

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

SHEBOYGAN CITY EMPLOYEES LOCAL 1750A,  
WCCME, AFSCME, AFL-CIO,

Complainant,

vs.

CITY OF SHEBOYGAN,

Respondent.

Case XVI  
No. 16794 MP-240  
Decision No. 11877-A

Appearances:

Mr. Michael J. Wilson, Staff Representative, appearing on behalf  
of the Complainant.

Mr. Clarence H. Mertz, City Attorney, appearing on behalf of the  
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint of prohibited practices having been filed with the Wisconsin Employment Relations Commission in the above entitled matter on May 15, 1973; and the Commission having appointed George R. Fleischli, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and Order as provided in Section 111.07(5) of the Wisconsin Statutes; and, hearing on said complaint having been held at Sheboygan, Wisconsin on June 21, 1973 before the Examiner; and, after preparation of the transcript, the matter having been held in abeyance pending possible settlement of the issues in dispute; and the parties, being unable to settle all of the issues in dispute, having filed their written arguments, the last of which was received by the Examiner on March 9, 1976; and the Examiner, having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Sheboygan City Employees, Local 1750A, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Complainant, is a Labor Organization having offices in Sheboygan, Wisconsin and since September 16, 1966 has been the certified representative of all regular full-time and regular part-time employees of the City of Sheboygan, Wisconsin employed in its Streets and Sanitation Department, Park Department, Municipal Auditorium and Armory, Tool House Office, Wildwood Cemetery, and Sewage Treatment Plant; excluding elected officials, department superintendents, assistant superintendents, supervisors, and City Hall employees for purposes of bargaining on questions concerning wages, hours and conditions of employment; that, at all times relevant herein, Ray Rothwell was the President of said Labor Organization and that Michael J. Wilson was the Staff Representative assigned to service said Labor Organization by the Wisconsin Council of County and Municipal Employees, an affiliated labor organization.

2. That the City of Sheboygan, Wisconsin, hereinafter referred to as the Respondent is a Municipal Employer having offices at City Hall in Sheboygan, Wisconsin.

3. That on or about January 1, 1972 the Complainant and Respondent entered into a collective bargaining agreement covering wages, hours and conditions of employment for the employees represented by the Complainant effective from January 1, 1972 until at least December 31, 1973 which contains the following provisions relevant herein.

"AGREEMENT

This Agreement made and entered into and effective the 1st day of January, 1972, by and between the City of Sheboygan, hereinafter referred to as the Employer, and the Sheboygan Employees Local 1750-A affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union. The bargaining unit is composed of all regular full time and regular part time employees in the Street and Sanitation Department, Park Department, Municipal Auditorium and Armory, Wildwood Cemetery and Sewage Treatment Plant as certified by the Wisconsin Employment Relations Board September 16, 1966, pursuant to an election held September 7, 1966.

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ARTICLE I

MANAGEMENT AND UNION POLICY OF COOPERATION

SECTION 1. RECOGNITION

The Employer agrees that it will and does hereby recognize the Union as the sole collective bargaining agency for all employees of the City of Sheboygan in the above listed departments, exclusive of department superintendents and above, assistant superintendents, and supervisors. Recognition embodies and embraces collective bargaining in good faith, and the adjustment and settlement of grievances with authorized representatives chosen by the Union. The delineation of the Union herein shall not prevent the expansion of the Union and/or the addition of other departments or divisions of City employees.

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SECTION 6. RESERVATION OF RIGHTS

The City retains all the rights, powers and authority vested in it, except as specifically limited and modified by express provisions of this agreement and Article XVI.

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# SCHEDULE E

## LABOR AND TITLES GROUP & SUPERVISION BELOW DEPT. HEADS

(\$ .20 Per Hr. Increase Based on 1971  
Schedule Longevity 2.5, 5.0, 7.5 Percent)

| Class<br>Grade | Pay<br>Basis | BASE SALARY RATES |                      |                        | LONGEVITY SCHEDULE                 |  |   |
|----------------|--------------|-------------------|----------------------|------------------------|------------------------------------|--|---|
|                |              | Minimum<br>Rate   | Intermediate<br>Rate | Maximum<br>Rate        | After 5<br>Yrs. Svc. &<br>1 Yr. at | After 10<br>Yrs. Svc. &<br>1 Yr. at 1st. | After 15<br>Yrs. Svc. &<br>1 Yr. at 2nd |
|                |              | First 6<br>Months | Next<br>Year         | After<br>1 1/2<br>Yrs. | Maximum<br>Rate                    | Longevity<br>Rate                        | Longevity<br>Rate                       |
|                |              |                   |                      | . . .                  |                                    |  |   |
| 3              | Hly          | 2.77              | 2.85                 | 2.94                   | 3.01                               | 3.09                                     | 3.16                                    |
|                | Bwkly        | 221.60            | 228.00               | 235.20                 | 240.80                             | 247.20                                   | 252.80                                  |
|                |              |                   |                      | . . .                  |                                    |  |   |
| 6              | Hly          | 3.03              | 3.13                 | 3.23                   | 3.31                               | 3.39                                     | 3.47                                    |
|                | Bwkly        | 242.40            | 250.40               | 258.40                 | 264.80                             | 271.20                                   | 277.60                                  |
|                |              |                   |                      | . . .                  |                                    |  |   |
| 8              | Hly          | 3.23              | 3.34                 | 3.45                   | 3.54                               | 3.62                                     | 3.71                                    |
|                | Bwkly        | 258.40            | 267.20               | 276.00                 | 283.20                             | 289.60                                   | 296.80                                  |
| 9              | Hly          | 3.34              | 3.45                 | 3.57                   | 3.66                               | 3.75                                     | 3.84                                    |
|                | Bwkly        | 267.20            | 276.00               | 285.60                 | 292.80                             | 300.00                                   | 307.20                                  |
|                |              |                   |                      | . . .                  |                                    |  |   |
| 12             | Hly          | 3.69              | 3.82                 | 3.95                   | 4.05                               | 4.15                                     | 4.25                                    |
|                | Bwkly        | 295.20            | 305.60               | 316.00                 | 324.00                             | 332.00                                   | 340.00                                  |
|                |              |                   |                      | . . .                  |                                    |  |   |
| 15             | Hly          | 4.09              | 4.24                 | 4.40                   | 4.51                               | 4.62                                     | 4.73                                    |
|                | Bwkly        | 327.20            | 339.20               | 352.00                 | 360.80                             | 369.60                                   | 378.40"                                 |

4. That for some time prior to December 13, 1972 informal discussions took place between representatives of the Respondent and various employees who might be affected by the Respondent's decision to establish an automated data processing system; that the purpose of these discussions was to obtain information necessary for the implementation of the new system as well as keeping the affected employees informed as to what they might expect under the new system; that no special effort was made to involve representatives of the Complainant in these discussions and none of the employees who took part in the discussions asked the representatives of the Complainant be included in the discussions; that sometime during the week ending December 16, 1972, probably on Wednesday, December 13, 1972 Rothwell attended a supervisory training program during the evening hours; that sometime during the evening Lawrence Carlson, Deputy Director of Public Works, asked Rothwell to step out of the meeting for the purpose of discussing some of the changes that the Respondent proposed to make as a result of the pending implementation of the automated data processing system; that during this discussion Carlson advised Rothwell that it was the City's intention to meet with two of the employees directly affected by the proposed implementation of the automated data processing system, John Klunck and employee Meifert, on Monday, December 18, 1973 for the purpose of discussing the

Respondent's proposal to alter or eliminate the jobs currently performed by them and certain alternatives which would be made available to them to preserve their employment status; that thereafter on Monday, December 18, 1972 Carlson; Bob Kuhlmann, Director of Public Works; Ed Klein, Methods Analyst; and William T. Zengler, Director of Personnel for the City of Sheboygan met with Klunck and Meifert for the purpose of discussing with them the proposed changes referred to by Carlson in his prior conversation with Rothwell; that immediately thereafter Carlson, Klein, Zengler, and probably Kuhlmann met with Rothwell for the purpose of discussing the proposed implementation of the data processing system and the results of their prior conversation with Klunck and Meifert; that although Rothwell claims the meeting on Monday, December 18, 1972 came as a surprise to him because he did not receive prior notification that the meeting would take place, the subject matter of the meeting did not come as a surprise since it had been discussed with him previously; that during the course of the meeting Rothwell agreed with the representatives of the Respondent present that the proposed changes discussed during the meeting fell within the area of management's rights, but Rothwell did not specifically agree that the impact on the wage rate of any of the employees affected by the proposed changes was a management prerogative.

5. That after the meeting with Rothwell on December 18, 1972, Zengler drafted a letter to Rothwell dated December 20, 1972 which read in relevant part as follows:

"Dear Mr. Rothwell:

MEETING OF DECEMBER 18, 1972

This is to confirm the following information discussed in the meeting of December 18, 1972, between you and Messrs. Kuhlmann, Carlson, Klein, and myself:

1. Alfred Hoffmann will be retiring this year; and his position of Stock Clerk, Class Grade 6, will be posted as a 40 hour a week position from 7:30 a.m. to 4:30 p.m., Monday through Friday.
2. Additional truck drivers will be posted.
3. An electrician Helper classification is being considered, and we will arrange a meeting with you in the near future regarding the establishment of this classification.
4. The duties and responsibilities of the Timekeeper, Class Code 144, have been changed as a result of data processing; and the class grade will be changed from 12 to 9 as discussed with the incumbent. He will receive the general increase as of January 1, 1973, and will then continue at this rate of pay until the general pay increases for Class Grade 9 exceed this rate.
5. A Clerk-Typist II position, Class Code 172, Class Grade 3, will be posted for the Municipal Service Building Office.
6. The Field Clerk I, Class Code 141, Class Grade 8, will be abolished by the Common Council effective the end of January, 1973, due to the fact that the manual record keeping that is being performed by this position will be discontinued. The incumbent, John Klunck, has been advised to bid on the above new openings, plus any other openings in city employment. If he does not obtain any of those positions, he can accept a Laborer II vacancy, Class Grade 8.

If you have any questions, please contact me by January 6, 1973, since the Salary & Grievances Committee will be reporting to the Common Council at this time."

6. That after he received Zengler's letter dated December 20, 1972 and sometime before January 4, 1973, Rothwell consulted with Wilson, concerning the changes proposed by the Respondent's representatives in the meeting on December 18, 1973; that thereafter on January 4, 1973, Wilson sent Zengler a letter which read in relevant part as follows:

"Re: New Classifications and Respective Pay Rates

Dear Mr. Zengler:

The purpose of this letter is to state the Union's position on the above subject to avoid any possible confusion. The City or Employer may have the right to change or in effect create new classifications, but the rate of pay for such classifications must be negotiated with the Union."

7. That on January 15, 1973 the Respondent's Common Council enacted general ordinance #135-72-73 amending general ordinance #80-63-64 (establishing a table of organization for employees of the Respondent city) which deleted the existing Field Clerk I (class grade 9) <sup>1/</sup>position then occupied by John Klunck and Field Clerk II (class grade 10) position in the Department of Public Works service building office (tool house) and added one Clerk-Typist II (class grade 3) position; that on January 30, 1973 Zengler set Klunck a letter regarding said action which read as follows:

"Dear Mr. Klunck:

This is to confirm the following information discussed in the meeting of December 18, 1972, between you and Messrs. Kuhlmann, Carlson, Klein, and myself, and with Mr. Ray Rothwell, President of Local 1750-A.

The proposed changes affecting the work at the Municipal Service Building Office were explained and comments were asked for by January 6, 1973. These changes included the fact that there was no longer a requirement for a field Clerk I position. (The Common Council will be abolishing this position effective March 1, 1973.)

You were informed that the City will post the following authorized vacancies in accordance with Civil Service Regulations and the Union agreement, and you were advised to apply for any of these that interest you:

Stock Clerk

Truck Driver

Clerk Typist II

If the Union waives the posting requirements for any of the above positions, the Civil Service Commission will appoint you without examination. In addition, there is a Laborer II authorized vacancy which the City will hold for you with the Union's concurrence.

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<sup>1/</sup> Ordinance #135-72-73 indicates that the Field Clerk I Classification was a class grade 8. All other documents indicate that it was a class grade 9.

There is also an authorized opening as Laborer I which will be held vacant. We are notifying the Union of these facts by copy of this letter and request their reply by February 7, 1973.

Please advise us of you intentions by February 7, 1973, or if you desire another meeting regarding this matter with myself or the Mayor, please advise us by February 7, 1973.

You, of course, have the right to request a hearing with the Civil Service Commission in accordance with the Civil Service regulations or the right to initiate any valid grievance involving any violation of the Union contract.

In our meeting, it was also suggested that you apply for any other approved vacancy in the City that you may be interested in and qualified for such as Housing Inspector which was posted from January 15, 1973, through January 26, 1973, and also advertised in the Sheboygan Press.";

that shortly thereafter, on February 3, 1973, Klunck filed a grievance which read in relevant part as follows:

"COMPLAINT IN DETAIL On December 9, 1957 began working at the Service Building, for the city of Sheboygan, and have completed 15 years of dedicated service without using any sick leave. Last December 18, 1972, I was informed that as the work load in the office was greatly diminished, they would have to eliminate the job I had held for 15 consecutive years. I feel this is purely discriminatory as I am by far the oldest employee (in length of service, that is) than my two fellow employees in the office, one of them being three 3 years as of June, 1972, the other a little over a year. As the personnel department wants to eliminate my job, they are offering me three choices in lieu of the job I had, they are: Truck Driver (grade 9), Stock clerk (grade 6) or typist (a probable grade 2). I feel all these jobs are unsatisfactory and I would gladly take the Housing Inspector job, which is also open, but for this they want me to take a written exam. This is wrong! I feel they should include this job along with the other three 'choices' offered me. The salary on this job (Housing Inspector) ranges from a starting \$333.00 to \$390.00, bi-weekly, which is about the same in pay (and dignity) as the pay I am receiving, \$324.00 bi-weekly. Thank you."

8. That thereafter, on March 5, 1973, the Respondent's Common Council adopted resolution #384-72-73 which reclassified Klunck to the classification of Stock Clerk I to continue at his present "rate of pay" (class grade 9) until such time as general pay increases raise the pay of the Stock Clerk I (class grade 6) to his present level of pay or above; that thereafter on March 12, 1973, Zengler notified Rothwell of such action by a memo which read as follows:

"The grievance from John Klunck dated February 3, 1973, and the grievance dated February 5, 1973, have been denied and placed on file by the Salaries & Grievances Committee at their meeting on March 8, 1973, per our previous discussion.

The document red-circling John Klunck's rate of pay for the Stock Clerk position is lying over as Common Council business, and I have advised John that he can start to work as a Stock Clerk, Pay Grade 9, red-circled, whenever his doctor releases him."

9. That on April 4, 1973 the Respondent's Common Council enacted general ordinance #176-72-73 further amending general ordinance #80-63-64 (establishing a table of organization for employes of the Respondent city) which, inter alia:

- "a. Reduced the class grade of the Timekeeper position in the Respondent's Department of Public Works, service building office (tool house) from a class grade 12 to a class grade 9 because of the change in the duties of that job brought about by the automated data processing system and provided further that the employee occupying the position of Timekeeper (Meifert) would continue in the 'present pay grade of 12' until such time as general pay increases raised the pay of the Timekeeper position to his present level of pay or above;
- b. Deleted an existing position of public Works Foreman II (class grade 15) then occupied by Anthony Champeau in the Public Works Department and added a new classification and position of Construction Leadman (class grade 12) and provided further that the employee occupying the position of Public Works Foreman II which was eliminated (Champeau) would continue in the 'present pay grade of 15' until such time as general pay increases raise the pay of Construction Leadman to his level of pay or above because Champeau was allegedly not properly performing the duties of a Public Works Foreman II;
- c. Created a new classification title and position of Electrician Foreman (class grade 15) in the Public Works Department to be occupied by the same individual (Donald N. Wehmeyer) who held an existing Public Works Foreman II position (class grade 15) because the Respondent had concluded that the duties then performed by Wehmeyer were more accurately described as those of an Electrician Foreman rather than a Public Works Foreman II;
- d. Deleted the Electrician II classification and position in the Public Works Department which had been vacant since 1969 when the incumbent (Wehmeyer) was reclassified as a Public Works Foreman II on his request;
- e. Deleted one Cemetery Caretaker position at the Respondent's Wildwood Cemetery, thereby reducing the number of said positions to three, which was the actual number of positions in said classification that had been filled in recent years;
- f. Deleted three Laborer II positions and two Truck Driver positions in the Respondent's Streets and Sanitation Department to reflect the attrition in said classifications caused by the Respondent's prior determination in May of 1972 to decrease the number of garbage collections from two to one per week without laying off any employees performing such work;
- g. Added one Electrician I position thereby increasing the number of said positions by one to meet a backlog of electrical work that needed to be performed; and
- h. Added three Laborer I positions, thereby increasing the number of said positions from 17 to 20 so as to reduce the need to hire temporary employees to perform the work normally performed by employees in that classification."

10. That on April 9, 1973 Rothwell wrote a letter to the Salaries and Grievance Committee of the Respondent's Common Council complaining inter alia about the action taken by the Respondent's Common Council when it enacted general ordinance #176-72-73 on April 4, 1973 which read in relevant part as follows:

"Dear Sir:

In a letter dated January 4, 1973 sent to Mr. W. Thomas Zengler, Director of Personnel, the union stated its' position that the pay ranges for new or reclassified positions was a proper subject of negotiations and not an item to be unilaterally handled by the City of Sheboygan.

To date no requests for such negotiation have been received by the Union from the City of Sheboygan, although it is the Union's understanding proposed ordinances changing job titles assignments, staffing and pay ranges are now being considered by the Common Council, General Ordinance 77-73, amending General Ordinances 80-63-64, as proposed, would modify to collective bargaining agreement between Local 1750A, AFSCME, AFL-CIO and the City of Sheboygan, is that the timekeeper is deleted from class grade 12 to 9; an electrician II position is deleted while an electrician I position would be added to the work force; three Labor II positions are deleted and three Laborer I positions are added to the work force; and a public works foreman II class grade 15 is deleted while a construction leadman class grade 12 is added to the work force (new position).

If the nature of a job has not changed significantly the new position created at the reclassification made is in violation of collective bargaining agreement. The city cannot simply change job titles and thus pay rates while the worker continues to perform the same work. Such changes may appear to be efficient to the city, but create an unbearable hardship on the work force.

The union has not been privilege to any information as to why these changes are being proposed, and in the absence of a request to negotiate or even confer on these matters the union shall seek to enforce the collective bargaining agreement."

11. That the Salaries and Grievance Committee had not responded to Rothwell's letter of April 9, 1973 by the time the complaint herein was filed on May 15, 1973; that thereafter the Salaries and Grievance Committee "placed the letter on file" and has not responded to said letter since that date.

12. That on June 4, 1973 the Respondent's Common Council enacted general ordinance #20-73-74 further amending general ordinance #80-63-64 (establishing a table of organization for employes of the Respondent city) which inter alia deleted the classification and position of Construction Leadman (class grade 12) then occupied by Anthony Champeau that had been created by general ordinance #176-72-73 and restored the Public Works Foreman II position (class grade 15) that had been deleted by general ordinance #176-72-73; that the reason for said deletion and addition was because Champeau had allegedly begun properly performing the duties of a Public Works Foreman II.

13. That by the conduct of its agents, Rothwell and Wilson, the Complainant clearly and unambiguously waived any right it may have had to bargain collectively with the Respondent with regard to the decision to implement an automated data processing system and its actual implementation except insofar as said implementation may have affected the rate of pay for any changed or newly created job classifications; that at no time after receiving Wilson's letter dated January 4, 1973, did the Respondent offer to bargain or bargain with the Complainant with regard to the proper rate of pay to be paid the employe working in the Field Clerk I classification (Klunck) as a result of the changes in his duties which accompanied the implementation of the automated data processing system and that the Respondent unilaterally established



the rate of pay to be paid Klunck on March 5, 1973 by arbitrarily changing said employee's job classification and "red circling" his rate; that at no time after receiving Wilson's letter dated January 4, 1973, did the Respondent offer to bargain or bargain with the Complainant with regard to the proper rate of pay to be paid the individual working in the classification of Timekeeper (Meifert) as a result of the changes in his duties which accompanied the implementation of the automated data processing system and that the Respondent unilaterally established same on April 4, 1973 by reducing the pay rate for said classification from Class Grade 12 to Class Grade 9 and "red circling" his rate; that by unilaterally adding one Clerk Typist II position to the City Tool House on April 4, 1973 the Respondent did not unilaterally change the wages, hours or working conditions of the employees represented by the Complainant.

14. That prior to creating the new classification and position of Construction Leadman on April 4, 1973 the Respondent was aware of the position taken by the Complainant with regard to its desire to bargain about any changes in the rate of pay of any changed or newly created job classifications in the bargaining unit represented by the Complainant but that the Respondent never offered to bargain or bargained with the Complainant with regard to the rate of pay to be paid to the employee assigned to work in that newly created classification (Champeau); that, by Rothwell's letter of April 9, 1973 and its complaint herein, the Complainant has demanded to bargain with the Respondent with regard to the rate of pay to be paid employees working in said job classification and the Respondent, by its answer and other conduct since receiving a copy of said letter and complaint, has refused to do so and continues to refuse to do so; that by subsequently deleting the Construction Leadman classification and position from its table of organization and restoring the incumbent (Champeau) to his former classification and position of Public Works Foreman II (grade 15) to reflect its judgment that Champeau had begun to properly perform the duties of said classification, the Respondent did not change or create a new job classification which would require the establishment of a different rate of pay.

15. That by changing the classification title of Wehmeyer from that of a Public Works Foreman II in the Public Works Department to that of an Electrician Foreman in said department on April 4, 1973 the Respondent did not unilaterally change the wages, hours or conditions of employment of Wehmeyer or any other employee represented by the Complainant.

16. That since filing the complaint herein the Complainant has dropped and waived any claim that the Respondent has failed or refused to bargain collectively or otherwise interfered with the rights of employees represented by the Complainant by deleting the Electrician II classification and position in its Public Works Department, deleting one cemetery caretaker position in its Wildwood Cemetery, deleting three Laborer II positions and two Truck Driver positions in its Streets and Sanitation Department, and by adding one Electrician I position and adding three Laborer I positions to its table of organization on April 4, 1973.

Based on the above and foregoing Findings of Fact the undersigned makes and enters the following:

#### CONCLUSIONS OF LAW

1. That at all times relevant herein Michael J. Wilson was acting as an agent of the Complainant labor organization with the actual and apparent authority to perform all of the actions taken by him on behalf of the Complainant labor organization.

2. That by failing and refusing to bargain with the Complainant with regard to the rate of pay to be paid to Klunck as the result of the changes in the duties of his job classification (Field Clerk I) and by unilaterally changing the rate of pay to be paid to Klunck by arbitrarily changing his job classification from that of Field Clerk I (class grade 9) to that of Stock Clerk (class grade 6) the Respondent has refused to bargain collectively as defined in Section 111.70(1)(d) of the MERA and has interfered with the rights of the employees represented by the Complainant and thereby committed prohibited practices within the meaning of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the MERA.

3. That by failing and refusing to bargain with the Complainant with regard to the rate of pay to be paid to Meifert as the result of changes in the duties of his job classification (Timekeeper) and by unilaterally changing the rate of pay of said job classification from that of Class Grade 12 to Class Grade 9 the Respondent has refused to bargain collectively as defined in Section 111.70(1)(d) of the MERA and has interfered with the rights of the employees represented by the Complainant and has thereby committed prohibited practices within the meaning of Section 111.70(3)(a)4 and 111.70(3)(a)1 of the MERA.

4. That by unilaterally adding one Clerk Typist II position to the City Tool House without first offering to bargain or bargaining with the Complainant with regard to the addition of said position the Respondent has not refused to bargain collectively as defined in Section 111.70(1)(d) of the MERA and has not interfered with the rights of employees represented by the Complainant and has not thereby committed any prohibited practices within the meaning of the MERA.

5. That by creating the new classification and position of Construction Leadman without first offering to bargain or bargaining with the Complainant with regard to the rate of pay to be paid the employee assigned to work in said classification and position (Champeau) and by subsequently failing and refusing to bargain with the Complainant with regard to the rate of pay to be paid said employee, the Respondent has refused to bargain collectively as defined in Section 111.70(1)(d) of the MERA and has interfered with the rights of the Employees represented by the Complainant and has thereby committed prohibited practices within the meaning of Sections 111.70(3)(a)4 and 111.70(3)(a)1 of the MERA.

6. That by changing the Classification Title of Wehmeyer from that of a Public Works Foreman II in the Public Works Department to that of an Electrician Foreman in the same department the Respondent did not refuse to bargain collectively as defined in Section 111.70(1)(d) of the MERA and has not interfered with the rights of the employees represented by the Complainant and has not thereby committed any prohibited practices within the meaning of the MERA.

Based on the above and foregoing Findings of Fact and Conclusions of Law the undersigned makes and enters the following

#### ORDER

IT IS ORDERED that the City of Sheboygan, its officers and agents shall immediately:

1. Cease and desist from refusing to bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO with regard to the rate of pay for any changed or newly created job classifications or otherwise interfering with the rights of employees represented by said labor organization for purposes of collective bargaining.

2. Take the following affirmative action which the Examiner finds will effectuate the policies of the MERA:

- (a) Offer to bargain and, if requested to do so, bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO, with regard to the rate of pay to be paid John Klunck as a result of the changes in his duties which came about as a result of the implementation of the automated data processing system in January, 1973;
- (b) Offer to bargain and, if requested to do so, bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO, with regard to the rate of pay to be paid to employe Meifert, as a result of the changes in the duties of the Timekeeper Classification and position held by him which came about as a result of the implementation of the automated data processing system in January, 1973;
- (c) Notify its employees by posting in conspicuous places on its premises where notices to all employees are usually posted copies of the notice attached hereto and marked "Appendix A". Appendix A shall be signed by the Chairman of the Respondent's Salaries and Grievance Committee and shall be posted and remained posted for sixty (60) days thereafter exclusive of the day of posting. Reasonable steps shall be taken by the Respondent to insure that said notice is not altered, defaced or covered by other material; and
- (d) Notify the Wisconsin Employment Relations Commission in writing within twenty (20) days following the date of this order as to what steps have been taken to comply herewith.

Dated at Madison, Wisconsin this 10<sup>th</sup> day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner

APPENDIX A

Pursuant to an order of the Wisconsin Employment Relations Commission and in order to effectuate the policies of the Municipal Employment Relations Act we hereby notify our employees that:

1. WE WILL NOT refuse to bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO, with regard to the rate of pay for any changed or newly created job classifications or otherwise interfere with the rights of employees to be represented for purposes of collective bargaining by Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO.
2. WE WILL offer to bargain and, if requested, bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO, with regard to the rate of pay to be paid John Klunck as the result of changes in his duties which came about as a result of the implementation of the automated data processing system in January, 1973.
3. WE WILL offer to bargain and, if requested, bargain with Sheboygan City Employees Local 1750-A, WCCME, AFSCME, AFL-CIO, with regard to the rate of pay to be paid employee Meifert as a result of the changes in the duties of the Timekeeper classification and position held by him which came about as a result of the implementation of the automated data processing system in January, 1973.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 1976.

City of Sheboygan

By \_\_\_\_\_  
Chairman, Salaries Grievance Committee

THIS NOTICE MUST REMAIN POSTED FOR SIXTY (60) DAYS FROM THE DATE HEREOF EXCLUSIVE OF THAT DATE AND MUST NOT BE ALTERED, DEFACED OR COVERED BY ANY MATERIAL.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

The complaint herein was filed on May 15, 1973 and the hearing thereon was held on June 21, 1973. In its complaint the Complainant alleged that the Respondent violated its duty to bargain in good faith by enacting the two ordinances and one resolution described in paragraphs 7, 8 and 9 of the Findings of Fact. The complaint read in relevant part as follows:

"The Sheboygan Common Council on April 4, 1973, enacted General ordinance Number 176-72-73 which violates the collective bargaining rights of Sheboygan Employees Local 1750 A of the American Federation of State, County and Municipal Employees, AFL-CIO, in that the City of Sheboygan through said ordinance [sic] created the following new positions without negotiating the wage rate for such positions with the collective bargaining agent: Electrician Foreman, Construction Leadman.

The Sheboygan Common Council on April 4, 1973, enacted General Ordinance Number 176-72-73 which violates the collective bargaining rights of Sheboygan Employees Local 1750 A of the American Federation of State, County and Municipal Employees, AFL-CIO, in that the City of Sheboygan through said ordinance [sic] changed the following classifications pay rate without negotiating the new wage rate for such positions with the collective bargaining agent: Timekeeper, Foreman II.

The Sheboygan Common Council on January 15, 1973, enacted General Ordinance [sic] Number 135-72-73 which violates the collective bargaining rights of Sheboygan Employees Local 1750 A of the American Federation of State, County and Municipal Employees, AFL-CIO, in that the City of Sheboygan through said ordinance [sic] deleted Field Clerk I and II positions and created a Clerk Typist II position at a lesser paygrade and the Sheboygan Common Council enacted General Ordinance [sic] 384-72-73 which 'red circled' employee effected above; without negotiating the 'red circle' or change in wage rates with the collective bargaining agent.

The Sheboygan Common Council on April 4, 1973, enacted General Ordinance [sic] Number 176-72-73 which violates the collective bargaining rights of Sheboygan Employees Local 1750 A of the American Federation of State, County and Municipal Employees, AFL-CIO, in that the City of Sheboygan through said ordinance [sic] deleted from the table of organization one Electrician II position, three Labor II positions, one Public Works Foreman II, two Truck Drivers, one Cemetery Caretaker position, and through said ordinance [sic] added the following positions to the table of organization, one Electrician I, and three Labor I's, thereby reducing the wages paid to the bargaining unit without negotiating same with the collective bargaining agent.

The Sheboygan Common Council on April 4, 1973, enacted General Ordinance [sic] 176-72-73 which violates the collective bargaining rights of Sheboygan Employees Local 1750 A of the American Federation of State, County, and Municipal Employees, AFL-CIO, in that the City of Sheboygan deleted a Public Works Foreman II position and created a Construction Leadman position and 'red circled' an employee in the new position without negotiating the 'red circle' with the collective bargaining agent."

After receiving the complaint the Respondent enacted Ordinance 20-73-74 which in effect reversed the effect of Ordinance 176-72-73 insofar as it had abolished the position of Public Works Foreman II held by Champeau and assigned him to the new classification and position of Construction Leadman.

By its answer which was filed shortly thereafter the Respondent admitted that it enacted the Ordinances and Resolution as described in the complaint but denied that the enactment of said Ordinances and Resolution violated the collective bargaining rights of the employees represented by the Complainant or constituted a prohibited practice.

After the close of the hearing the parties withheld the filing of briefs because of their desire to attempt to settle the issues in dispute. When it became apparent that no settlement was possible the parties filed their briefs in the matter. In its brief the Complainant omitted any reference to the allegations contained in the fourth unnumbered paragraph of the complaint and has apparently abandoned any claim that the Respondent violated its duty to bargain by the conduct described therein. 2/

#### POSITIONS OF THE PARTIES:

The Complainant contends that by the conduct described in the first, second, third and fifth unnumbered paragraphs of its complaint, the Respondent has violated its duty to bargain in good faith. At the hearing the Complainant introduced evidence in support of its contention that it has never waived its right to bargain with regard to the rate of pay for any changed or newly created job classifications and has in fact insisted on exercising such right and that the Respondent has refused to bargain with regard to the rate of pay for changed and newly created job classifications.

The Respondent contends generally that Wilson, who is a District Representative for the Wisconsin Council of County and Municipal Employees (WCCME) with which Local 1750-A is affiliated, lacks "standing" to file the complaint herein or otherwise act for Local 1750-A and that the evidence will not support a finding that it violated its duty to bargain with regard to the various positions in question. Because the Respondent's arguments vary somewhat with regard to the different positions involved the particulars of its arguments in relation to the various positions are discussed below.

#### AGENCY STATUS OF WILSON

Although it is true that the collective bargaining agreement in question is between the Respondent and Local 1750-A, the Commission's original Order of Certification 3/ clearly indicates that Local 1750-A is affiliated with the Wisconsin Council of County and Municipal Employees (WCCME) as well as the American Federation of State, County and Municipal Employees (AFSCME) and the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). Furthermore a labor organization is not in any way restricted as to the selection of its representatives for purposes of collective bargaining. The uncontradicted evidence of record indicates that Wilson has at all relevant times acted as the representative of Local 1750-A in negotiations with the Respondent

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2/ Consequently the Examiner has made no determination of whether the conduct described therein constituted a prohibited practice.

3/ City of Sheboygan (7665) 9/16/66.

and had the authority, actual or apparent, to bargain with the Respondent and to institute the instant proceeding against the Respondent. There is no evidence in the record presented herein which would justify the conclusion reached in the case relied upon by the Respondent 4/ that Local 1750-A withdrew or settled the issues in dispute and that Wilson is attempting to contradict or repudiate that action.

#### FIELD CLERK POSITIONS

In the third unnumbered paragraph of its complaint the Complainant alleges that the Respondent violated its duty to bargain when it deleted the Field Clerk I and Field Clerk II classifications and positions. However, the evidence and arguments presented all relate to the situation of John Klunck who held the position and classification of Field Clerk I and there is no evidence that would support a finding of a violation with regard to the classification and position of Field Clerk II.

Because of the introduction of the automated data processing system many of the duties of the Field Clerk I classification and position held by Klunck were changed or eliminated. Rather than lay Klunck off the Respondent suggested several possible alternative positions which Klunck might bid on and offered to waive the bidding procedure if the Complainant was agreeable to such proposal. Klunck was apparently not interested in any of the proposed positions as indicated by his grievance. Because of the changed nature of his duties the Respondent reclassified Klunck as a "Stock Clerk" with additional "clerical" duties. Although the Respondent did not immediately reduce Klunck's wages it "red circled" him thereby changing the rate of pay to be earned by him over time.

On the basis of the facts presented the Examiner concludes that the Employer changed Klunck's rate of pay to reflect the changes in his duties without offering to bargain or bargaining with the Complainant over the proper rate of pay to be paid Klunck for his modified duties. The fact that the classification of "Stock Clerk" may have previously existed and carried an established wage rate is not controlling. This is not a case where an employee was simply transferred from one job classification and position to another. On the contrary, the incumbent Field Clerk I was retained in his old position, the duties of which had changed substantially, and arbitrarily reclassified as a "Stock Clerk" with additional "clerical" duties, all without negotiating the impact on his rate of pay. 5/ Consequently, the Respondent has been directed to negotiate with regard to his rate of pay.

The Employer's contention that the reclassification of Klunck was pursuant to an agreed-to disposition of his grievance is simply not supported by the record nor does the record support a finding that Rothwell ever agreed on December 18, 1972 or thereafter that the Respondent had the right to unilaterally take action which affected the rate of pay of Klunck or any other employee. While Rothwell may have led the Respondent's agents to believe that he had no such objection because of his comment to the effect that management had the right to implement the automated data processing system the record will not support the finding of a clear and unambiguous waiver of bargaining rights particularly in light of the subsequent correspondence between Zengler and Wilson.

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4/ City of Sheboygan (12134-A, B) 7/74, 11/74.

5/ Nothing herein is intended to imply that the rate of pay established for Klunck or any other employee was inadequate or inequitable under the circumstances. The conclusion reached herein is simply that the rate of pay was established unilaterally without bargaining.

### TIMEKEEPER

The situation involving the Timekeeper, Meifert, is similar to that of Klunck. Because of changes in the duties of the Timekeeper position the Respondent changed the rate of pay for said position and "red circled" Meifert's existing rate. This action was taken without first offering to bargain or bargaining with the Complainant.

The record will not support a finding that the Complainant clearly and unequivocally waived its right to bargain about the rate of pay for the changed Timekeeper classification. On the contrary, the record demonstrates that the Complainant, through Wilson, demanded such bargaining and the Respondent chose to ignore that demand and act unilaterally.

### CLERK TYPIST II

Because of the apparent need for the services of a Clerk Typist which arose as a result of the implementation of the automated data processing system, the Respondent added a Clerk Typist II position to its City Tool House. There is insufficient basis in the record herein to conclude that employees working in the Clerk Typist II classification are appropriately included in the bargaining unit represented by the Complainant. By its own admission the Complainant does not presently represent any Clerk Typists. The instant bargaining unit description, which is established essentially along departmental lines, was appropriate when certified in 1966. However, in view of the changes in Section 111.70 since that date, giving the Commission discretion to establish appropriate bargaining units, it is questionable whether the Commission would include a Clerk Typist II position in the existing unit. Furthermore it should be noted that the classification of Clerk Typist II is not a new one and there exists an established rate of pay for said classification. On the basis of these facts the undersigned concludes that the Complainant has failed to establish by a clear and satisfactory preponderance of the evidence that the Respondent's action of creating the Clerk Typist II position in question affected the wages, hours or conditions of employment of employees represented by the Complainant.

### CONSTRUCTION LEADMAN

While it is clear that an employer can take appropriate disciplinary action in response to the failure or refusal of an employee to properly perform the duties assigned to him, the action taken against Champeau involved the creation of a new job classification, that of Construction Leadman. Like Klunck and Meifert, Champeau did not suffer an immediate reduction in his wages due to the fact that his rate of pay was "red circled". This constituted a change in the rate of pay to be earned by Champeau over time as a result of his new classification. The Union made a timely objection to this unilateral act and ultimately filed the complaint herein. The fact that the Respondent's violation of its bargaining obligation may have been the result of a good faith belief that it had no obligation to bargain about the matter because of the disciplinary nature of its underlying motivation, does not excuse the action taken. 6/ Likewise, the fact that the Respondent has subsequently reversed the action taken does not render its prior violation of its bargaining obligation moot. However, in view of the fact that the Employer has restored Champeau to his previous classification and rate of pay the Complainant does not seek any affirmative relief on his behalf and none has been ordered.



## ELECTRICIAN FOREMAN

The record and arguments with regard to the action taken in the case of the Electrician Foreman are contradictory. First of all the Complainant indicates in the first unnumbered paragraph of its complaint that the Respondent "created" the position of "Electrician Foreman" by Ordinance Number 176-72-73. 7/ (The reference to the deletion of one Electrician II position and the creation of one Electrician I position contained in the fourth unnumbered paragraph would appear to be unrelated to this allegation based on the evidence of record.) 8/ It should be noted that the rate of pay for an Electrician Foreman (Class Grade 15) is the same as that of a Public Works Foreman II. It would also appear that Zengler's explanation, as reflected in his memo and his testimony, must be accepted as the only permissible explanation of the effect of the Respondent's action with regard to the Electrician Foreman position since the record will not support any other conclusion. Zengler stated in his memo to the City Attorney dated June 21, 1973 as follows:

"1. Paragraph 1 of Complaint -- Gen. Ord. 176-72-73

a. Electrician Foreman

In 1968, the Union filed a grievance alleging improper classification of the employee in the Electrician II position. They requested a reclassification from Electrician II to Foreman II - Traffic Control & Electrical Department (See Exhibit 1). In June of 1969, the Electrician II was reclassified to Public Works Foreman II. In the 1970 collective bargaining negotiations, the Union alleged that this was an improper title because Mr. Wehmeyer did not perform a variety of Public Works duties but was in charge of the electrical division only. The Union was informed in negotiations that the employer would review the classification and duties of all foremen and that a change in Mr. Wehmeyer's title would be considered at the time a complete review of all foremen duties could be made. The Common Council has by adoption of Gen. Ord. 176-72-73 granted said grievance and the Union's request during the 1970 negotiations regarding the upgrading and reclassification of the Electrician II position."

Since the evidence of record will not support a finding that the Respondent did any more than change the Classification Title of Wehmeyer by General Ordinance 176-72-73, the undersigned Examiner has concluded that the Respondent did not thereby violate its duty to bargain. However, if the effect of the ordinance was as claimed in the Complainant's and Respondent's briefs (i.e. a change in his wage rate as well as his classification) the Respondent should have offered to bargain about such change even though it accrued to the advantage of the incumbent under the circumstances.

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7/ It also inexplicably refers to the creation of the Construction Leadman in this same paragraph even though said allegation is repeated in the fifth unnumbered paragraph of the complaint. Similarly it refers to the alleged change in the rate of pay for a "Foreman II" classification in the second unnumbered paragraph. Nothing in the record or the Complainant's brief explains the meaning of this obscure allegation and consequently it has been ignored.

8/ According to a memo from the Respondent's Director of Personnel, Zengler, to the Respondent's City Attorney, the Electrician II position had been vacant since June, 1969 when the incumbent, Wehmeyer, had been promoted to the classification of Public Works Foreman II. Also, according to Zengler the additional Electrician I position was created to relieve a backlog of work.

### EFFECT OF THE AGREEMENT

There is nothing in the collective bargaining agreement that existed at the time that the Respondent enacted the two ordinances and Resolution in question which would appear to constitute a waiver of the Respondent's duty and the Complainant's right to bargain with regard to the changes in the wage rates which resulted from the enactment of the two ordinances and Resolution. The Complainant was the recognized bargaining representative for the employees in question (Article I, Section 1). Although the agreement sets out the proper wage rate to be paid to employees working in the various Class Grades involved (Schedule E) there is no provision which expressly waives the obligation to bargain about proposed changes in the class grade of new or changed classifications. While the Respondent retained all rights it had before entering into the agreement by Article I, Section 6, it did not thereby obtain a waiver of its duty to bargain with the Complainant before exercising those rights in a way that affects the wage rates of employees represented by the Complainant.

For the above and foregoing reasons the undersigned concludes that the Respondent violated its duty to bargain and interfered with the rights of employees represented by the Complainant when it refused to bargain about the proper wage rate to be paid employees Klunck, Meifert and Champeau whose wage rates were changed as a result of changes in their job classifications and has entered an appropriate remedial order.

Dated at Madison, Wisconsin this 10<sup>th</sup> day of August, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By George R. Fleischli  
George R. Fleischli, Examiner