

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF KENOSHA

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Case XXII
No. 17303 ME-998
Decision No. 12522

Mr. Terry L. Constant, President, Kenosha Assistant City Attorneys Professional Association, and Mr. Jerold W. Breitenbach, Assistant City Attorney, appearing on behalf of the Union.

Mr. Wallace E. Burkee, Mayor, Mr. John Serpe, City Administrator, and Mr. Jim Warzon, Supervisor of Personnel, appearing on behalf of the Municipal Employer.

Kenosha Assistant City Attorneys Professional Association having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employees of the City of Kenosha; and hearing on such petition having been conducted on December 3, 1973, at Kenosha, Wisconsin, Herman Torosian hearing Officer having been present; and the Commission having considered the evidence and briefs of counsel and being satisfied that a question has arisen concerning representation for certain employees of the City of Kenosha;

DIRECTED


That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive in the collective bargaining unit consisting of all Assistant City Attorneys employed by the City of Kenosha, excluding confidential, supervisory, managerial, and all other employees of the Municipal Employer, who were employed on December 3, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Kenosha Assistant City

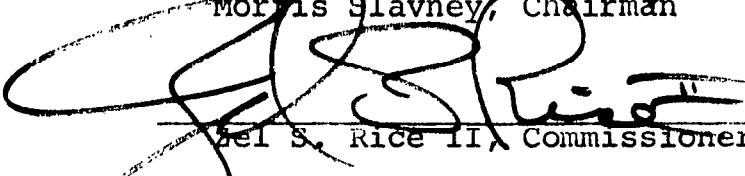
Attorneys Professional Association, for the purposes of collective bargaining with the City of Kenosha in questions of wages, hours and conditions of employment.

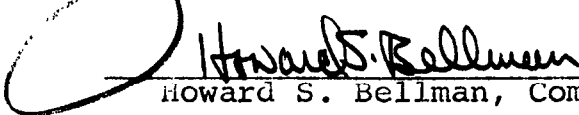
Given under our hands and seal at the
City of Madison, Wisconsin this 5th
day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Mel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

It is the City's position that the Commission should not direct an election for the petitioned unit in that Assistant City Attorneys are managerial employees and, therefore, are not "municipal employees" as set forth in Section 111.70(1)(b) of the Municipal Employment Relations Act.

There are currently two Assistant City Attorneys employed by the City of Kenosha. One is classified as an Assistant City Attorney I and the other is classified as an Assistant City Attorney II.

Both City Attorneys are responsible for prosecuting alleged violations of City Ordinances; assisting and preparing briefs and representing the City before state adjudicatory agencies; performing legal research; advising department officials and the general public on the interpretation of laws and rules; providing legal opinions to departments and others in the establishment of departmental policies and procedures; confer with department heads on preparation or review of rules; performing any functions which serve the various standing council committees; and representing the City at Civil Service hearings.

Both City Attorneys spend approximately 15 to 20 percent of their time attending department, board and commission meetings. Their role at said meetings is to answer legal questions, interpret the law, and provide legal opinions to the various committees and boards in order that said entities can carry out their designated functions. Once they have provided said information, the board, commission or committee makes a decision or formulates policy, taking into consideration, of course, the professional expertise provided by the Assistant City Attorneys. The Assistant City Attorneys, however, do not become involved in the actual decision making or in the formulation of policy by the various boards, commissions and committees.

In reviewing the duties performed by the Assistant City Attorneys as outlined above, the Commission is convinced that while said attorneys provide legal advice and present the decision makers with legal alternatives, they do not participate in the actual decision making.

Also, the Commission cannot conclude that the position of Assistant City Attorney is a managerial trainee position for the position of City Attorney. While an Assistant City Attorney can very well become the City Attorney, there is no assurance that such a result will occur.

Based on the above, the Commission concludes that the positions of Assistant City Attorney I and II are not managerial personnel, but employees within the meaning of the Municipal Employment Relations Act 1/

1/ City of Milwaukee (12035-A) 2/74.

and, therefore, the Commission has today directed an election to be conducted in the petitioned unit.

Dated at Madison, Wisconsin this 5th day of March, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Thomas Slawney
Morris Slawney, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner