

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
DISTRICT COUNCIL 48, AFSCME, AFL-CIO	:	Case XXV
Involving Certain Employes of	:	No. 15504 ME-776
CITY OF WAUWATOSA	:	Decision No. 11633
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Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., for the Union.
Mr. Donald Kraft, President, Local 305, for the Union.
Mr. Harold Gehrke, City Attorney, for the Municipal Employer.

ORDER DIRECTING ELECTION

District Council 48, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to clarify and amend the certified bargaining unit consisting of "all regular full-time employees of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, and Park and Recreation Department, excluding seasonal employes, craft employes occupying the Electrician and Sign Painter classifications, executives and the following supervisors: General Street Foreman, Assistant Street Foremen, Equipment Foreman, City Electrician, Water Superintendent, Water Foreman, Park Superintendent and Forestry Foreman;" and hearing in the matter having been held on May 16, 1972 and continued on May 24, 1972 at Milwaukee, Wisconsin, and Wauwatosa, Wisconsin, respectively, Commissioners Zel S. Rice II and Jos. B. Kerkman being present on May 16, 1972 and Commissioner Rice being present on May 24, 1972; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises and being satisfied that the issues involved herein do not concern a clarification of an existing bargaining unit but a matter of accretion to an existing unit, makes and issues the following

ORDER


That the petition filed herein be, and the same hereby is, dismissed, and further,

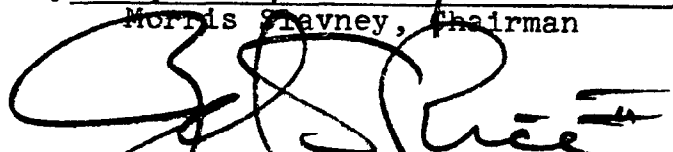
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive among all regular part-time and regular seasonal employes of the City of Wauwatosa who were employed by the City of Wauwatosa on February 21, 1973, except such employes as may prior to the election, quit their employment, for the purpose of determining whether a majority of such employes desire to accrete to the existing collective bargaining unit consisting of all regular full-time employes of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, and Park and Recreation Department, excluding seasonal

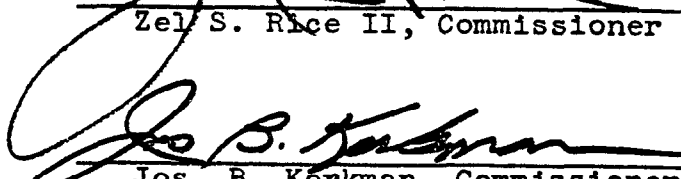
employees, craft employees occupying the Electrician and Sign Painter classifications, executives and the following supervisors: General Street Foreman, Assistant Street Foremen, Equipment Foreman, City Electrician, Water Superintendent, Water Foreman, Park Superintendent and Forestry Foreman.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Stavney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DIRECTING ELECTION

District Council 48, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, in its initial petition, requested clarification of the existing certified bargaining unit 1/ with respect to certain seasonal employes occupying the position of Extra-Help--Laborer in various departments of the City of Wauwatosa, hereinafter referred to as the Municipal Employer, should be included in said existing bargaining unit.

During the course of the hearing, the parties stipulated to the inclusion of two individuals holding the aforementioned positions; namely, Jeffrey Kessen and Steve Kurth, in the existing certified collective bargaining unit. Subsequently, the Petitioner amended its petition to request clarification of the bargaining unit as to the general inclusion or exclusion of all regular part-time employes and all seasonal employes.

The Commission has held that neither an existing collective bargaining agreement and the associated question of timeliness 2/ nor the original unit certification based upon the parties' stipulation 3/ bars clarification and amendment proceedings as herein.

The Municipal Employer, in contrast to the Petitioner, contends that the exclusion of the part-time employes and seasonal employes from the collective bargaining unit should be maintained.

Part-Time Employes

The Petitioner desires clarification of the existing bargaining unit to include regular part-time employes in the unit description. The Commission has held that regular part-time employes share a sufficient community of interest in the terms and conditions of employment with full-time employes to be included in the same unit. 4/

Emphasis in such determination has been placed upon the regularity of employment rather than upon the number of hours worked. At the time of the hearing, there was only one regular part-time employe employed by the Municipal Employer in the departments covered by the

1/ Based upon the Stipulation executed by the parties, the Commission conducted an election among:

all regular full-time employes of the City of Wauwatosa employed in the Street Department, Mechanical and Maintenance Department, Electrical Department, Water Department, and Park and Recreation Department, excluding seasonal employes, craft employes occupying the Electrician and Sign Painter classifications, executives and the following supervisors: General Street Foreman, Assistant Street Foremen, Equipment Foreman, City Electrician, Water Superintendent, Water Foreman, Park Superintendent and Forestry Foreman.

As a result of such election, the Commission, on December 14, 1962 certified the Union as the collective bargaining representative of

collective bargaining unit. No evidence has been adduced to indicate that there is a lack of a community of interest between the regular part-time employe and the regular full-time employes to warrant the former's exclusion from the collective bargaining unit.

Seasonal Employes

The Petitioner seeks to eliminate the exclusion of seasonal employes from the collective bargaining unit. The Petitioner would include all seasonal employes who work three or more months of a year and all seasonal employes who have a reasonable expectation of returning to work for the Municipal Employer the following year. Employes who do not meet either criterion would continue to be excluded from the unit.

DISCUSSION

The Commission has consistently determined the inclusion or exclusion of seasonal employes in bargaining units upon a consideration of such employes' reasonable expectation of returning to employment with the Municipal Employer. 5/ Thus, the amount of time worked during a given year is not the determinative factor in their inclusion. Regular seasonal employes must have a reasonable expectation of reemployment with the Municipal Employer in the subsequent season. As such, they share a sufficient community of interest in the terms and conditions of work with other regular employes to be appropriately included with the latter in a bargaining unit. While regular part-time employes, as well as seasonal employes, may properly be included in a unit of regular full-time employes, they were excluded from the unit certified herein as the result of the Stipulation executed by the parties prior to the election resulting in the certification of the Union as the collective bargaining representative for the employes in the existing unit. The Petitioner, by a petition for clarification of the bargaining unit, seeks to accrete to the existing certified unit, regular part-time and seasonal employes, who were originally excluded from the unit. Therefore, this proceeding is not properly one which requires a clarification of the existing unit, but an expansion of the existing unit.

The Commission will not permit the accretion of regular part-time employes and seasonal employes to the existing unit without granting such employes an opportunity to determine for themselves whether they desire to accrete to the existing unit, consisting of full-time employes. Therefore, we have directed an election among all regular part-time employes, and seasonal employes (who have a reasonable expectation of returning to work the following season) employed in the Street Department, Water Department and Park and Recreation Department of the City of Wauwatosa. Should the required number of such employes vote in favor of such accretion, the Commission will subsequently amend the original certification to reflect the accretion of regular part-time and seasonal employes.

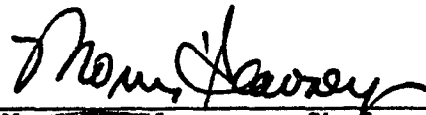
5/ Pierce Co. Highway Dept., (6150), 10/62; City of Menomonie, (6158), 11/62; Village of Menomonee Falls, (6218), 1/63; City of Green Bay (6558), 11/63.

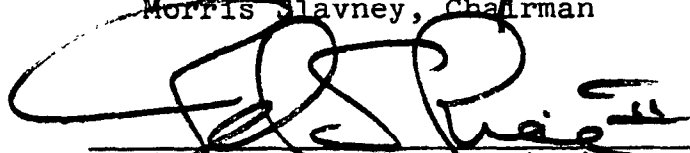
The Municipal Employer is requested to furnish the Commission, as well as the Petitioner, a list of the employes who are employed as regular part-time employes and seasonal employes (who have a reasonable expectation of returning to work the following year). Such list shall include the employes who were employed on the eligibility date established herein.

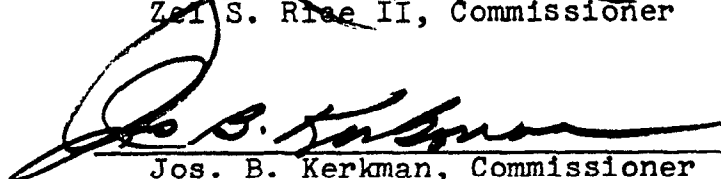
Should the Petitioner not desire to proceed with said election, it should so immediately advise the Commission to that effect.

Dated at Madison, Wisconsin, this 23rd day of February, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rhee II, Commissioner


Jos. B. Kerkman, Commissioner