineman Crew Leader, 1st Class Lineman or Apprentice Lineman, asserting that they are all craft employes within the meaning of Sec. 111.70(1)(d), Stats., and requesting an election to determine whether a majority of those allegedly craft employes desire to continue to be included in the same bargaining unit with non-craft employes which is presently represented by AFSCME Local 1432 and, if not, to determine whether and by whom they wish to be represented in a separate craft unit.

Pursuant to notice, a hearing was held in the matter on September 14, 1993, at the Hartford City Hall, Hartford, Wisconsin, by Commission Examiner Marshall L. Gratz. The parties summed up their positions on the record and the transcript was received by the Commission on September 24, 1993.

On the basis of the record, and upon consideration of the parties' arguments, the Commission makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. Darnell L. Wagner is an individual who resides at 2456 Lough Lane, Hartford, Wisconsin, 53027-9712.
2. The City of Hartford (herein the City) is a municipal employer with offices at 109 North Main Street, Hartford, Wisconsin, 53027.
3. Hartford Municipal Employees Union Local 1432 affiliated with District Council 40, AFSCME, AFL-CIO (herein Local 1432) is a labor organization with a mailing address of 5 Odana Court, Madison, Wisconsin, 53719-1169.
4. Local 1432 represents a bargaining unit of City employes described in the parties' 1992-93 Agreement as follows:

employees of the City of Hartford employed in the street, parks, cemeteries, electric, water, wastewater

departments and solid waste department, but excluding all supervisory employees.

That bargaining unit and Agreement cover the City's blue collar employes. A separate bargaining unit and agreement cover the City's clerical employes, who are represented by AFSCME Local 1432-B.

5. The Local 1432 Agreement covering blue collar employes contains the following 1993 hourly rates of pay for the various classifications it covers:

Lineman Crew Leader	\$15.58
1st Class Lineman	15.05
Apprentice Lineman	
1st Year	13.19
2nd Year	13.85
3rd Year	14.38
Crew Leader	
Equipment Operator/Mechanic	13.71
Equipment Operator	
Meter Reader	
Water Serviceman	
Wastewater Serviceman	
Probationary Rate	12.53
Regular Rate	13.19
Laborer	
Probationary Rate	12.30
Regular Rate	12.90

6. Among the City's departments is its Utilities Department, which installs, maintains and operates water and electric power distribution and metering equipment and facilities serving the industrial, commercial and residential customers within the City limits. The Utilities Department is headed by Director of Utilities, Leroy Wolf. It is operationally and organizationally separate from the City's Department of Public Works (herein DPW), which is headed by its own Director, Lou Darin. Both Wolf and Darin and the other City Department heads report to City Administrator Matthew Fulton.

7. The employes in the Utilities Department are divided between water and electric services, except that the Department Clerk/Typist does the billing and clerical work associated with both services. In addition to Wolf and the Clerk/Typist, the employes working on the electric service, all of whom work full-time, consist of one Lineman Crew Leader (Darnell Wagner), Three 1st Class Linemen (Melvin Meyer, Lloyd Freckmann and Steven Casper), two Apprentice Linemen (Dean Larson and Todd Flegner), two Meter Readers and one summer helper. The Meter Readers, Clerk/Typist and Lineman Crew Leader report to Wolf. Wagner, who is the Lineman Crew Leader, works with and oversees the work of the employes in the Lineman classifications, both when they are all working together and when they are working in two or more smaller crews.

8. On November 22, 1971, the Commission issued an order dismissing a petition for craft-unit severance filed by Wolf, who was at that time in a non-supervisory Lineman position. The Commission concluded at that time that the four employes holding positions in the City's non-supervisory linemen classifications (which then consisted only of 1st Class Lineman and Apprentice Lineman) were not craft employes because their positions did not "require the training and the practice of the skills of the 'electrician-craft' so as to

warrant the exclusion of the Lineman positions from the [existing AFSCME] collective bargaining unit. . . ." In its Memorandum Accompanying the dismissal, the Commission summarized its rationale as follows:

the Linemen in question spend a substantial portion of their time performing duties outside of the area of specialization generally associated with a Lineman Electrician. No licensing is required of the 1st Class Lineman, and the Linemen here do not "exercise the gamut of the skills of a Lineman-electrician", since [the] only licensed electrician who can handle the more difficult of maintenance and construction tasks, is the Lineman-Foreman [who was excluded from the unit as a supervisor]. There is no existing or past history of a formal training program.

9. Since at least 1978, the City has required as a condition of continued employment, that each of its newly-hired Lineman Apprentices, upon successful completion of probation, participate in an indentured apprenticeship training program in the electrical lineman trade sponsored by the State of Wisconsin. Since 1978, each of the City's newly-hired Linemen Apprentices has fulfilled that requirement. The State apprenticeship program takes approximately four years to complete. To date, Meyer, Fleckman and Casper have successfully completed the requirements of that program and have attained the status of State-certified journeymen electrical linemen. Larson and Flegner are in their fourth and second year of the apprenticeship program, respectively, such that each is progressing toward but has not yet attained the status of State-certified journeyman electrical lineman.

10. Since approximately 1986, the City has further required that candidates for Lineman Apprentice possess, as a minimum qualification for being considered for hiring, an education equivalent to a Technical School degree or a High School degree plus a minimum of 3 years of recent experience in electrical distribution. As an apparent consequence of that change in minimum qualifications for hire, since 1986 the City has denied bids from at least two bargaining unit members who applied for posted Lineman Apprentice openings, because those applicants did not meet that educational requirement. Meyer was the last employe to successfully post into a Lineman apprentice position from a different position with the City. He did so in 1979. Since that time, Fleckman, Casper, Larson and Flegner were all hired from the outside.

11. Under the Local 1432 Agreement with the City, Apprentice Linemen advance year-by-year automatically from the 1st year through the 3rd year rates as they progress through their apprenticeship. An Apprentice Lineman would remain at the 3rd year rate until attaining State-certification as a journeyman electrical lineman, at which point the employe is awarded the 1st Class Lineman classification and rate.

12. The work performed by the six employes in the City's three lineman classifications consists predominantly of installing, repairing and servicing electrical lines, distribution systems, stations and plants, variously located overhead, underground and at ground level. To a lesser extent, their work involves design and repair of traffic control devices, street lights, runway and airport lights and playing field lights. To yet a lesser extent, their work involves driver-type vehicle maintenance, diagnosing and repairing miscellaneous items or tools, designing, installing or replacing building electrical and related systems and material handling and inventory control. The work performed by the six employes is quite similar to that of journeyman electric linemen employed by the private sector firm that has provided a variety of electrical construction and other services for the City for many years.

13. The six employes generally work exclusively with one another, performing very little work for or with employes from other departments or from the Utility Department water service, and performing only limited work for or with the Meter Readers in the Utility Department electrical service. On

limited occasions, the six lineman classification employes assist other departments by providing specialized equipment for specialized tasks or by troubleshooting certain electrical problems experienced in City buildings or equipment. When DPW personnel are unavailable to do so, they remove snow as necessary to permit them to access transformers, substations or other facilities upon which they need to work. However they do not: dig holes or trenches for the DPW or for the water service, collect refuse, patch streets, or paint benches. They occasionally become involved in complex or problematic meter installations, whereas all other meter installations and all meter readings are the responsibility of the Meter Readers. In his testimony, Wolf estimated that the six employes spend a total of perhaps one percent of their time on non-craft work.

14. The three 1st Class Linemen (Melvin Meyer, Lloyd Freckmann and Steven Casper) are skilled journeymen craftsmen in the electrical lineman trade, and the two Lineman Apprentices (Dean Larson and Todd Flegner), are apprentices to skilled journeyman craftsmen in the electrical lineman trade.

15. Wagner has not participated in a State-sponsored indentured lineman apprenticeship program and is not a State-certified journeyman lineman. No such apprenticeship program was available to municipal utilities and their employes when he transferred to a lineman apprentice in 1968 or 1969 after being employed by the City for 9 months as a Meter Repairman. When such apprenticeship programs became available to municipal utilities, the City neither required nor asked Wagner to take that formalized training, and he did not ask permission to do so. He has, however, years of on-the-job experience and extensive ad hoc training over the years at a variety of seminars that he attended and has continued to attend since 1962 concerning various aspects of electrical distribution work, offered variously by Rural Electrical Associations, the Municipal Electric Utilities of Wisconsin and Wisconsin Public Power, Inc., and by the City's and other electrical utilities in the area. In January of 1988, Wagner was promoted to Utilities Crew Leader when Wolf vacated that job to accept promotion to Utilities Director. Wagner possesses a master electrician's license in three municipalities, including the City of Hartford, which he has renewed on a grandfathered basis since about 1976. The master electrician's licenses are the highest level of electrical license issued by those municipalities. Master licenses authorize the holder not only to personally install electrical service and equipment in residential and commercial properties, but also to have apprentices perform such work under the master license holder's supervision. Master electrician licensure, at a minimum, represents a thorough familiarity with the electrical code applicable in the municipalities in which the license is held. Wagner's City of Hartford master electrician's license is further evidence of his well-rounded understanding of the electrical distribution field.

16. It is Wagner, rather than Wolf, who normally provides the hands-on oversight of and problem-solving for the linemen and apprentices, with the 10% of Wolf's time that he spends in the field focused primarily on design and planning activities. Wolf is not a State-certified journeyman lineman, but he has worked for the City's electric utility for some 28 years, and as the Lineman Crew Leader from 1972 until 1988.

17. Wagner's ad hoc training and lengthy and varied work experience, including his many years of overseeing and work closely and nearly exclusively with journeymen linemen and their apprentices, are equivalent to the training and experience of a skilled journeyman craftsman in the electrical lineman trade.

CONCLUSIONS OF LAW

1. Under Sec. 111.70(4)(d)2.a., Stats., Darnell Wagner has standing to file the election petitions he filed in this proceeding.

2. The Crew Leader position held by Wagner is that of a craft employe within the meaning of Sec. 111.70(1)(d), Stats.

3. The 1st Class Lineman positions held by Melvin Meyer, Lloyd Freckmann and Steven Casper are those of craft employes within the meaning of Sec. 111.70(1)(d), Stats.

4. The Apprentice Lineman positions held by Dean Larson and Todd Flegner are those of craft employes within the meaning of Sec. 111.70(1)(d), Stats.

5. Under Sec. 111.70(4)(d)2.a., Stats., the craft employes identified in Conclusions of Law 1-3, above, are entitled to determine by secret ballot vote whether they desire to continue to be represented in the existing collective bargaining unit represented by AFSCME Local 1432 that includes both craft and non-craft employes.

6. If a majority of those craft employes eligible to vote do not vote in favor of continued representation in that unit, a question of representation will exist concerning a bargaining unit consisting of all regular full-time and regular part-time craft electrical lineman employes of the City of Hartford, including all such employes employed in the classifications of Lineman Foreman, 1st Class Lineman and Lineman Apprentice, but excluding supervisors, managerial employes and confidential employes.

DIRECTION OF ELECTION

1. Elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in a voting group consisting of

all regular full-time and regular part-time craft electrical lineman employes of the City of Hartford, including all such employes employed in the classifications of Lineman Foreman, 1st Class Lineman and Lineman Apprentice, but excluding supervisors, managerial employes and confidential employes, who were employed on the date of this Direction, except such employes as may prior to the election quit their employment or be discharged for cause,

for the purpose of determining whether a majority of such craft employes eligible to vote favor continued representation with non-craft employes in the existing bargaining unit consisting of

employees of the City of Hartford employed in the street, parks, cemeteries, electric, water, wastewater departments and solid waste department, but excluding all supervisory employes;

and, if a majority of those craft employes eligible to vote do not vote in favor of continued representation in that unit, for the further purpose of determining whether a majority of those craft employes voting favor representation of a bargaining unit consisting of

all regular full-time and regular part-time craft electrical lineman employes of the City of Hartford, including all such employes employed in the classifications of Lineman Foreman, 1st Class Lineman and Lineman Apprentice, but excluding supervisors, managerial employes and confidential employes.

by Hartford Municipal Employees Union Local 1432 affiliated with District Council 40, AFSCME, AFL-CIO, or by the Hartford Area Lineman Association, or do not wish to be represented for the purposes of collective bargaining.

Given under our hands and seal at the City of Madison, Wisconsin this 29th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

City of Hartford

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

PROCEDURAL BACKGROUND

Petitioner Darnell Wagner initiated this proceeding by filing an initial petition on April 16, 1993, requesting a craft-severance vote among alleged craft electric lineman employes of the City. After being informed that AFSCME Local 1432 contended that that petition was untimely because the contract reopener date for the existing unit is August 1, 1993, Wagner waited until after June 1, 1993 and filed his petition again, with the Commission receiving it on June 3, 1993. Both petitions were accompanied by signed statements from other employes involved expressing their support for the petition. The later of the petitions was also accompanied by a written request dated June 1, 1993 and signed by Petitioner Wagner stating, "The Independent union name on the petition for election should read as follows: Hartford Area Lineman Association."

The Commission Examiner circulated to all parties copies of the Commission's November, 1971 decision (Dec. No. 10645) dismissing a similar petition on the grounds that the employes involved were not craft employes. At the hearing, the parties agreed that the Commission should take administrative notice of the file in the 1971 case, and they took the positions summarized below, which basically raised three issues. First, a dispute concerning Petitioner Wagner's standing to process the petitions. Second, disputes about the claimed craft employe status of the five employes in the 1st Class Lineman and Lineman Apprentice classifications. And third, a dispute as to the claimed craft employe status of Wagner who is employed in the Lineman Crew Leader classification.

POSITION OF THE PETITIONER

The circumstances that led the Commission to conclude in 1971 that the City's lineman were not craft employes have changed significantly. All lineman personnel hired since that time have been required to enter formal lineman trade apprenticeship programs, with the City paying for tuition. Three of those employes have completed those apprenticeships and become State-certified journeymen. The two most recently-hired are still in the process of completing those apprenticeships and can be expected to become certified journeymen when they complete all of the necessary requirements. The evidence further indicates that the City intends to continue to require its lineman recruits to be formally trained via apprenticeship leading to State-certification as journeymen.

There have also been many changes in the nature of the work performed since 1971. The technology of the work has constantly been changing, such that the employes are frequently trained regarding new developments.

The Commission should find that Wagner is a craft employe even though he did not participate in a formal apprenticeship and hence does not hold a State journeyman certification. The record shows that there was no lineman training school available when Grievant began working as a lineman for the City. In light of his years of experience, extensive ad hoc training, and demonstrated skills, Wagner should be deemed the equivalent of a skilled journeyman craftsman in the lineman trade on the same sort of basis as Wagner has been "grandfathered" for licensure as a master electrician by various municipalities including the City. Even though he has not attended a formal apprenticeship school, Wagner argues that he has graduated from the "school of hard knocks."

In addition to the craft-severance ballot, the Commission should also

provide the lineman craft employes with the opportunity to express their desires regarding representation in a separate craft unit. One of the choices offered on that ballot should be as requested in Wagner's letter to the Commission.

POSITION OF AFSCME LOCAL 1432

At the outset of the hearing, Local 1432 questioned whether some or all six of the employes in the three classifications involved have participated in an formal apprenticeship program ending with journeyman status and hence whether they are all duly qualified to be considered "craft employes" within the statutory definition.

Local 1432 also commented for the record that it understood that Petitioner Wagner seeks to have an independent labor organization represent the claimed craft employes in a craft-only unit. In that regard, Local 1432 noted its belief that there may be some connection or cooperation between that independent labor organization and an AFL-CIO organization. Local 1432 stated its intent to invoke Article 20 of the AFL-CIO Constitution if such a connection or cooperation emerges out of the instant proceedings.

At the end of the hearing, Local 1432 argued that the record clearly shows that whatever his skills and other licensure may be, Darnell Wagner has not served a formal apprenticeship and is not a certified journeyman lineman. Accordingly, he is not a "skilled journeyman craftsman" within the meaning of the statutory definition of "craft employe." For that reason, Wagner lacks standing to file and process the instant petition. On that basis, the Commission should dismiss the petition filed by Mr. Wagner.

If the Commission does not dismiss the petition on the above basis, Local 1432 argues that the Commission should exclude Wagner from the craft voting group and potential craft unit because he is not, for the reasons noted above, a "craft employe" within the statutory definition.

If the Commission directs a craft severance vote and the employes determined to be eligible do not favor continued representation in the existing Local 1432 unit, then Local 1432 wishes to be included on the representation ballot as one of the available choices as exclusive representative of the separate craft unit.

POSITION OF THE CITY

The City cooperated fully in the development of the evidentiary record in this matter, but it expressly stated that it was taking no position on any of the matters in dispute.

DISCUSSION

Standing of Darnell Wagner to Initiate Petition

Section 111.70(4)(d)2.a., Stats., provides, in part, as follows, "Questions of representation may be raised by petition of the municipal employer or any municipal employe or any representative thereof." Wagner is a municipal employe employed by the City. He filed the instant petition with the written support of other municipal employes employed by the City. He therefore can fairly be said to have filed the instant petition not only on his own, but also as a "representative" of those other municipal employes. Accordingly, even if we had not concluded that he is a craft employe, Wagner would have had standing to file and process the instant petition. See generally, Green Bay Public School District, Dec. No. 23263-A (WERC, 8/86) at p.6. See also, City of Antigo, Dec. No. 20170 (WERC,12/82) and City of Menasha, Dec. No. 8989 (WERC, 4/69), both of which support the right of an individual to file a representation petition.

We have therefore concluded that Wagner has proper standing to file and process the petitions he filed in this case.

Claimed Craft Status of Linemen 1st Class and Lineman Apprentice

Section 111.70(1)(d), Stats., defines "craft employe" as "a skilled journeyman craftsman, including his apprentices and helpers, but . . . not . . . employes not in direct line of progression in the craft."

To constitute a "craft" employe within the meaning of Sec. 111.70(1)(d), Stats., the individual must have a substantial period of apprenticeship or comparable training. Employes will be considered to be engaged in a single craft when they are a distinct and homogeneous group of skilled journeyman craftsmen working as such together with their apprentices and/or helpers. E.g., Winnebago County Hospital, Dec. No. 6043 (WERC, 7/62) and Dane County, Dec. No. 26057 (WERC, 6/89)(" . . . [I]n our view, the present statutory definition of 'craft employe' is the functional equivalent of the decisional standards set forth in Winnebago County, Dec. No. 6043 (WERC, 7/62) which were operative in 1970." Id. at 10). The Commission will also recognize an experience equivalent where it is clearly demonstrated to exist. Dane County (Exposition Center-Coliseum), Dec. No. 16946 (WERC, 4/79); Dane County, Dec. No. 26057, supra; See also, Green Bay School District, supra; and Adams County, Dec. No. 27093 (WERC, 11/91) (majority opinion with Chairman Hempe dissenting on other grounds).

The 1971 circumstances (noted in Finding of Fact 8) that were in effect when the Commission determined that the employes in the City's non-supervisory lineman classifications were not craft employes have materially changed since that time.

Since about 1976 or 1977, the City has uniformly required newly-hired Lineman Apprentices who successfully complete probation to participate in a State-sponsored indentured electrical lineman apprenticeship program. Since about 1986, the City has required that employes have the equivalent of a technical school degree or a high school degree plus three recent years' experience in electrical distribution. As a consequence, the four most recently-hired of the six employes now working in the Lineman classifications were hired from the outside rather than by means of posting from other City positions of a non-craft nature. All of the employes selected for lineman apprentice positions since 1976 have participated in the mandated four year apprenticeship program. Three have completed the program and have become state-certified journeyman electrical linemen. The other two are in the process of obtaining journeyman certification but have not yet completed the program.

The six employes employed in lineman classifications work closely with one another and perform very little work of a non-craft nature. Thus, unlike the situation in 1971, they no longer "spend a substantial portion of their time performing duties outside of the area of specialization generally associated with a Lineman-Electrician." The work they perform is quite similar to that of journeyman electric linemen employed by the private sector firm that has provided a variety of electrical construction and other services for the City for many years.

For those reasons, we have concluded that in the materially-changed circumstances now in effect, the three 1st Class Linemen are "skilled journeyman craftsmen" and the two Apprentice Linemen are "apprentices" to "skilled journeymen craftsmen" within the meaning of Sec. 111.70(1)(d), Stats. Accordingly, all five of them are "craft employes" within the meaning of that Section.

It can also be noted that, as was also basically true in 1971, the

Lineman Crew Leader, 1st Class Lineman and Apprentice Lineman 2nd and 3rd year all enjoy differentials over and above the rates paid under the Agreement to the non-craft classifications listed in the Agreement. Those differentials provide additional support for the conclusion that the Lineman classifications are craft in nature.

Claimed Craft Status of Lineman Crew Leader

For the foregoing reasons, and others, we are also satisfied that Wagner's experience and training is equivalent to that of a "skilled journeyman craftsman" in the electrical lineman trade.

Wagner works closely with, oversees, problem-solves for, and in some instances trains a work crew consisting exclusively of lineman craft journeymen and apprentices in direct line of progression in the craft. He is clearly a part of "a distinct and homogeneous group of skilled journeyman craftsmen working as such together with their apprentices and/or helpers."

Unlike the situation in 1971, Wagner's employer now uniformly hires employes with education or equivalent experience in electrical distribution and requires those new-hires to participate in a formal four year State-sponsored apprenticeship program leading to State certification as a journeyman in the lineman trade.

Those considerations coupled with Wagner's possession of a master electrician's license in various communities and his ad hoc training from a number of qualified sponsoring organizations on a wide range of electrical distribution, safety and related subject areas clearly demonstrate that his background is equivalent to the training and experience of a skilled journeyman craftsman in the electrical lineman trade.

Accordingly, we have concluded that he too is a craft employe within the statutory definition.

Details Concerning the Elections Directed

We have directed a secret ballot election among the employes of the City in the lineman craft classifications to determine whether a majority of such employes eligible to vote favor continued inclusion in the existing mixed craft/non-craft blue collar unit. We have further directed that these employes also be given a ballot concerning their preference regarding representation in a separate craft-only unit, which ballots will be counted only if a majority of the eligibles do not favor continued inclusion in the existing mixed craft/non-craft unit. If the representation ballots are counted, the employes will be represented for the purposes of collective bargaining if a majority of such employes voting favor one of the two union choices on the ballot.

There will be three choices on the representation ballot because both Local 1432 and the Petitioner have expressed an interest in appearing on that ballot in addition to the third choice of no representation. Consistent with Petitioner Wagner's written request submitted prior to the hearing in this case, his requested appearance on the ballot will be in the form of "Hartford Area Lineman Association."

Dated at Madison, Wisconsin this 29th day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner