

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 MILWAUKEE DISTRICT COUNCIL 48, :
 AFSCME, AFL-CIO and its :
 affiliated LOCAL 133 :
 :
 Involving Certain Employees of :
 :
 CITY OF OAK CREEK :
 :

Case III
 No. 15307 ME-753
 Decision No. 10890-D

Appearances:

Podell, Ugent & Cross, S.C., Attorneys at Law, 207 East Michigan Avenue, Milwaukee, Wisconsin 53202, by Mr. Alvin R. Ugent, for the Union.
 Mr. P. Harry Eberle, Personnel and Budget Director, Oak Creek City Hall, 8460 South Howell Avenue, Oak Creek, Wisconsin 53154, for the City.

FINDINGS OF FACT, CONCLUSION OF LAW
 AND ORDER DISMISSING UNIT CLARIFICATION PETITION

District Council 48, AFSCME, AFL-CIO and its affiliated Local 133 having on February 15, 1982 filed an amended petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of certain employees of the City of Oak Creek, which unit is presently represented by said Council and said affiliate for the purposes of collective bargaining, by determining whether part-time employees occupying the classification of Draftsman are, or are not, included in said bargaining unit; and hearing in the matter having been conducted at Oak Creek, Wisconsin on March 8, 1982, before Christopher Honeyman, an Examiner on the staff of the Commission; and the Commission, having reviewed the transcript of record, as well as the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That District Council 48, AFSCME, AFL-CIO, and its affiliated Local 133, hereinafter jointly referred to as the Union, are labor organizations representing municipal employees for the purpose of collective bargaining, and have their address at 3427 West St. Paul Avenue, Milwaukee, Wisconsin 53208.
2. That the City of Oak Creek, hereinafter referred to as the City, is a municipal employer, which employs various employees in the performance of its governmental functions, and which has its principal offices at 8640 South Howell Avenue, Oak Creek, Wisconsin 53154.
3. That, following an election conducted by it, the Wisconsin Employment Relations Commission, on May 30, 1972 certified the Union as the exclusive collective bargaining representative of all regular full-time office and clerical employees, civil engineers and engineering technicians in the employ of the City, excluding all other employees; that, pursuant to a resolution adopted by the City on November 8, 1972, the City voluntarily recognized the Union as the exclusive collective bargaining representative of all regular full-time Highway Department employees, excluding all other employees, confidential employees, and supervisors; that thereafter the City voluntarily recognized the Union as the exclusive collective bargaining representative of all regular full-time cleaning personnel (excluding supervisors), parks maintenance technicians and the fire dispatch clerk; that at least for the past number of years the parties have entered into collective bargaining agreements covering the wages, hours and working conditions

of said employes represented by the Union, and in that regard the parties have treated such employes as being included in a single collective bargaining unit, covered by a single collective bargaining agreement; that there presently exists such an agreement between the parties, which by its terms is effective from July 1, 1980 through at least June 30, 1982; and that the following classifications of employes are included in said single unit, and covered by said collective bargaining agreement:

Custodian

Custodian
Senior Custodian

Clerical

Clerk-Typist
Clerk-Dispatcher (Fire)
Clerk-Bookkeeper
Clerk-Secretary
Clerk-Buyer
Engineering Secretary

Engineering

Draftsman
Engineering Technician
Senior Draftsman
Administrative Technician
Senior Engineering Tech.
Civil Engineer

Public Works

Laborer
Park Maintenance Tech.
Automotive Serviceman
Equipment Operator
Chief Mechanic

4. That shortly prior to September 16, 1981 the City employed three individuals in the position of Draftsman; that by the latter date one of the individuals occupying such position was promoted to a position of Engineering Technician, resulting in a vacancy in one Draftsman position; that on the latter date the City employed two individuals, who were students at the Milwaukee Area Technical College, to jointly fill said vacant position, each of them working twelve (12) hours per week, and that said individuals do not have any expectancy of employment beyond the date they graduate from said College in June, 1982; that on occasions, the Assistant City Planner, an individual not in the unit represented by the Union, will pick up some of the drafting functions of the position; that the City has not applied the provisions of the collective bargaining agreement between it and the Union to the wages, hours, or working conditions of said two part-time employes, contending that they are not included in the unit covered by said collective bargaining agreement; and that, as a result, the Union initiated the instant proceeding seeking to determine whether said employes are included in said unit.

5. That the City employs various part-time employes, primarily during the summer months, in its Park, Recreation and Street Departments, as well as in its Library; that said employes have various lengths of employment and some are employed on a seasonal or casual basis; and that said part-time employes are not included in any collective bargaining unit of employes of the City.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That since the collective bargaining unit presently represented by Council 48, AFSCME, AFL-CIO and its affiliated Local 133 includes only certain regular full-time employes of the City of Oak Creek, those part-time employes employed in the classification of Draftsman by the City of Oak Creek cannot appropriately be accreted to said existing collective bargaining unit within the meaning of any provision of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

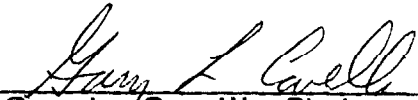
ORDER

That the instant petition for unit clarification be, and the same hereby is, dismissed.

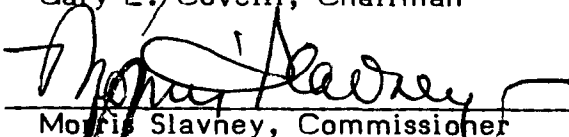
Given under our hands and seal at the City of Madison, Wisconsin this *21st* day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

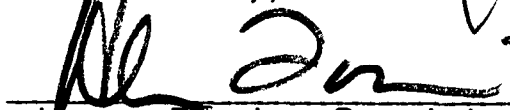
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING UNIT CLARIFICATION PETITION


Due to a vacancy in the position of Draftsman, resulting from the promotion of the former occupant thereof to another position in the bargaining unit represented by the Union, and the filling of such vacancy by two part-time student employes, the Union filed the instant petition seeking and urging a determination by the Commission that said part-time employes are included in the bargaining unit involved.

It is quite apparent to the Commission, from the facts developed in the record, that the existing unit includes only regular full-time employes of the City. Further, it is obvious from past bargaining history, and from the provisions of the existing collective bargaining agreement that part-time employes are excluded. Indeed, a portion of the existing unit resulted from an election conducted by the Commission in a unit consisting of only regular full-time employes. Under such circumstances the Commission will not, by unit clarification, accrete the regular part-time employes in question to the existing unit.

Our determination herein does not preclude the Union from filing a petition with the Commission requesting that an election be conducted among all regular part-time employes to determine whether they desire to be accreted to the existing unit.

Dated at Madison, Wisconsin this 21st day of May, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner