

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
EARL SURA
To Clarify Bargaining Unit
Consisting of Electrical Inspectors
in the Employ of
CITY OF RACINE

Case XXV
No. 16138 ME-849
Decision No. 11498

Appearances:

Mr. Earl Sura, appearing on behalf of himself as Petitioner.
Mr. Jack Harvey, City Attorney, for the City of Racine; and
Mr. Albert A. Reid, City Clerk - Personnel Director,
appearing on behalf of the City of Racine.

ORDER CLARIFYING BARGAINING UNIT

Earl Sura having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify the certified bargaining unit represented by City of Racine Employees, Local 2239, Wisconsin Council of County and Municipal Employees, Council No. 40, AFSCME, AFL-CIO, consisting of "all inspectors who are electricians by trade employed by the City of Racine in the Building Department but excluding supervisors and all other employees of the City of Racine"; and a hearing in the matter having been conducted on November 20, 1972 at Racine, Wisconsin, Marshall L. Gratz, Hearing Officer, being present; and the Commission having considered the evidence and the arguments of the parties and being fully advised in the premises and being satisfied that the position of Electrical Inspector II is a supervisory position, makes and issues the following

ORDER

That the position of Electrical Inspector II shall be, and hereby is, excluded from the collective bargaining unit of all inspectors who are electricians by trade employed by the City of Racine in the Building Department, but excluding supervisors and all other employees of the City of Racine.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Jos. B. Kerkman
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

On April 6, 1972, the Commission certified Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO as the exclusive collective bargaining representative for all inspectors who are electricians by trade employed by the City of Racine in the Building Department but excluding supervisors and all other employees of the City of Racine. 1/ That certification was based upon the results of an election directed on November 10, 1971. In the Memorandum accompanying its Direction of that election, the Commission noted that the electrical inspectors' election was being directed on the basis of the parties' stipulation. 2/

The petition in the instant case was filed on October 30, 1972 by Earl Sura, hereinafter referred to as Petitioner, who contends that he was erroneously included in said unit because he holds an appointive position and because he is a supervisor. The Petitioner is classified as an Electrical Inspector II. Hearing was held on November 24, 1972. Although it had been mailed a notice of the hearing, Wisconsin Council of County and Municipal Employees did not appear in person or otherwise at the hearing.

POSITIONS OF THE PARTIES:

The Petitioner argues that he is an employee appointed directly by the City Council and that he has sufficient supervisory authority to be deemed a "supervisor" under the definition contained in Sec. 111.70(1)(o)1 of the Wisconsin Statutes. 3/

The Municipal Employer takes the position that Petitioner does not have sufficient supervisory authority to be deemed a supervisor, under said definition, and that Petitioner's position should therefore remain included in the aforementioned bargaining unit.

DISCUSSION:

The initial inclusion of Petitioner in the aforementioned bargaining unit of electrical inspectors was made pursuant to a stipulation between the City of Racine and Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO. 4/ The issue of Petitioner's supervisory status was not raised at that time. Furthermore, Petitioner's standing was not challenged at the hearing. For those reasons the Commission is willing, in this case, to consider the Petition on its merits.

1/ City of Racine, Dec. No. 10614 (4/72).

2/ City of Racine, Dec. No. 10389-C (10/71).

3/ All references herein to numerical sections shall refer to the Wisconsin Municipal Employment Relations Act unless otherwise noted.

4/ City of Racine, Dec. No. 10389-C (10/71)

Petitioner should be excluded from the instant bargaining unit if he is in fact a "supervisor" as that term is defined in Sec. 111.70(1)(o)1. Said definition reads in pertinent part as follows:

"'Supervisor' means . . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Petitioner is employed as the sole Electrical Inspector II in the employ of the City of Racine. That position falls within the Building Department of the Public Works Division of City government. The Building Department includes plumbing inspection, electrical inspection, electrical construction, traffic signal, bridge repair and general electrical repair functions. Although the Building Department is under the general supervision of William Feist, Petitioner asserts that he is a supervisor as to the Assistant Electrical Inspector and two City Maintenance Electricians. Petitioner and the Assistant Electrical Inspector are the only two individuals presently included within the unit of electrical inspectors. The two City Maintenance Electricians are in another unit; they are represented therein by a Local of the International Brotherhood of Electrical Workers.

Petitioner's work consists of issuance of electrical construction permits, assisting architects in achieving electrical code compliance, supervising the maintenance of electrical systems within City Public Works buildings, traffic signals and bridges, and the planning and/or supervising of the performance of alterations or additions to the electrical systems on certain City-owned structures. He estimates that he spends about 30% of his time in conducting on-site inspections of electrical construction. Perhaps 20% of his time is spent in drawing plans and cost estimates for electrical work to be done on City property. Petitioner further estimates that he spends 50% of his time in activities of a "supervisory nature" with respect to his Assistant Electrical Inspector and (more significantly) with respect to the two City Maintenance Electricians.

The City Maintenance Electricians report to Petitioner daily to receive their work assignments. In emergency situations, other City personnel can call upon the Electricians for services, however, e.g., when a traffic tie-up has resulted from a malfunctioning traffic light. The Electricians are occasionally called in during their off hours for emergency repairs by persons other than Petitioner; such calls go to the Police Department dispatcher who assigns the work order by telephone in accordance with an "on-call" schedule prepared by Petitioner. Petitioner checks the work done by the Electricians and orders them to correct deficiencies therein if any are found. Petitioner does not perform any electrical construction or repairs himself. He maintains a log of work performed by the Electricians; and he has given oral evaluations of the work of each, especially early in their tenures, to the Commissioner of Public Works at the latter's request.

Petitioner is the recipient of the Electricians' complaints which he has always adjusted himself; no grievance has gone beyond Petitioner to his knowledge. In addition, the Personnel Office of the Municipal Employer discussed the bargaining demands of the Electricians with Petitioner before formulating its response thereto. Furthermore, the Electricians request the Petitioner to grant compensatory time off for overtime worked, which the Petitioner grants or denies such requests in his own discretion.

Also, at the request of the head of the City Personnel function, Petitioner interviewed several applicants for each of the City Maintenance Electrician positions. In each case, the applicant recommended by Petitioner was hired by the Municipal Employer.

Petitioner has verbally reprimanded the Electricians and believes that he has the authority to effectively recommend more serious forms of discipline up to and including discharge, but he also notes that no such impositions of more serious discipline have ever been necessary.

The Municipal Employer has raised the issue of Petitioner's authority to supervise. Petitioner relies upon repeated oral representations to Petitioner by the Commissioner of Public Works indicating that Petitioner was in charge of the Electricians, and verbal orders to the Electricians to the same effect. In addition, at the Building Department head's request and based upon an order from the Mayor, Petitioner prepared work rules and regulations for the Electricians and submitted same to his superiors. Those rules included a specific reference to the fact that the Electricians are under the direct supervision of Petitioner. No objections were raised to those rules since their submission three weeks prior to the hearing in this matter.

The Municipal Employer did not present evidence in direct contradiction to the inference of supervisory authority that can be drawn from the above considerations. For that reason, and because there was no evidence to suggest that there was another supervisor engaged in the direct supervision of the City Maintenance Electricians, the Commission is satisfied that Petitioner is a supervisor of those two employees.


The foregoing conclusion makes unnecessary a detailed analysis of the relationship between Petitioner and the Assistant Electrical Inspector.

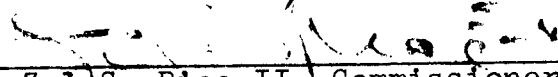
For the foregoing reasons, the Commission concludes that the position of Electrical Inspector II should be excluded from the instant bargaining unit.

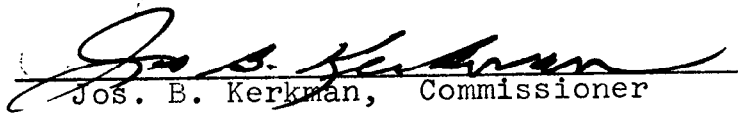
Dated at Madison, Wisconsin, this 28th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner