

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Stipulation of	:	
	:	
LOCAL 742, affiliated with MILWAUKEE	:	
DISTRICT COUNCIL 48, AFSCME, AFL-CIO	:	
	:	
and	:	Case VI
	:	No. 15815 DR(M)-36
CITY OF CUDAHY	:	Decision No. 11126-A
	:	
For Declaratory Ruling	:	
	:	

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., appearing on behalf of the Union.
 Mulcahy, Gefke & Wherry, S.C., Attorneys at Law, by Mr. Robert B. Moberly, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECLARATORY RULING

Local 742, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO and City of Cudahy, Wisconsin, having requested the Wisconsin Employment Relations Commission to issue an order clarifying an existing collective bargaining unit; and hearing having been held in the matter on July 20, 1972 at Milwaukee, Wisconsin, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments of counsel and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Declaratory Ruling.

FINDINGS OF FACT

1. That City of Cudahy, referred to herein as the Municipal Employer, is a Wisconsin municipality having its principal offices at City Hall, Cudahy, Wisconsin.
2. That Local 742, affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, referred to herein as the Union, is a labor organization having its principal offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
3. That on or about July 17, 1968 the Union, by John Redlich, a business agent in its employ, presented evidence to the Finance and Claims Committee of the Municipal Employer to show that said labor organization represented a majority of the clerical employes of the Municipal Employer; and that on such occasion said committee of the Municipal Employer approved a recommendation for recognition of the Union as the exclusive bargaining agent in a unit of clerical employes of the Municipal Employer.
4. That, on September 3, 1968, the Common Council of the Municipal Employer adopted its Resolution No. 2300, wherein the Municipal Employer extended recognition to the Union as the exclusive bargaining agent for employes in a unit comprised of clerical and

city hall employes of the City of Cudahy, including employes in the Assessor's, Clerk's, Treasurer's, Engineer's, Inspector's and Water Utility offices and two custodial positions in said City Hall.

5. That, thereafter, the Union made a request to the Municipal Employer for job descriptions of employes in the bargaining unit; and that, pursuant to such request, the Municipal Employer presented the Union with copies of certain job descriptions, including a copy of a job description covering a position titled Deputy Registrar of Vital Statistics in the Health Department of the City of Cudahy, as adopted by the Cudahy Civil Service Commission on November 1, 1968.

6. That the parties engaged in collective bargaining; that, during collective bargaining, proposals were exchanged concerning the elimination of certain job titles and the replacement of same with certain new job titles; that on November 4, 1968 the Finance Committee and the Committee As A Whole of the Municipal Employer made a recommendation to eliminate the classification of Deputy Registrar of Vital Statistics and replace same with a classification of "General Office Clerk II"; and that the action of the Municipal Employer in this regard was reported to the Union as a proposal in bargaining.

7. That on March 12, 1969, the Common Council of the Municipal Employer, meeting as the Committee As A Whole, approved a recognition clause for inclusion in the collective bargaining agreement between the parties, wherein it was stated that the Municipal Employer recognized the Union as the exclusive collective bargaining agent for the appropriately recognized bargaining unit as referred to Resolution No. 2300 for all clerical and charwomen employes of the City excluding only the Secretary-Deputy Clerk.

8. That, on August 21, 1969, the City Clerk and Comptroller of the Municipal Employer directed a letter to the labor negotiator of the Municipal Employer, wherein reference was made to 14 employes in the City Hall for whom Local 742 bargains; and that enumeration of the employes employed by the Municipal Employer on that date indicates that the Deputy Registrar of Vital Statistics, alternatively known as General Office Clerk II in the Health Department of the Municipal Employer, was included within the aforementioned reference to 14 employes.

9. That, on September 9, 1970, the City Attorney of the Municipal Employer directed a letter to the Common Council of the Municipal Employer, wherein reference was made to the recognition by the Municipal Employer of the Union as the representative of all of the clerical employes in the employ of the Municipal Employer.

10. That on December 21, 1971 the parties entered into a collective bargaining agreement for the period January 1, 1972 to December 31, 1972 wherein the parties included a recitation of the Municipal Employer's recognition of the Union as the exclusive collective bargaining agent for a unit of clerical and charwomen employes of the Municipal Employer.

11. That the Deputy Registrar of Vital Statistics, alternatively known as the General Office Clerk II in the Health Department of the Municipal Employer, performs functions of an office and clerical nature, including the preparation and maintenance of records, forwarding of copies of said records, taking of dictation and transcription of

same, typing, setting up and maintaining of files, answering telephone calls and furnishing information within scope of knowledgeable requirements, requisition of office supplies per prescribed procedures, dispensing and care of lending equipment, and operation of office machines; that the requirements for said position impose no educational requirement beyond graduation from high school; that the occupant of said position must make a written acceptance of same; that the occupant of said position must take an oath of office and is bonded; that the occupant of said position participates as cashier and record keeper in certain activities of the Health Department conducted in the community outside of the offices of the Health Department; that the occupant of said position, under supervision, dispenses oral polio vaccine, but dispenses no other medications and does not diagnose medical problems; that the record keeping functions performed by the occupant of said position are performed pursuant to regulations of the State of Wisconsin requiring a high degree of accuracy and attention to detail; that the position in dispute is the only clerical position in the Health Department of the Municipal Employer; and that the occupant of said position is the only non-professional employe employed in said department.

12. That the Municipal Employer employs 13 clerical and charwomen employes in at least six departments of municipal government separate and apart from the Health Department; that said separate departments of municipal government are located in two facilities separate and apart from the offices of the Health Department; that employes in such departments are under separate supervision in each department; that during the years 1969, 1970 and 1971 employes in such separate departments holding the classification of General Office Clerk II received the same rate of pay as the occupant of the position in dispute in this case, and that during the year 1972 the rates of pay for said positions differed by \$.38 per month; that certain of the employes in said departments are bonded; and that the employes in said departments perform office and clerical work not unlike the office and clerical functions required of the occupant of the position in dispute in this case.

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

CONCLUSIONS OF LAW

1. That the position of Deputy Registrar of Vital Statistics, alternately known as General Office Clerk II in the Health Department of the City of Cudahy, has previously been included within the scope of the recognition granted by said Municipal Employer to said labor organization.

2. That the Deputy Registrar of Vital Statistics, alternately known as General Office Clerk II in the Health Department of the City of Cudahy, is neither a professional employe, a confidential employe, nor a managerial employe, nor a supervisor within the meaning of the Municipal Employment Relations Act.

3. That a unit consisting of all clerical and charwomen employes of the City of Cudahy is appropriate for the purposes of collective bargaining within the meaning of the Municipal Employment Relations Act.

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

DECLARATORY RULING

That the position held by Sue Martinek under the title of Deputy Registrar of Vital Statistics, or alternately under the title of General Office Clerk II in the Health Department of the City of Cudahy be, and the same hereby is, included in the collective bargaining unit consisting of all clerical and charwomen employes of the City of Cudahy.

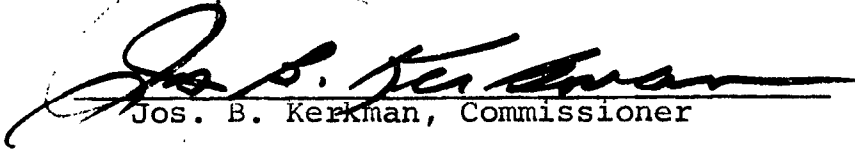
Given under our hands and seal at the City of Madison, Wisconsin, this *23rd* day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DECLARATORY RULING

The Union previously filed a complaint with the Commission wherein it alleged that the Employer had committed prohibited practices within the meaning of Section 111.70(3)(a) of the Municipal Employment Relations Act. 1/ The matter came on for hearing on June 27, 1972, at which time the parties entered into a settlement whereby said complaint of prohibited practices was dismissed, the parties stipulated that a dispute existed between them as to whether the position held by Sue Martinek 2/ should be included in a bargaining unit with certain clerical employees of the Employer, and the parties agreed to the issuance of an Order by the Commission clarifying the bargaining unit in that regard. The instant case was opened by the Commission pursuant to the foregoing agreement of the parties. Hearing was held at Milwaukee, Wisconsin on July 20, 1972. Counsel for the Union made oral argument at the close of the hearing. At his request, a stenographic transcript of the hearing was prepared and mailed to Counsel for the Employer on January 9, 1972. A brief was filed on behalf of the Employer on April 13, 1972.

The Union contends that the position in dispute is already included in a city-wide unit of clerical employees in which the Employer has recognized the Union as the exclusive representative. The Union contends that such a city-wide unit of clerical employees is appropriate within the meaning of Section 111.70(4)(a)(2)(a) of MERA.

The Employer contends that the position of Deputy Registrar of Vital Statistics has never been included in the bargaining unit, and that there is no community of interest between the position in dispute and the clerical employees in the bargaining unit, and therefore the position should be excluded from the bargaining unit.

PREVIOUS RECOGNITION OF BARGAINING REPRESENTATIVE AND UNIT

The parties to this proceeding were parties to a collective bargaining agreement which was effective for the period January 1, 1972 to December 31, 1972. Said agreement contained a recognition clause which stated:

"ARTICLE I - RECOGNITION

1. Exclusive recognition: The City hereby recognizes the Union as the exclusive collective bargaining agent for the appropriate certified bargaining units (and recognized units) by City of Cudahy Resolution 2300, and as the certified representative for those employees in these bargaining units occupying the classifications as defined in the appropriate "Certifications of Representatives" promulgated by the Wisconsin

1/ City of Cudahy, Case V, No. 15573, MP-134.

2/ The parties were unable to stipulate as to the title of the position in dispute. The Employer claims that the position carried the title: Deputy Registrar of Vital Statistics. The Union contends that the position is included in the collective bargaining agreement under the title: General Office Clerk II.

Employment Relations Commission, and clerical and charwomen employees of the City as determined by Wisconsin law. The Union recognizes its responsibility to cooperate with the City to assure maximum service at minimum cost to the public consonant with its obligations to the employees it represents."

The foregoing Recognition Clause appears to derive from three separate sources. Resolution 2300 was adopted by the Common Council of the Employer on September 3, 1968 following a meeting of the Finance and Claims Committee of the City of Cudahy on July 17, 1968, at which the Union demonstrated majority status in the unit. It states:

"WHEREAS, a request was presented to the Common Council of the City of Cudahy by John Redlich representing Local No. 742 City Employees Union, asking that the Common Council voluntarily certify Local No. 742 as the exclusive bargaining agent for certain clerical employees in a specific unit in the City Hall in the Assessor's, Clerk's, Treasurer's, Engineer's, Inspector's, and Water Utility Office's and the two custodial positions in the City Hall and,

WHEREAS, there are no other petitions or requests for certification from any other groups or organizations and Local No. 742 has appeared before the Finance Committee of the City of Cudahy and presented signed signature cards of seven (7) City Hall employees indicating their desire to have Local No. 742 represent them as their bargaining unit and,

WHEREAS, the Common Council of the City of Cudahy in a meeting held on August 6, adopted the minutes of the Finance and Claims Committee meeting held on July 7, 1968 (sic) wherein there was a recommendation that such a voluntary certification of Local No. 742 take place.

NOW, THEREFORE, the Common Council of the City of Cudahy do hereby resolve that City Employees Union Local No. 742 be and hereby is certified to be the exclusive bargaining agent for a unit comprised of clerical and City Hall employees as above enumerated in the City of Cudahy."

The Commission has searched its records to determine what, if any, certifications of representatives it has issued concerning employees of the Employer, and only one such case is found. In City of Cudahy, Case I, No. 8685, ME-42 (Decision No. 6028) 8/62, the Commission (then the Wisconsin Employment Relations Board) certified Milwaukee District Council 48 and Local 742, AFSCME, AFL-CIO as the exclusive representative of a bargaining unit consisting of all employees of the City of Cudahy working in the Department of Public Works, including the water Department and all employees working for the School Board, excluding supervisory employees, certificated personnel (teachers) and all craft employees receiving the prevailing rate. While said certification would not have included the position in dispute here, it may have included a clerical employee who was later specifically included in the unit recognized by Resolution 2300. The Water Utility office is housed in facilities separate and apart from the City Hall, and Resolution 2300 thus evidences an intent to create a unit of clerical employees which cut across both "department" and "plant" lines. The

Union also produced evidence, from the minutes of a meeting of the Common Council of the Employer, meeting as a Committee As A Whole, on March 12, 1969, to show recognition of the Union as of that date in a unit consisting of "all clerical and charwomen employees of the City, excluding only the Secretary - Deputy Clerk."

Apart from the recognition clause of the labor agreement and its interpretation, the Union has adduced evidence to corroborate its claim that the position in dispute has always been included in the bargaining unit. Early in their relationship, the Union requested the then-existing job descriptions from the Employer. A two page job description for the position of Deputy Registrar of Vital Statistics was one of the job descriptions provided to the Union at that time. A change of job titles subsequently became a subject of negotiations between the Union and the Employer. The Union has shown that, as of November 4, 1968, a proposal was under consideration in the Employer's Finance Committee and Committee As A Whole providing for the elimination of a number of specific job titles, including that of Deputy Registrar of Vital Statistics, and the replacement of same with a new classification of "General Office Clerk II". The Employer made a proposal to the Union in this regard, and the Union has subsequently operated on the belief that all of the specific job titles were eliminated and obsolete.

On August 21, 1969, the City Clerk and Comptroller of the Employer wrote a letter to the Employer's labor negotiator concerning wage requests made by the Union, wherein reference was made to "14 employees in the City Hall who Local 742 bargains for." A witness called on behalf of the Union, who has been an employe throughout the period involved in this case, testified concerning the names and number of employes in the bargaining unit on the date of the indicated letter. This testimony indicates that the position in dispute was included in the reference to City Hall employes represented by the Union.

On February 9, 1970, the City Attorney of the Employer wrote a letter to the Common Council of the Employer, wherein reference was made to a "General Clerk II" position. Reference is made in the same letter to the fact that the Clerk II position is not a tailor made position for a specific individual, and the letter indicates recognition of the possibility that a clerical employe from a different department might desire the position then in question. The City Attorney made reference in the indicated letter to the fact that "all of the clerical employees are members of the bargaining unit that is represented by Local 742."

The evidence indicates that the Deputy Registrar of Vital Statistics has received the same rate of pay as General Office Clerk II, except in 1972, when the Deputy Registrar of Vital Statistics received \$.38 per month less than the General Office Clerk II. The Union claims that the equality is a result of its bargaining efforts, while the Employer would appear to claim that the equality was a matter of coincidence.

Upon review of the evidence, the Commission finds that the position occupied by Sue Martinek has historically been included in a bargaining unit consisting of all clerical employes of the Employer. Such a finding is not dispositive of the case, and the Commission must determine whether the continuation of such inclusion is appropriate.

APPROPRIATENESS OF COLLECTIVE BARGAINING UNIT

As is indicated above, the Employer provided the Union with a copy of the job description of the Deputy Registrar of Vital Statistics some time ago. In 1970 a more detailed job description was prepared covering the position. The more recent document states specific work situations and circumstances, while the earlier document, which was adopted by the Cudahy Civil Service Commission, contains general descriptions of the type of work to be performed. The Employer does not disavow the contents of the earlier document, which states:

"PRIMARY FUNCTIONS:

Performs routine, non-routine and special assignments related to functions of the Health Department in maintaining of various records as required by State statutes. Is able to take dictation and transcribe same. Perform duties with minimal supervision. Assist nurses in operation of various clinics when required.

TYPICAL DUTIES:

1. Prepare and maintain Health Department records confidential in nature and forward copies of these records to various agency that requests them in conformance with State statutes and departmental regulations.
2. Take dictation and transcribe same in preparing correspondence. Assist nurses in summarizing daily reports, typing same.
3. Set up and maintain files reflecting burial permits, death certificates, birth certificates, marriage certificates, etc. as directed by supervisor, and makes necessary corrections as warranted.
4. Answer telephone calls, furnish pertinent information that is within scope of knowledgeable requirements and for which permission has been granted to release.
5. Requisition office supplies and equipment per prescribed procedures, dispense, renew and care for Free Hospital Lending Equipment.
6. Operate office equipment such as typewriters, mimeograph, grapha-type, Addresso-graph, Thermofax, ditto and other reproduction type equipment.
7. Maintain various registers reflecting tuberculosis cases and other communicable diseases. Maintain school health records and child hygiene records as directed.
8. Maintain high standard of good housekeeping practices as related to efficient office functions.

9. Perform related duties and responsibilities as directed by Public Health Nurse Supervisor or supervisor assigned."

The position in dispute is the only clerical position in the Cudahy Health Department. The title: "Deputy Registrar of Vital Statistics" derives from Chapter 69, Wisconsin Statutes. The occupant of the position must make a written acceptance of the position, takes an oath of office and is bonded. In addition to the office functions outlined in the foregoing job description, the Deputy Registrar of Vital Statistics travels, with other members of the Health Department staff, to various locations in the community when clinics are operated. On such occasions she acts as cashier or assists in the recordkeeping involved in the operation of the clinic. Under certain circumstances the Deputy Registrar of Vital Statistics administers oral polio vaccine, but does not administer any other medicines or diagnose medical problems. The Employer contends that the Deputy Registrar of Vital Statistics is a technical employe and that she has no community of interest with the employes included within the existing clerical unit.

Prior to the enactment of the Municipal Employment Relations Act the Commission had only limited authority with respect to the determination of units appropriate for the purposes of collective bargaining. Craft and professional employes could only be included in units consisting of a single craft or profession. All otherwise eligible employes of a municipal employer constituted the appropriate unit, except where a majority of the employes in a separate department, plant or division of the municipal employer voted to constitute themselves as a separate unit. Sections 111.70(1)(e) and 111.70(4)(d)(2)(a) of MERA give the Commission the authority to determine the units appropriate for the purpose of collective bargaining, with the mandate to avoid fragmentation whenever possible by maintaining as few units as practicable in keeping with the size of the total municipal work force. While the instant unit consisting of all clerical employes of the municipal employer may not have been appropriate under the prior statutes, it is clear that all employes in an occupational grouping, such as office and clerical employes, constitutes an appropriate unit under MERA. See Dane County (10492-A) 3/72, where the Commission combined office and clerical employes holding a wide variety of job titles in 31 separate departments in a single unit of all office and clerical employes of the municipal employer.

The evidence in this record would support a conclusion that the position in dispute calls for very high level office work. That conclusion alone would not warrant the creation of a separate unit, consisting of one employe, but such a result is inescapable if the position of the Employer is adopted by the Commission. The Employer employs approximately 14 clerical and office employes. These employes are assigned to at least seven separate departments, one of which is the Health Department. All of the departments are located in City Hall except the Water Utility and the Health Department, each of which is located in a separate facility approximately 1 block from the City Hall. There is no dispute concerning inclusion of the sole clerical employe in the Water Utility in a single unit with the other clerical employes. The other employes in the Health Department are registered nurses. The Commission has long recognized registered nurses as a professional group. A unit consisting of all employes of the Health Department could not be considered appropriate. Section 111.70(4)(d)(2)(a) of MERA also forbids the mixing of professional and non-professional employes in a single unit unless the majority

of the professional employees have voted in favor of inclusion in the mixed unit.

The record indicates that some of the other clerical employees of the Employer perform high level clerical work and are bonded. The educational requirements for the position and many of the duties outlined in the job description of the Deputy Registrar of Vital Statistics, particularly recordkeeping, typing, filing, answering telephones, and operation of office machines, are not unlike the requirements and duties of the other clerical employees of the Employer. In Dane County, supra, the Commission included persons holding job titles such as Court Clerk II, Court Records Clerk, Legal Stenographer and Tract Index Supervisor in a single unit with other clerical employees. The requirement for accuracy and attention to detail in such occupations is self-evident, but does not constitute a basis for exclusion from a bargaining unit. The Commission is satisfied that the same considerations require that the Deputy Registrar of Vital Statistics of the Employer be included in an appropriate collective bargaining unit consisting of all office and clerical employees of the municipal employer.

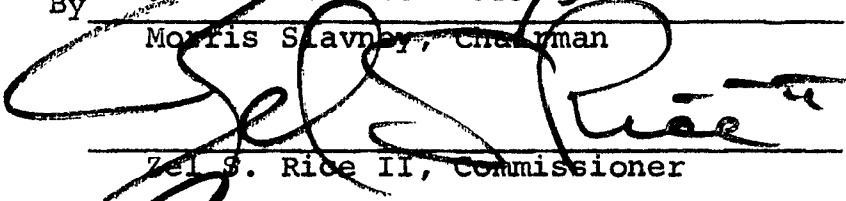
At hearing, Counsel for the Employer commented on the need that an election be held in this case. The argument was not developed further in the brief filed on behalf of the Employer. The Commission will not permit the employees in a portion of an appropriate unit to vote separately on a question of representation. Nothing in the present record indicates that a question concerning representation exists as to the entire unit. Accordingly, no election is appropriate in this case.

Given under our hands and seal at the City of Madison, Wisconsin, this *29th* day of April, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavny, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner