

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
DISTRICT COUNCIL 40, AFSCME,	:	Case I
AFL-CIO	:	No. 17233 ME-987
	:	Decision No. 12315
Involving Certain Employes of	:	
	:	
VILLAGE OF GERMANTOWN	:	
	:	

Appearances:

Mr. Robert W. Lyons, District Council Representative, appearing on behalf of the Union.

Mr. William H. Wetterau, Village Board President, Mr. Phillip J. Eckert, Village Attorney and Mr. Vernon Kauth, Village Clerk, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

District Council 40, AFSCME, AFL-CIO having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employes of the Village of Germantown; and a hearing on such petition having been conducted at West Bend, Wisconsin on November 9, 1973, Marshall L. Gratz, Hearing Officer, being present; and the Commission having considered the evidence and being satisfied that a question of representation has arisen concerning certain employes of said Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employes of the Village of Germantown employed in the Highway, Utility, and Sanitation Departments, excluding professional, supervisory and clerical employes, who were employed by the Municipal Employer on November 9, 1973, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by District Council 40, AFSCME, AFL-CIO, for the purpose of collective bargaining with the above-named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
 Morris Slavney, Chairman

Zel S. Rice II
 Zel S. Rice II, Commissioner

Howard S. Bellman
 Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Union filed the instant petition on October 9, 1973 requesting an election among the following employes:

"All regular full-time and regular part-time employes of the Village of Germantown, employed in the Highway, Utility, and Sanitation Departments, excluding professional, supervisory, and clerical employes."

At the hearing, it was revealed that the Village employs personnel in the following departments: Police, Highway, Sanitation, Utility, Village Hall and Library. To date, only the employes in the Police Department are represented for the purposes of collective bargaining.

The parties stipulated that the claimed bargaining unit is an appropriate unit within the meaning of Sections 111.70(1)(e) and (4)(d)(2)(a) of the Municipal Employment Relations Act. They further stipulated that the aforesaid unit would account for all of the blue-collar employes in the employ of the Village, with the exception of the part-time janitor, George Moersfelder, who they stipulated lacks a community of interest with the other eligibles, since he works varied hours according to the need for his services as determined by the Village and in no event more than ten to twenty hours in any one week. We agree that the part-time janitor is excluded from the unit as a casual employe.

The parties also stipulated that Evelyn Foral, a secretary in the Utility Department, should be excluded since she is a clerical employe. We also accept said stipulation since there is no community of interest between the clerical employes and the "blue-collar" employes in the unit which warrants the inclusion of the clerical position in said unit.

The parties were in dispute with respect to the eligibility of three individuals, who occupy the positions of Superintendent in each of the three departments encompassed in the claimed bargaining unit, i.e., Highway, Sanitation and Utility.

The Municipal Employer asserts that each of those three positions is supervisory and ought, therefore, to be excluded. The Union, on the other hand, argues that the individuals, occupying such positions, at most, are working foremen and should be included in the collective bargaining unit.

Each of the three Superintendents at issue is the most senior man in his department. Each receives an hourly wage which is approximately 11 percent above that received by the other full-time employes in his department. Each is provided with fringe benefits according to the same schedule of benefits applicable to the other employes in his department, including pay for overtime work performed. Each is authorized to impose oral discipline at his own discretion, though more severe discipline would probably need to be cleared through higher authority. Each would be consulted with respect to transfers or layoffs affecting employes in their department, though final decisions on such matters would be made by higher authority. Each is vested with the authority to excuse absences, schedule vacations and authorize overtime work among the employes in their respective departments.

Highway Department Superintendent

The Highway Department performs snow removal work and repairs and constructs streets and roadways within the Village. It consists of six employes in addition to Ervin Patzen, the Superintendent. The six drive trucks, operate a backhoe, graders and lawn mowers, and perform certain shoveling and other hand labor. It is estimated that Patzen spends between

20 and 25 percent of his time (on a yearly average) working side by side with fellow employes in his department. His participation in such work is limited, however, to operation of a grader machine and fine grading in road construction or, in unusual circumstances, in the plowing of snow.

A substantial portion of Patzen's work time is spent driving through the Village to observe, direct and inspect the performance of Highway Department crews at various locations and in investigating problem areas for future Department crew assignments.

He also spends some of his time conferring with various Village officials. He discusses various matters with members of the Village Board including budgetary and equipment needs of the Department and personnel matters as described below. He also confers with the Police Chief concerning street safety, with the Village Engineer concerning proper elevations for culverts being installed under or near streets and with the Planning Commission concerning long-range traffic usage and need fulfillment. Patzen is also responsible for arranging for and inspecting the maintenance and repairs done to Highway Department equipment by subcontracted firms.

Although Patzen does not interview applicants for Highway Department positions, he is consulted as to whether a candidate being considered by the Village Board appears qualified "on paper" for the particular position open.

Since Patzen spends a considerable portion of his time in supervising and planning the work of other employes, and since he is the only link between the Village Board Highway and Bridges Committee and the employes in the Highway Department, the Commission, based on the foregoing facts, concludes that Ervin Patzen is a supervisor and also performs certain managerial functions, and that he is, therefore, as Superintendent of the Highway Department, consequently excluded from the bargaining unit, and not eligible to vote.

Sanitation Department Superintendent

The Sanitation Department consists of two employes, Marvin Groth and Donald Guetzke, in addition to its Superintendent, Clarence Strack. Groth and Guetzke drive refuse trucks and pick up refuse. Strack spends a majority of time on similar work, though he personally handles refuse cans, etc. only occasionally. In addition to such unit work, Strack unilaterally lays out the refuse routes followed by Department personnel, alters same when appropriate, receives public complaints about refuse pick-up service and informs citizens when they appear to have violated Village ordinances concerning refuse storage, etc. He also maintains records concerning the costs of the refuse collection operation, vends dumpsters to commercial or large-scale residential developments required by ordinance to use same and represents the Village at conferences concerning the regulations of landfill and other refuse disposal methods.

Though he serves the same function in the hiring process as does the Highway Superintendent, he spends a majority of his time performing unit work and "supervises" only two subordinates, the Commission finds that Strack's duties are routine in nature and that he is insufficiently involved in supervisory functions so as to warrant his exclusion from the unit. Strack therefore is eligible to vote.

Utility Department Superintendent

The nonclerical functions of the Utility Department are carried out by Chief Sewer Plant Operator, William Hilgendorf, Chief Water Plant Operator, Lawrence Reith, and Melvin Kelling, Utility department Superintendent. Hilgendorf tests influent and effluent at the Sewer Plant,

prepares reports concerning same and generally sees to it that the plant equipment is operating properly. Reith checks pumphouses at various locations and makes sure that the water supply is adequate and pure.

Superintendent Kelling performs the work of the operators in their absence and his presence permits seven day per week performance of certain vital daily functions. He also teams with each operator to help in the performance of two-man tasks. He routinely checks the work of each man as well. Kelling maintains an office, which is also used by Hilgendorf, at least for record-keeping. In addition, Kelling is in charge of the work of the operators when water main breaks require all three of them to work on repairs. The three remain in constant radio intercommunication.

Kelling is not directly responsible to the Village Board or to a Committee thereof, however. Instead, he reports to the Village Engineer who also holds the position of Utility Manager. The Utility Manager and the Superintendent jointly interview prospective Department employes and then send recommended candidates to the Village Board for consideration.

Although Kelling serves certain supervisory functions with respect to Hilgendorf and Reith, such functions are insufficient to warrant his exclusion from the unit. Therefore, we find that the Utility Department Superintendent position is properly included in the bargaining unit and that Melvin Kelling is eligible to vote.

The eligibility list herein has been modified in conformity with the foregoing stipulations and the foregoing determinations as to eligibility.

Dated at Madison, Wisconsin this 6th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

 Zel S. Rice II
Zel S. Rice II, Commissioner

 Howard S. Bellman
Howard S. Bellman, Commissioner