

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY (HIGHWAY DEPARTMENT)

Case X  
No. 16628 ME-907  
Decision Nos. 6150-A  
and 11843

Mr. Dale Jurgensen, Attorney at Law, appearing on behalf of the  
Municipal Employer.

Pierce County Highway Employees Local 556, AFSCME, AFL-CIO, having on March 21, 1973 filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to issue a clarification of a bargaining unit of certain employees of Pierce County, Wisconsin employed in the Pierce County Highway Department; and, pursuant to notice, a hearing having been held in the matter at Ellsworth, Wisconsin on April 27, 1973, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following

That the collective bargaining unit, previously certified by the Wisconsin Employment Relations Commission on November 23, 1962, consisting of all regular full time and regular seasonal employees of the Pierce County Highway Department, excluding the Highway Commissioner, Assistant Highway Commissioner, Patrol Superintendent, confidential clerical personnel and supervisory personnel, shall be, and the same hereby is, clarified to include all bridge tenders in the employ of Pierce County.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 11<sup>th</sup>  
day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

~~Morris Clayney, Chairman~~

Zed S. Rice II, Commissioner

~~Jos. B. Kerkman, Commissioner~~

No. 6150-A  
11843

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

On November 23, 1962, following an election conducted by it, the Wisconsin Employment Relations Board (now the Wisconsin Employment Relations Commission) certified the Union as the exclusive representative of employees in a unit consisting of all regular full time and regular seasonal employees of the Pierce County Highway Department, excluding the Highway Commissioner, Assistant Highway Commissioner, Patrol Superintendent, confidential clerical personnel and supervisory personnel. 1/ The Union and the Municipal Employer are parties to a collective bargaining agreement for the period January 1, 1973 through December 31, 1973, wherein the Municipal Employer recognizes the Union as the exclusive bargaining agent for "all County Highway Employees, except confidential and supervisory employees." A dispute has arisen between the parties as to whether two persons employed as bridge tenders should be included in the bargaining unit. The employees in question are not presently included in any bargaining unit.

U. S. Highway 10 crosses the St. Croix River at Prescott, Wisconsin by means of a drawbridge. At that point, the St. Croix River delineates the border between the State of Wisconsin and the State of Minnesota, and the two states share the costs of operation of the bridge. By agreement between the States, the State of Minnesota pays the State of Wisconsin its share of the costs of operation of the bridge at Prescott, and the State of Wisconsin arranges for the actual operation of the bridge. The State of Wisconsin, Department of Transportation, Division of Highways, has entered into an "Authority for Expenditure" agreement with Pierce County for the operation of the Prescott bridge for the year 1973. Said agreement states, in part:

"Operation of bridge for 1973 calendar year. The bridge shall be operated under the general supervision of the State and in accordance with the pertinent laws, rules and regulations governing navigation.

Sufficient operators shall be employed to operate the bridge in conformance with the times of operation outlined in the regulations, or as otherwise directed by the State. The operator(s) shall be approved by the State before being placed on permanent status.

The county shall designate one operator as Chief Operator, who shall receive and carry out such orders and instructions as received from the State pertaining to the proper operation and care of the bridge. The Chief Operator shall be called to work in the spring of 1973 when navigation begins, or prior to that time if the state requests a Standby operator or watchman be on duty. His employment will be suspended at the end of the navigation season in the fall of 1973.

The assistant operator will work under the supervision of the Chief Operator. He will be called to work in the spring of 1973 when the state requests 24 hour operation of the bridge. His employment will be suspended in the fall of 1973 when the state requests only Standby operation of the bridge.

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1/ Decision No. 6150.

The state shall have the right to initiate the termination of the services of any operator when it is of the opinion that the operator is negligent in his duties.

In lieu of small tool charges, the State shall reimburse the County for: Electric power and light necessary to operate the bridge, telephone service, and fuel and supplies as authorized by the State on approved requisition forms."

The State of Wisconsin enters into similar agreements with counties, cities, and private individuals elsewhere in the State for the operation of other bridges. The State of Wisconsin and Pierce County enter into other "Authority for Expenditure" agreements for maintenance of State and U. S. highways. Under the "Authority for Expenditure" agreement, Pierce County does not incur any expenses in connection with the operation of the Prescott bridge which are not reimbursed by the State.

Since at least 1961, Pierce County has employed two bridge tenders at the Prescott bridge. The United State Coast Guard requires that the bridge be opened, on call, at any hour, 7 days per week during the navigation season, and the bridge tenders are kept on the payroll from approximately March 15 to approximately December 15, each year. The bridge tenders are scheduled "on duty" 12 hours per day, 7 days per week. However, statistics for the past three years indicate that the bridge is opened, on the average, less than twice per day during the navigation season. The present bridge tenders are able to have other employment in the immediate vicinity of the bridge, which they leave on call to perform their duties as bridge tenders. The present bridge tenders are seasonal employees, who do not work for Pierce County during the months when the bridge is out of operation. The bridge tenders are paid on the same payroll as other employees of the Pierce County Highway Department, although their salaries have been computed on a monthly basis while other Highway Department employees are paid on an hourly basis. The County pays the health insurance premiums of the bridge tenders on a year-around basis. The bridge tenders are under the supervision of the Assistant Highway Commissioner of Pierce County. Officials of the State Department of Transportation also call on the bridge tenders from time to time, although there is no evidence that the State has ever exercised its contractual authority to affect the employment of any bridge tender.

#### POSITIONS OF THE PARTIES:

The Union seeks to have the two employees included in the existing unit of Highway Department employees. It contends that they are regular seasonal employees, and therefore within the existing unit description. The Union also points to the facts of being under the same payroll and under the same supervision as evidence of community of interest.

The County contends that the bridge operation is not a County activity, but something that belongs to the State, and that the two employees in question are not County employees. The County also contends that there is no community of interest between the employees in question and the employees in the existing unit.

#### DISCUSSION:

During the course of the hearing, the County indicated that it entered into the "Authority for Expenditure" agreement covering operation of the Prescott bridge only reluctantly. Had the County refused to enter

into an agreement with the State, the State would have made other arrangements for the operation of the bridge. On the basis of these facts, the County claims that the bridge tenders in question should not be regarded as employees of Pierce County. The record indicates that the County receives full reimbursement from the State for the wages paid to members of the bargaining unit when they are working on maintenance of State and U. S. highways. There is no dispute that such employees are included in the bargaining unit, without regard to the source of funds for payment for the compensation. The Commission has consistently held that partial contribution or full reimbursement of municipal employers' expenses of employment from State or federal funds does not preclude the inclusion of employees on whom reimbursement is received in bargaining units with employees paid completely from local funds. 2/ The employees in question are clearly not employees of the State of Wisconsin, they do not receive benefits granted to employees of the State, and they are not under the exclusive supervision of the State. The fact of the County's reluctance to continue contracting for the operation of the bridge does not affect the case, as the Commission must look to the current situation in making determinations of this nature and cannot engage in speculation as to what the situation might have been if another employing body had assumed operation of the bridge in 1973. The Commission concludes that the bridge tenders in question are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and that they are employees of Pierce County.

During the course of the hearing representatives of the County expressed some concern over the inclusion of the bridge tenders in the same unit with other employees of the Highway Department, based on the possibility that such a co-mingling of employees might lead to interchange of employees between work on the bridge and work on other Highway Department projects. It is clear that such matters would fall within the scope of bargaining between the parties if a single unit were found to be appropriate, but that they are not persuasive in making determinations as to the nature and description of the appropriate unit. Such determinations must be made in light of the mandate of Section 111.70(4)(d)(2)(a) of the Municipal Employment Relations Act to maintain as few units as practicable in keeping with the size of the total municipal work force. Upon review of the record, the Commission finds that a separate unit of bridge tenders would constitute an undue fragmentation, and would be inappropriate for the purposes of collective bargaining. The common supervision and health insurance benefits between them are evidence of a substantial community of interest between the bridge tenders and other employees in the Highway Department. The fact that employees within a bargaining unit are working in diverse occupations and under diverse wage and hour arrangements does not preclude their inclusion in a single bargaining unit. 3/

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2/ Superior Vocational School (7479) 2/66; Milwaukee Board of School Directors (9000) 4/69; Milwaukee Board of Vocational and Adult Education (6343-A) 11/69.

3/ Dane County (10492-A) 3/72.

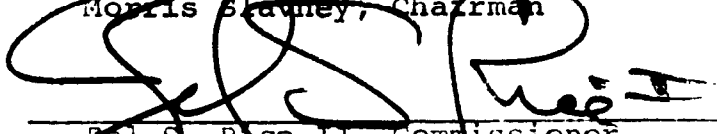
The collective bargaining agreement between the parties contains no provision for the bridge tender positions, their wages, hours or conditions of employment. The bridge tenders did not vote in the representation election conducted by the Commission in 1962. However, since the results of the original election overwhelmingly indicated that the employees involved selected the Union as the bargaining representative, the inclusion of the two bridge tender positions in the unit would not, and does not, affect the representative status of the Union. The Commission will not permit the employees in a position of an appropriate unit to vote separately on a question of representation. 4/ We have therefore issued an order clarifying the bargaining unit to include the positions of bridge tender in the unit presently represented by the Union. Our determination herein is not intended to extend the coverage of the 1973 collective bargaining agreement to the positions of bridge tender. 5/ Their inclusion in the unit will have its impact on the bargaining for the 1974 collective bargaining agreement. However, there is nothing to prevent the Municipal Employer and the Union from voluntarily agreeing to extend all or any provisions of the existing agreement to the bridge tenders.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of May, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Blawie, Chairman

  
Del S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner

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4/ City of Cudahy (11126-A) 4/73.

5/ LaCrosse Jt. School Dist. No. 5 (10980) (6912) 5/72; City of Fond du Lac (11830) 5/73.