

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XLIX
No. 16437 ME-873
Decision No. 11784

Herrling, Lathrop, Hamilton & Swain, Attorneys at Law, by Mr. Dennis W. Herrling, appearing on behalf of the Petitioner.
Mr. David G. Geenen, City Attorney, appearing on behalf of the Employer.
Mr. William Sandoval, Representative, appearing on behalf of the Intervenor.

Appleton Municipal Professional Employees Association, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among certain employees of the City of Appleton, Wisconsin; and hearing on such petition having been conducted at Appleton, Wisconsin, on February 14, 1973, Douglas V. Knudson, Hearing Officer, being present; and during the course of the hearing Appleton Municipal Employees Union City Hall Employees Local No. 73, WCCME, AFSCME, AFL-CIO, having been permitted to intervene in the proceeding on its claim that it presently represented the employees involved; and the Commission having considered the entire record, arguments and briefs of the parties, and being satisfied that the unit claimed to be appropriate by the Petitioner does not constitute an appropriate collective bargaining unit within the meaning of the Municipal Employment Relations Act;

ORDERED

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

By

~~Morris Slavney, Chairman~~

~~Zel S. Rice II, Commissioner~~

Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING ORDER OF DISMISSAL

The instant proceeding was initiated by a petition filed on January 15, 1973, by Appleton Municipal Professional Employees Association, hereinafter referred to as the Petitioner requesting the Commission to conduct an election among all employees employed by the City of Appleton, hereinafter referred to as the Employer, in pay ranges 9, 10 and 11, specifically, the classification of Environmentalist I and II, Deputy Director of Welfare, Building Inspector, Housing Inspector, Electrical Inspector and Plumbing Inspector, to determine whether said employees desire to be represented by the Petitioner for the purposes of collective bargaining, pursuant to the Municipal Employment Relations Act.

During the course of the hearing held on February 14, 1973, the Appleton Municipal Employees Union - City Hall Employees Local No. 73, WCCNE, AFSCME, AFL-CIO, hereinafter referred to as the Intervenor, intervened in the proceeding on its claim that it presently represents said employees in a bargaining unit consisting of all regular City Hall employees and employees in conjunction thereto, employed by the Employer, excluding craft employees, and also excluding employees in the Parking Commission, Engineering Division - Department of Public Works and Office of Assessor. In that regard the evidence disclosed the Intervenor and the Employer were parties to a collective bargaining agreement, which expired on December 31, 1972, covering the wages, hours and working conditions of the above-stated bargaining unit, included the classification which the Association seeks to represent.

Timeliness

The Intervenor contended that the Association's petition was untimely filed since it had opened negotiations with the Employer in August, 1972 on an agreement to replace the agreement due to expire on December 31, 1972. A tentative agreement for the 1973 calendar year was reached on January 31, 1973, and became effective following ratification of it by both the Intervenor and the Municipal Employer on February 7, 1973.

There is no issue of timeliness if the Petitioner is correct in its assertion that the employees in question are professional employees. The Commission will not refuse to process a petition for lack of timeliness where the Petitioner seeks to establish a separate bargaining unit of craft or professional employees who were improperly included in an overall unit of employees. 1/ Former Section 111.70(3)(d) of the Wisconsin Statutes required separate bargaining units for craft employees and the present Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act provides for separate bargaining units of craft or professional employees, unless a majority of the craft or professional employees vote for inclusion in an overall unit, which vote has not been conducted with respect to the positions the Petitioner seeks to represent.

CRAFT OR PROFESSIONAL

Environmentalist I and II

These classifications were previously entitled Sanitarians and present incumbents are registered as Sanitarians by the State of Wisconsin.

1/ Milwaukee County (11685) 3/73.

In previous decisions the Commission has found Sanitaricians to be professional employees 2/ and is satisfied that, similarly, the positions of Environmentalist I and II require such education and/or training and involve such duties and responsibilities so as to constitute a professional status.

Inspectors (Building, Electrical, Housing and Plumbing)

The Plumbing Inspector, who is required to have a journeyman or master plumber's license and the Electrical Inspector, who is required to have a master electrician's license and has served a four-year apprenticeship, which included formal classroom instruction, as an Assistant Electrical Inspector, are determined to be craft positions.

The skills, knowledge and/or training necessary to perform the duties assigned to the Building Inspector and Housing Inspector positions, in addition to the statements concerning "Desirable Training and Experience" contained in the job descriptions and the actual training and experience possessed by the present incumbents when they were hired, are sufficient to convince the Commission that said Inspector positions constitute craft positions.

Deputy Welfare Director

While the incumbent does not possess college training in social work, Section 111.70 of the Wisconsin Statutes does not limit professional employees to only those possessing college degrees. The incumbent performs a variety of duties, including: interviewing applicants, ascertaining their needs and eligibility, determining appropriate programs for financial, medical or material assistance, resolving residency disputes including the collection of funds from other municipalities or assistance furnished to their residents, etc.

The knowledge and experience required to perform said duties justify a finding that the Deputy Welfare Director is a professional position.

The bargaining unit description in the recognition clause of the 1972 collective bargaining agreement between the Intervenor and the Employer excludes craft employees from the bargaining unit. Section 111.70(4)(d)2.a. of the Wisconsin Statutes clearly prohibits units which include both professional employees and non-professional employees unless a majority of the professional employees vote for inclusion in the unit, or units which include both craft and non-craft employees unless a majority of the craft employees vote for inclusion in the unit. Neither the craft nor the professional employees have voted for inclusion in the bargaining unit represented by the Intervenor, therefore, the classifications in question are to be excluded from said bargaining unit.


The record reveals that the unit sought by the Petitioner includes both craft and professional employees. We deem that such a combined unit of craft and professional employees is inappropriate under Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, and therefore, the Commission is hereby dismissing the petition.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Earl A. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

2/ City of Racine (10389-C) 11/71; City of Green Bay (11201) 8/72.