

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

ST. CROIX COUNTY (HIGHWAY DEPARTMENT

Case VIII

No. 15501 ME-774

Decision No. 11251

ORDER CLARIFYING BARGAINING UNIT

St. Croix County Highway Employees, Local 576, Wisconsin Council of County and Municipal Employees, A.F.S.C.M.E., AFL-CIO, having on April 7, 1972, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to conduct an election among certain employees of St. Croix County (Highway Department); and the Petitioner having, on April 26, 1972, filed an amended petition, wherein it alleged that it presently is, and formerly has been, the exclusive bargaining representative in the bargaining unit indicated in its original petition, that no question concerning representation exists in such bargaining unit; that, however, a question has arisen between the Petitioner and the Municipal Employer concerning whether nine foremen employed by the Municipal Employer in the Highway Department should be included in such bargaining unit; and that, pursuant to notice, a hearing having been held in the matter at Hudson, Wisconsin, on May 5, 1972, Marvin L. Schurke, Hearing Officer, being present;<sup>1/</sup> and the Commission having considered the evidence and arguments of Counsel and being fully advised in the premises, makes and issues the following

ORDER

1. That the positions of Sign Foreman and Welding Foreman shall be, and the same hereby are, included in the collective bargaining unit consisting of all employees of St. Croix County (Highway Department), excluding the Commissioner, Patrol Superintendent, Office Manager, Surveyors, Partsman, Supervisors and Confidential Employees.


2. That the positions of Crusher Foreman, Loader Foreman, Grading Foreman, Bridge Foreman and Shop Foreman shall be, and the same hereby are, excluded from the collective bargaining unit described above.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 28th  
day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slawney, Chairman

  
Earl S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

<sup>1/</sup> See the attached memorandum for details concerning the conduct of  
the hearing in this matter.

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

In its petition filed on April 7, 1972, the Petitioner requested a representation election in a bargaining unit consisting of all employees of the St. Croix County Highway Department, excluding the Commissioner, Assistant Commissioner and Office Manager. Notice was issued on April 18, 1972, setting the matter for hearing on May 2, 1972. The Municipal Employer requested a postponement of that hearing, and on April 21, 1972, notice was issued postponing the hearing in the matter to May 5, 1972. On April 25, 1972, pursuant to its request therefor, Teamsters' Local 662 of Eau Claire, Wisconsin was furnished copies of the petition and notices of hearing. On April 26, 1972, the Petitioner filed its amended petition, and copies of said amended petition were mailed on the same day by the Commission to all parties, with a cover letter which stated, in part:

"Hearing in the matter will be held on Friday, May 5, 1972, at 10:30 A.M. at the St. Croix County Courthouse, Hudson, Wisconsin, as previously established by notice dated April 21, 1972."

On May 5, 1972, the District Attorney of the Municipal Employer, its Negotiator, the Chairman and four members of the Highway Committee, the Highway Commissioner, and the Office Manager of the Highway Department appeared at the time and place established for the hearing. Nobody appeared on behalf of the Petitioner. The Hearing Officer placed a telephone call to Mr. Guido Cecchini, the area Representative of the Wisconsin Council of County and Municipal Employees, who advised the Hearing Officer that he had failed to make note of the date set for the hearing. Mr. Cecchini was in Eau Claire, Wisconsin at the time and advised the Hearing Officer that it would be impractical to attempt to appear for the hearing on that day. The Municipal Employer moved for the dismissal of the petition, with prejudice, and also moved for assessment of costs against the Petitioner. The County provided an affidavit in which it claimed to have incurred expenses of \$201.00 in connection with appearances at the scheduled hearing.

On instructions of the Commission, the Hearing Officer advised the parties that, since the nature of the proceeding is investigatory rather than adversary, the hearing would be opened and evidence would be taken concerning the status of the nine foremen positions set forth in the amended petition. Mr. Cecchini declined to make a tardy appearance at the hearing, but requested leave to file a written statement of the Union's position. During the telephone conversation, Mr. Cecchini advised the Hearing Officer that the Union did not contest the exclusion of the Shop Foreman from the unit as a supervisor.

The hearing was opened and Highway Commissioner Julian C. Moen was called and sworn as a witness. Commissioner Moen testified pursuant to examination by the Hearing Officer and by the Municipal Employer. A copy of the current collective bargaining agreement between the Petitioner and the Municipal Employer was received in evidence. Following the close of the hearing, the Petitioner was advised, by letter, that a statement of its position could be filed with the Commission on or before May 24, 1972. No statement of position, or request for additional time, has been received by the Commission, and the Petitioner is presumed to have waived its opportunity to file same.

The collective bargaining unit involved herein was established through voluntary recognition, and the description of said unit has not previously been the subject of proceedings before the Commission. Under the circumstances, it would be inappropriate to grant the Municipal Employer's motion to dismiss with prejudice. There

would be no determination on the merits, and no "prejudice" would emanate from such a dismissal. The evidence taken during the hearing held on May 5, 1972, constitutes the record upon which the accompanying order is issued. The Commission is satisfied that the motion for assessment of costs should also be denied.

#### SIGN FOREMAN

The position of Sign Foreman was formerly considered by the parties as being within the bargaining unit. The incumbent of that position is James Meath. The Sign Foreman maintains sign inventories, builds signs, erects signs and repairs signs on a year-around basis. He possesses a high degree of knowledge concerning sign posting standards and regulations. However, he works alone for all but one to two months of the year. During those one or two months, two other employees are assigned to work with the Sign Foreman. The Sign Foreman does not participate in the selection of the employees who are designated to work with him, and he does not exercise significant supervisory authority over such employees. The Sign Foreman is paid on an hourly basis, shares facilities with other unit employees, and performs substantial work of a nature similar to other employees. The Commission is satisfied that the Sign Foreman is a working foreman during the limited period when he works with other employees. We conclude that the Sign Foreman is not a supervisor within the meaning of Sec. 111.70 (1)(c) of the Municipal Employment Relations Act, but rather an employee and therefore is included in the existing unit.

#### CRUSHER FOREMAN, LOADER FOREMAN, GRADING FOREMEN, AND BRIDGE FOREMAN

The collective bargaining agreement contains the following provisions detailing some of the authority vested in the individuals holding the titles indicated above:

#### "ARTICLE 9 - MISCELLANEOUS PROVISIONS

SECTION 1. Outside crews shall be on the job at 7:00 a.m. unless otherwise specified and are allowed travel time back to headquarters. No travel time shall be allowed employees in reporting to the actual location of their work from headquarters after they have punched the time clock when required. Travel time will be the actual time necessary to return to headquarters from the location of their work, but in no case shall it exceed one-half (1/2) hour. Travel time required will be determined by the Foreman or Patrolman in charge, subject to the approval of the Highway Commissioner.

SECTION 4. All employees working out of the Hammond Shop shall report back to the shop at quitting time, unless otherwise ordered by the Foreman, and no employee is to leave the job or crew until notified by the Foremen to do so.

SECTION 6. Any employee who expects to be absent from his job must notify his foreman, the patrol superintendent, or the highway commissioner, at least one-half (1/2) hour before starting time when possible.

SECTION 7. Punctuality of employees is expected and required. The Foreman or supervisor is required, in the event of tardiness of an employee or of leaving the job before working hours are over, to deduct from his time one-quarter (1/4) hour for every fraction of one-quarter (1/4) hour of tardiness or absence. The Foreman or Supervisor shall exercise his discretion in determining the reasonableness of the employee's excuse for his tardiness or absence during working hours. No further notice need be given such employee. Habitual tardiness and absence during working hours shall be grounds for dismissal.

SECTION 8. Any employee who is guilty (sic) of using intoxicating beverages while on the job will automatically be suspended for a period of five (5) days and upon two (2) or more

violations the worker is suspended indefinitely, if, in the opinion of a Supervisor or the Union, any employee reports for work unable to properly perform his duties by reason of use of intoxicating beverages, he will be subject to the above penalties. It will be the responsibility of the Foreman or Supervisor to report any and all violations."

The testimony indicates that all of the foremen in this group work in the field, and are in charge of crews ranging in size from four men to fifteen or more. In all cases, they are the sole supervisor on the job site for a significant majority of the time. The Highway Commissioner and Patrol Superintendent visit the various locations where Highway Department crews are working, but their total time spent at any of the job sites supervised by these foremen would generally accumulate to only 4 to 16 hours per week. All of the foremen in this group direct and assign the employees working under them, and all of them have authority to reprimand an employee on the job site or send him home from the job site. In the event discipline is necessary, said foremen make recommendations to the Highway Commissioner, who follows such recommendations as closely as possible. The foremen in this group also make recommendations on promotions of employees and granting of probationary period pay increases. The Crusher Foreman spends no time performing manual work. The Loader Foreman operates three distinct types of operation, and the amount of manual work he performs varies according to the type of operation. When loading gravel, he operates the loader machine, but he also dispatches and assigns ten or more truck drivers. When running a brushing crew, this foreman spends less than 45% of his time performing work similar to that performed by the employees, and when running a shouldering crew, he spends approximately 90% of his time in supervision and only 10% of his time in manual work. The Grading Foremen spend approximately 30% of their time running a grader. They devote the remainder of their time to assigning work, setting up jobs and checking work. The Bridge Foreman probably spends more time performing work similar to that performed by the unit employees, but he supervises the crew which is the most independent in its activities and has the least other supervision. On the record before us, we conclude that these foremen have significant supervisory authority and are supervisors within the meaning of Sec. 111.70(1)(c) of the Act and are, therefore, excluded from the unit.

#### WELDING FOREMAN

The individual designated by the Municipal Employer as the Welding Foreman is an experienced welder who performs welding work virtually all of his time. He works with one other experienced welder and one helper in the Highway Shop. The Highway Commissioner and Patrol Superintendent maintain their headquarters at the Highway Shop, and the Highway Shop is under the full time supervision of the Shop Foreman. The evidence indicates that the Welding Foreman, because of his expertise and experience as a welder, leads the welding function, but it does not indicate that the Welding Foreman exercises significant supervisory authority over employees. We conclude that the Welding Foreman is a leadman or working foreman and is, therefore, included in the bargaining unit.

During the course of the hearing, the Municipal Employer questioned the effect of inclusion of any of the above foremen in the bargaining unit, where the parties presently have in effect a collective bargaining agreement which does not cover the wages or other conditions of employment of these alleged supervisors. The Municipal Employer does not question the status of the Petitioner as the majority representative in the Highway Department unit, consisting of approximately 100 employees. The inclusion of the Sign Foreman and the Welding Foreman would not affect the representative status of the Union. We, therefore, have issued an Order clarifying the bargaining unit to include the positions of Sign Foreman and Welding Foreman in the unit presently represented


by the Union. Our determination herein is not intended to extend the coverage of the 1972 collective bargaining agreement to the positions of Sign Foreman and Welding Foreman, unless the parties voluntarily agree to bargain such coverage.2/

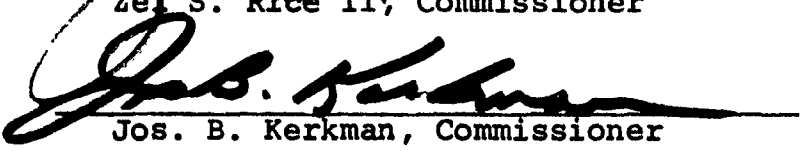
Dated at Madison, Wisconsin, this 28th day of August, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

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2/ LaCrosse Joint School District No. 5, (10980) 5/72.