

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The instant proceeding was initiated by petition of the City of Manitowoc, hereinafter referred to as the Municipal Employer, requesting clarification of the existing collective bargaining unit represented by Local 731, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, as to the inclusion or exclusion of the positions of Deputy City Clerk, Deputy City Treasurer and Deputy City Assessor. Prior to the hearing conducted July 20, 1973, the Union filed a petition with the Commission requesting clarification as to the appropriate inclusion or exclusion of the position of Information and Referral Service Manager in said collective bargaining unit. The Union's petition was consolidated with the proceeding herein.

The Municipal Employer argues that the positions of Deputy Clerk, Deputy Treasurer and Deputy Assessor are appropriately excluded from the collective bargaining unit on the basis of their appointed status and supervisory responsibilities. The Municipal Employer, contrary to the Union, avers that the duties of the deputies and their conditions of employment are those of "officials" rather than employees. On the ground that the deputies are empowered by statute 1/ to perform the duties of elected officials in the latter's absence, the Municipal Employer argues that the deputies are appropriately excluded from the collective bargaining unit just as the officials themselves are.

The statutes provide two sections relating to the appointment of Deputy Treasurer and Deputy Clerk specifically, 62.09(9)(f) and 62.09(11)(i). They provide that the elected officials appoint the deputies, that the deputies may act in the elected official's absence, or in the event of a vacancy in his office. Compensation for Deputy Clerk and Deputy Treasurer are set by the Council. Deputies are differentiated from other employees in that they are officially bonded.

The Commission has previously determined the status of such deputy positions. 2/ In Ashland County, the Commission stated that:

"Although the elected official has power to appoint his deputy, the [Municipal Employer] has the power to veto such selection, if it chooses, by failing to appropriate salary for the appointee. Moreover, the [Municipal Employer] is the locus of the authority to determine the deputy's conditions of employment not prescribed by statute. These conditions may be the subject of conferences and negotiations between the Union and the [Municipal Employer]. . . . The fact that statutes affect the nature of a seniority provision which the [Municipal Employer] and the Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employee under the statute. Therefore, except so far as tenure is concerned, the Deputy is in the same situation as any other [Municipal] employee."

The Commission went on to say that:

"The fact that a deputy fills in for his supervisor during the latter's absence, does not . . . convert the deputy into a supervisor or executive."

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- 1/ In the instance of the Deputy Assessor, such authority has been established by opinion of the Municipal Employer's City Attorney.
- 2/ Ashland County (7214) 7/65, Oneida County (9134) 7/69, Columbia County (12218) 10/73.

The Commission finds no reason herein to exclude the deputies from the collective bargaining unit solely on the basis of their statutory appointment or responsibilities. Therefore, we shall proceed to examine each of the deputy positions with regard to the exercise of supervisory authority as defined in the Municipal Employment Relations Act.

Deputy Treasurer

The office of the City Treasurer is staffed by the Treasurer, Deputy Treasurer, one full-time cashier and a part-time cashier/relief receptionist. The incumbent Deputy Treasurer for the past ten or eleven years, Loretta Stockinger, occupies the same office area as the cashiers. The position is primarily responsible for the department's bookkeeping and accounting. In addition, the Deputy serves as a cashier and provides information to the public. Her proximity to the other employees affords her a greater opportunity to observe and correct the staff than the Treasurer exercises from his separate office. The Deputy may report any obvious employee misconduct to the Treasurer. She may, as a result, recommend appropriate disciplinary action which the Treasurer testified he would give some weight to. Although the Deputy has not participated in the hiring process, in the Treasurer's absence she handed out and received application forms and directed applicants to return at an appropriate time. Recently, the Deputy has contributed her opinion in the selection of a switchboard operator by the Treasurer on the basis of her previous experience in the operator position.

On separate occasions in the absence of the Treasurer, the incumbent Deputy discharged a probationary employee, assigned an employee to man the switchboard, and telephoned an employment agency to secure a temporary employee.

The Commission stated in Ashland, wherein, on occasion, the deputies performed the statutory duties of the offices they served, that:

" . . . although true, such duties are essentially ministerial as opposed to the exercise of either the executive or supervisory duties of their supervisors. The official, himself, who appoints the deputy and might discharge him at will, bears full responsibility for the administration of the office. . . further, deputies have no supervisory authority or responsibility by reason of the minimal number of employees employed in their respective offices. The fact that a deputy fills in for his supervisor during the latter's absence, does not convert a deputy into a supervisor or executive."

We are satisfied that the soliciting and rendering of the Deputy's opinion concerning job applicants and the Deputy's occasional assumption of the Treasurer's statutory and supervisory duties in the official's absence constitute exceptions to the normal arrangement and do not establish that the Deputy Treasurer, herein, is a supervisory employee. Therefore, we conclude that the position of Deputy Treasurer is appropriately included in the existing collective bargaining unit.

Deputy Clerk

In addition to the City Clerk, the Clerk's office is staffed by one full-time Deputy, two regular part-time employees and one temporary part-time employee. The duties of the Deputy Clerk include overseeing the conduct of elections, recording and typing minutes of council meetings, supervising special projects, and preparing the payroll. Although election poll workers are hired by the Clerk, the Deputy oversees approximately sixty workers during polling hours. Similar to the Deputy position discussed above, the Deputy Clerk works in the same area as other employees and thereby directly observes the staff more often than

the Clerk does. The Deputy's recommendation would be given consideration in a departmental disciplinary matter. In the absence of the Clerk, the Deputy could reassign work or call in temporary help.

Mrs. Evelyn Martin, the Deputy Clerk since 1969, has neither made a recommendation nor participated in the hiring or firing of any employees. Mrs. Martin has not fully assumed all of the statutory duties of the Deputy position. Whereas, the Deputy could supervise special projects, such supervision has neither been exercised nor necessary to date. In the anticipated absence of the Clerk, instructions are usually left with the Deputy to convey to the employees.

Based on the foregoing, we are satisfied that the Deputy Clerk is not a supervisory employe within the meaning of Section 111.70, and thereby, is appropriately included in the existing collective bargaining unit.

Deputy Assessor

The position of Deputy Assessor is not a statutorily created position. At the time of the hearing, the position of Deputy Assessor was vacant. The most recent Deputy had been promoted to the statutory position of City Assessor. The Municipal Employer anticipates that a Deputy will be appointed shortly. Upon such appointment, the department will consist of the City Assessor, Deputy, a clerk-typist and conceivably two property assessors (presently, there is one property assessor and a second position is being sought).

The incumbent Assessor was hired and served as Deputy Assessor subsequent to the retirement of the previous Assessor. The Municipal Employer's City Attorney, upon request of the City Clerk's office, rendered a determination that the Deputy could assume the Assessor's duties during the vacancy of the latter's position. The vacancy lasted approximately five months. The assumed duties included hiring, discipline and grievance handling.

We are satisfied that the position of Deputy Assessor is not supervisory and thereby is appropriately included in the collective bargaining unit. The assuming of the Assessor's duties by the Deputy for several months does not imbue the Deputy's position with the Assessor's supervisory authority.

Information and Referral Service Manager

The position of Information and Referral Service Manager has been recently created. The position is presently occupied by Judith Hestoft. The Municipal Employer, contrary to the Union, avers that the position is supervisory, and appropriately excluded from the existing collective bargaining unit.

The Information and Referral Service Manager is directly supervised by the Director of and Advisory Committee on Aging. The Information and Referral Service is located in the Service Center which is approximately three miles away from the Committee on Aging which is housed in City Hall. The primary function of the Service is to identify and communicate community services for elderly residents of the City of Manitowoc. The Information and Referral Service is staffed by the Manager, a Secretary/Specialist and community volunteers.

The Manager is responsible for setting up and maintaining a community resource file; recruiting, training and coordinating a volunteer staff of twenty-seven; providing information to the public; reporting on a day-to-day basis to the Director of the Committee on Aging with regard to

the operation of the Service; and training and directing the Secretary/Specialist. Subsequent to the filing of the Union's petition herein, the Manager participated in the interviewing of the Secretary/Specialist.


The Municipal Employer argues that the Manager effectively supervises the twenty-seven volunteers and the Secretary/Specialist. Since the community volunteers are not municipal employees within the meaning of Section 111.70(1)(b), the direction of such volunteers does warrant a conclusion that the Manager constitutes a supervisor within the meaning of Section 111.70(1)(o) of MERA. Furthermore, we are satisfied that the Manager's participation in the interviewing of applicants for the position of Secretary/Specialist was perfunctory rather than determinative in nature. It appears that the Manager's work relationship to the Secretary/Specialist has been one of initial instruction as opposed to continuous supervision.

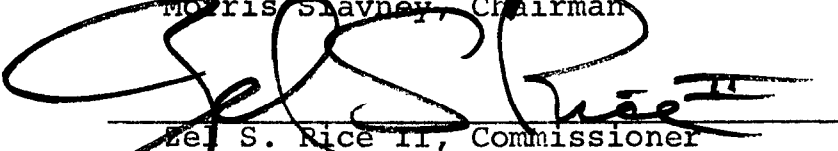
We are therefore satisfied that the Information and Referral Service Manager is also appropriately included in the collective bargaining unit involved.

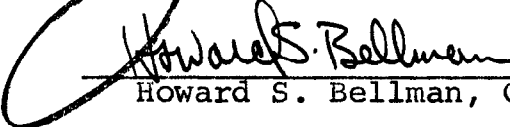
Dated at Madison, Wisconsin this 16th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner