

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	Case XVIII
OUTAGAMIE COUNTY	:	No. 16690 ME-915
	:	Decision No. 11789-A
For Unit Clarification	:	
	:	

Appearances:

Mr. William Schuh, Attorney at Law, for the Municipal Employer.
Mr. William Sandoval, Business Representative, for the Union.

ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

Outagamie County, hereinafter referred to as the Municipal Employer, initiated a proceeding to clarify an existing certified collective bargaining unit consisting of certain employes in its employ, presently represented by Local 455, AFSCME, AFL-CIO; and hearing in the matter having been conducted on May 23, 1973, Stanley H. Michelstetter II of the Commission's staff having been present; and during the course of the hearing the Municipal Employer having indicated a desire to withdraw its petition, and the Union having requested that the petition be considered as having been filed by the Union; and the Hearing Officer having granted said motion; and the Commission having considered the evidence and arguments of the parties, being fully advised in the premises, makes and issues the following

ORDER

That the collective bargaining unit, previously certified by the Wisconsin Employment Relations Commission on October 22, 1962, consisting of "all full-time employes of Outagamie County Highway Department, excluding highway commissioner, assistant highway commissioner, patrol superintendent, confidential clerical personnel, and supervisory personnel" be amended to reflect that the classification of superintendents and foremen are to be specifically excluded from said collective bargaining unit, and, therefore, the amended certified unit now reads as follows:

"all full-time employes, including the foreman of the Sign Department, in the employ of Outagamie County Highway Department, excluding highway commissioner, assistant highway commissioner, superintendents and all other foremen, and confidential clerical employes."

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slaney
 Morris Slaney, Chairman

Del S. Rice II
 Del S. Rice II, Commissioner

Joseph B. Kerkman
 Joseph B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING COLLECTIVE BARGAINING UNIT

On October 22, 1962, following an election conducted by it, the Commission certified Local 455, AFSCME, AFL-CIO, as the exclusive collective bargaining representative for "all full-time employes, in the employ of the Outagamie County Highway Department, excluding highway commissioner, assistant highway commissioner, patrol superintendent, confidential clerical personnel and supervisory personnel." Prior to the conduct of said election representatives of the County and Union agreed that the superintendents and foremen, with the exclusion of the foreman of the Sign Department, were to be excluded from the eligibles in the unit. Following the issuance of said Certification the parties entered into successive collective bargaining agreements which, despite the fact that foremen were excluded from the unit, covered the wages, hours and working conditions of the foremen who had been previously excluded from the eligibles.

On April 11, 1973, the County filed a petition with the Commission requesting a clarification of the unit with respect to whether superintendents and foremen should be included in or excluded from the unit. During the course of the hearing the County withdrew its petition. However, the Union sought a determination as to whether foremen should be included in the unit.

The evidence discloses that the Union, prior to the original election, by letter contained in the official files of the Commission, withdrew its objection to having the foremen excluded from the unit, and that the superintendents had been excluded from the unit during the election. The evidence further discloses that at its inception, the Union had as members all employes of the Highway Department, including the highway commissioner, superintendents, foremen and all other employes. After certification, the County entered into negotiations and negotiated collective bargaining agreements covering the wages, hours and working conditions of employes in said unit. In successive years the County and the Union entered into successive agreements with the same coverage. Sometime during 1972 a dispute arose as to the inclusion or exclusion of the foremen and superintendents, which dispute culminated in the instant petition.

The foremen positions^{1/} and overall organization of the County have remained relatively unchanged, with little turnover in occupancy in the last eleven years. The Highway Department at all relevant times has been headed by the highway commissioner, under whom serve three superintendents and under whom, in turn, serve eight foremen. Because the Highway Department functions differently in summer than it does in winter, the foremen are assigned a summer function and a winter function. In winter the Highway Department works out of seven garages located throughout the County and a main shop composed of two buildings. A foreman is in charge and located at each of the above locations. Superintendents are not regularly scheduled to visit these locations, but occasionally do so in the course of their work. During the summer three foremen are assigned as oil crew foremen, one as paving foreman, one as bridge foreman and one as concrete foreman.

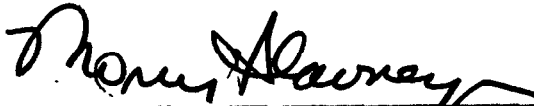
^{1/} With the exception of the foreman in the Sign Department.

As crew foremen, foremen exclusively determine the amount of personnel needed to perform assigned work, the amount of equipment needed to do such work. Foremen direct work at the site, exercise considerable discretion in deciding whether to report infractions of work rules to superiors. In the shops foremen direct the work force and exercise considerable discretion in reporting infractions of the rules. Foremen effectively recommend promotion or demotion, and neither promotion nor demotion will be made without the appropriate foreman's approval. As to hiring, the foreman does not interview applicants but must approve any decision to hire before the applicant will be hired. Under the parties' collective bargaining agreement, the foremen receive thirteen cents per hour more than other employes and are the highest paid employes. We conclude that the foremen have the power to effectively recommend the hire of employes, promote, assign, reward or discipline other employes in a responsible manner within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act. That the County has, in the past, voluntarily bargained with respect to such positions does not alter the fact that such positions are and always have been supervisory.

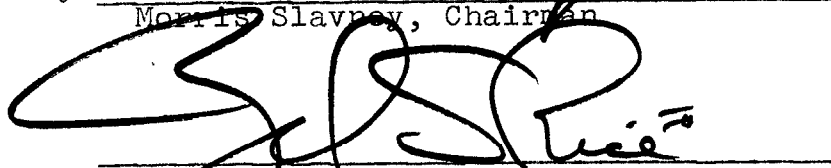
Dated at Madison, Wisconsin, this 17th day of July, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

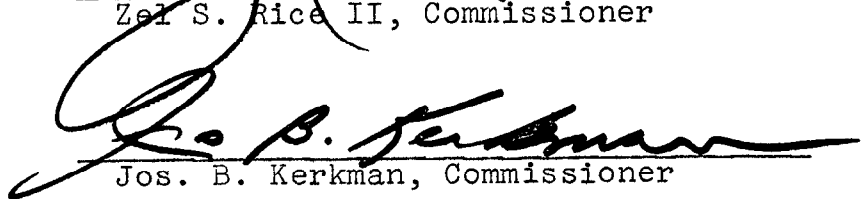
By



Morris Slavney, Chairman



Zel S. Rice II, Commissioner



Jos. B. Kerkman, Commissioner