

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LOCAL 366, AFFILIATED WITH MILWAUKEE
DISTRICT COUNCIL 48, AFSCME, AFL-CIO

For a Declaratory Ruling Involving
Certain Employees of

THE SEWERAGE COMMISSION OF THE
CITY OF MILWAUKEE

Case XXV
No. 15926 DR(M)-38
Decision No. 11228-A

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by John S. Williamson, Jr. and John Redlich, Staff Representative, for the Petitioner.

Ropella & Soukup, Attorneys at Law, by M. E. Ropella and Raymond D. Leary, Chief Engineer & General Manager, for the Municipal Employer.

DECLARATORY RULING

Local 366, Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission, pursuant to Section 111.70(4)(b) of the Municipal Employment Relations Act, to issue a Declaratory Ruling with respect to a dispute arising between said Petitioner and the Sewerage Commission of the City of Milwaukee, concerning the Municipal Employer's duty to bargain over its adoption of a requirement that all of its employees reside within the Milwaukee Metropolitan Sewerage District; and hearing in the matter having been held on September 14, 1972, John T. Coughlin, Hearing Officer, being present; and the Commission having considered the evidence, briefs and arguments, and being fully advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

FINDINGS OF FACT

1. That Local 366, Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, is a labor organization and represents certain employees in the employ of the Sewerage Commission of the City of Milwaukee for purposes of collective bargaining, and has its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. That the Sewerage Commission of the City of Milwaukee, hereinafter referred to as the Municipal Employer, has its offices at Jones Island, 700 E. Jones, Milwaukee, Wisconsin.
3. That at all times material herein, the Petitioner has been, and is, the certified collective bargaining representative of all regular full-time and regular part-time employees of the Municipal Employer employed in the following departments: Administration and Main Office; Drafting and Design; Engineering, Construction, Maintenance;

No. 11228-A

Plant Laboratory and Research; Plant Office and Plant Supervision; Plant Operation and Maintenance and Shipping; excluding employes in the Machine Shop, Power Plant and Building Trades, and further excluding supervisors, confidential employes and executives.

4. That on or about September 28, 1971, the Municipal Employer adopted the following resolution:

"Resolution concerning the residency requirements for all employes of the Sewerage Commission of the City of Milwaukee.

WHEREAS, the Labor Committee of the Sewerage Commission of the City of Milwaukee has reviewed the residency requirements of other units of government in the area; and

WHEREAS, the Labor Committee of the Sewerage Commission of the City of Milwaukee has recommended effective September 28, 1971, that all future employes of the Sewerage Commission of the City of Milwaukee shall be required to live in the metropolitan sewerage district and/or its contract areas; and

WHEREAS, the Labor Committee of the Sewerage Commission of the City of Milwaukee has recommended effective September 28, 1971, that all current employes of the Sewerage Commission of the City of Milwaukee who are living in the metropolitan sewerage district and/or its contract areas, shall be required to remain living in the metropolitan sewerage district and/or its contract areas as a condition of employment;

NOW THEREFORE BE IT RESOLVED, effective September 28, 1971, that all future employes of the Sewerage Commission of the City of Milwaukee shall be required to live in the metropolitan sewerage district and/or its contract areas and effective September 28, 1971, that all current employes of the Sewerage Commission of the City of Milwaukee, who are living in the metropolitan sewerage district and/or its contract areas, shall be required to remain living in the metropolitan sewerage district and/or its contract areas as a condition of employment; and

BE IT FURTHER RESOLVED, that the Personnel Office of the Sewerage Commission of the City of Milwaukee maintain a map of the metropolitan sewerage district and its contract areas, to which employes of the Sewerage Commission of the City of Milwaukee may have access.

GENERAL NOTICE TO ALL EMPLOYEES

The above resolution was adopted by the Sewerage Commission of the City of Milwaukee at a meeting held September 28, 1971.

If additional information is desired by any employes please contact the Personnel Department.

Ray D. Leary /s/
Ray D. Leary
Chief Engineer & Gen. Mgr.

5. That the Petitioner has prepared a proposal concerning the above quoted residency requirement which it desires to include in the next collective bargaining agreement between the parties, which agreement would become effective January 1, 1973, and has presented said proposal to the Municipal Employer.

6. That at all times material herein, the Municipal Employer has refused to bargain with respect to the proposal concerning the aforementioned residency requirement.

7. That the residency requirement set forth in the resolution adopted by the Municipal Employer concerns a matter affecting conditions of employment of the employes in the bargaining unit represented by the Petitioner.

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

DECLARATORY RULING

That the resolution requiring bargaining unit employes to reside within the Milwaukee Metropolitan Sewerage District is a condition of employment of employes in the bargaining unit represented by Local 366, Affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO, and, therefore, said residency requirement is subject to collective bargaining within the meaning of Section 111.70(1)(d) and 111.70(2) of the Municipal Employment Relations Act, as it affects the wages, hours and working conditions of the aforesaid employes.


Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zer S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

PETITIONER'S POSITION

The Petitioner requests a Declaratory Ruling with regard to a dispute as to whether the Municipal Employer has a duty to bargain collectively over a resolution which said Employer adopted on September 28, 1971 requiring all of its current employees to reside in the Milwaukee Metropolitan Sewerage District and that all future employees be required to live in the District. The Petitioner points out that the current collective bargaining agreement existing between itself and the Municipal Employer contains a "just cause" standard for discharge. It then argues that an employee who violates the residency requirement would be subject to possible discharge and that what shall or shall not constitute grounds for discharge has always been a subject of collective bargaining. Consequently, it avers that the Municipal Employer has a duty to bargain over the aforesaid residency requirement.

MUNICIPAL EMPLOYER'S POSITION

The Municipal Employer argues when one considers the nature of the services which the involved employees perform and the necessity of their immediate availability, that it is not unreasonable to require employees to maintain their residency within the geographic limits serviced by the Municipal Employer. The Municipal Employer stresses that the Milwaukee Sewerage Commission, funded by taxes derived from the people it services, would, without the residency requirement, allow a portion of its employees' income taxes to support the budgets of a county or a community whose citizens do not contribute towards the maintenance of the operation of the Municipal Employer's function.

DISCUSSION

It should be noted that the residency requirement adopted by the Municipal Employer specifically requires all current and future employees to either remain living or to live within the Milwaukee Metropolitan Sewerage District "as a condition of employment" (emphasis supplied). Thus, it is clear that the resolution recognizes that the residency requirement is a condition of employment. In addition, testimony revealed that violation of the residency requirement could subject an employee to discipline and potentially to discharge. Therefore, if an employee were terminated because he violated the residency requirement, his conditions of employment would be most drastically affected. To hold otherwise would be to adopt a most untenable and myopic approach to the reality of labor relations. The Municipal Employment Relations Act does require a Municipal Employer to bargain in good faith over subjects affecting wages, hours and conditions of employment, 1/ but it does not require a Municipal Employer to necessarily accede to a Union's proposal relating to those subjects.

Dated at Madison, Wisconsin, this 25th day of October, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney

Thomas Slavney, Chairman

Zell S. Rice II, Commissioner

Joseph B. Kerzain, Commissioner

1/ City of Wauwatosa (10670-A) 12/71.