

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

CITY OF KENOSHA BUILDING INSPECTORS :
ASSOCIATION :

Involving Certain Employees of :

CITY OF KENOSHA :

Case XXV
No. 17696 ME-1033
Decision No. 12620

Appearances:

Mr. Harvey E. Zimmerman, Director, appearing on behalf of
the Petitioner.

Mr. Karl Monson, District Representative, appearing on
behalf of the Intervenor.

Mayor Wallace Burkee and Mr. Jim Warzon, Personnel Director,
appearing on behalf of the City of Kenosha.

DIRECTION OF ELECTION

City of Kenosha Building Inspectors Association, having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted among certain employees of the City of Kenosha, Wisconsin, and hearing on such petition having been conducted at Kenosha, Wisconsin, on March 27, 1974, Herman Torosian, Hearing Officer being present; and during the course of the hearing Kenosha City employees, Local 71, AFSCME, AFL-CIO, having been permitted to intervene in the instant proceeding on the basis of its claim that it represented the employees involved; and the Commission having considered the evidence and arguments, and being satisfied that questions have arisen concerning appropriate unit and representation for certain employees of the City of Kenosha;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Direction in the collective bargaining unit consisting of all Inspectors (Building Inspectors, Plumbing Inspectors, and Electrical Inspectors) employed in the Department of Inspection of the City of Kenosha, but excluding supervisors, confidential and all other employees, who were employed on April 9, 1974, except such employees as may prior to the elections quit their employment or be discharged for cause, for the purpose of determining:

- 1) Whether a majority of such eligible employees desire to be included in an existing unit consisting of employees of the City of Kenosha employed in the Central Service, Street, and Waste Divisions of the Department of Public Works, the Department of Parks, in the Construction, Filtration, Pumping and Meter Divisions of the Water Department, in the Sewage Treatment Plant, in the Parking Commission, in the Department of Finance (including Purchasing Division), Assessing Department, City Planning Division,


Police Department, Department of Inspection, Administration and Engineering Division of the Department of Public Works, Department of Health, and the Office Division of the Water Department represented by Local #71, AFSCME are presently represented by Kenosha City Employees, Local #71, AFSCME, AFL-CIO, and

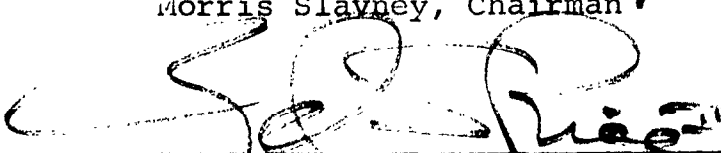
- 2) Whether a majority of such employees voting desire to be represented by City of Kenosha Building Inspectors Association, or by Kenosha City Employees, Local #71, AFSCME, AFL-CIO, or by no organization.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed on February 27, 1974, by City of Kenosha Building Inspectors Association, hereinafter referred to as the Petitioner, requesting the Commission to conduct an election among all Building Inspectors employed in the Department of Inspection to determine whether said employees desire to be represented by the Petitioner for the purposes of collective bargaining, pursuant to the Municipal Employment Relations Act.

At the hearing the Petitioner was allowed to amend its petition to describe the bargaining unit as follows: "all inspectors (building inspectors, plumbing inspectors, electrical inspectors) employed in the Department of Inspection by the City of Kenosha but excluding supervisors, confidential, and other employees of the employer."

During the course of the hearing Kenosha City Employees Local #71, AFSCME, AFL-CIO, hereinafter referred to as the Intervenor, was permitted to intervene on the basis of its claim that it presently represents the employees in the petitioned for bargaining unit. The Intervenor also stated its desire to appear on the ballot in the event an election is directed.

It is the position of both the Intervenor and the Municipal Employer that the instant petition should be dismissed for the reason that the inspectors are presently represented by Local #71 and are covered by a collective bargaining agreement existing between the Intervenor and the Municipal Employer. Said agreement is a two-year agreement, which Expires December 31, 1975.

The agreement describes the collective bargaining unit as follows:

"Employees of the City of Kenosha employed in the Central Service, Street, and Waste Divisions of the Department of Public Works, the Department of Parks, in the Construction, Filtration, Pumping and Meter Divisions of the Water Department, in the Sewage Treatment Plant, in the Parking Commission, in the Department of Finance (including Purchasing Division), Assessing Department, City Planning Division, Police Department, Department of Inspection, Administration and Engineering Division of the Department of Public Works, Department of Health, and the Office Division of the Water Department represented by Local #71 AFSCME."

The above unit was established pursuant to a Direction of Election issued by the Commission in 1966.^{1/} In said proceeding the question of whether or not building inspectors, plumbing inspectors, and electrical inspectors were craft employees was in issue. The Commission in its decision concluded that the employees occupying said positions were craft employees, since the positions required journeyman experience of at least five years in the particular craft involved. For said reason, said positions were excluded from the overall unit. At no time since 1966 have the parties agreed to include inspectors in the overall unit, nor have the inspectors ever considered themselves to be included in said unit.

^{1/} City of Kenosha, Decision No. 7529-A, 6/66.

The exclusion of inspectors is evident from the 1973 collective bargaining agreement between the parties. Appendix "A" which is attached to said agreement contains a list of "Positions in Table of Organization Represented by Local 71", and a list of classifications of both hourly and salaried employees. No inspector classifications appear in said list of classifications, and the only position listed for the Department of Inspection is the position of Secretarial Steno.

Also the 1974-1975 agreement, as did the 1973 agreement, contains among its provisions, a fair-share agreement requiring the Municipal Employer to deduct from the monthly earnings of all employees in the collective bargaining unit the amount of monthly dues certified by the Intervenor and pay said amount to the treasurer of said Union. At no time has the Municipal Employer made such deductions from the monthly earnings of the inspectors employed in the Department of Inspection.

The fact that one of the inspectors, until recently, voluntarily paid dues to Local #71 and that the benefits negotiated between Local #71 and the Employer are automatically extended to the Inspectors is not sufficient, in the instant case, to establish Local #71 as the bargaining representative for the inspectors.

Based on the above, the Commission concludes that the Building Inspectors, Plumbing Inspectors, and Electrical Inspectors are not presently included in the aforesaid bargaining unit represented by Local #71.

It is also the position of the Intervenor and Municipal Employer that the Building, Plumbing, and Electrical Inspectors are not craft employees as alleged by the Petitioner, and, therefore, to avoid fragmentation, should not be permitted to constitute themselves as a separate bargaining unit.

In regard thereto, the parties stipulated that the job duties performed by the Inspectors are the following:

"All of the inspectors are referred to actual sites of construction or repair by the Chief of the Inspection Department, their supervisor. The great majority of the Inspectors' time of employment is spent at these sites or in transit from, to, or between them. The Inspectors are charged with the duty of insuring that the provisions of the Code of General Ordinances of the City of Kenosha as they relate to the construction or installation of building, plumbing, or electrical materials are adhered to in the construction, alteration and/or repair of structures within the limits of the City of Kenosha. Also, they make inspections of premises in the City to determine if compliance with the Code of ordinances has been met in such areas of the codes as zoning restrictions, setback clearances, sign installations, swimming pool erections and hazardous depression conditions. Further, they answer questions from the public in matters related to their duties, send correspondence from the office of the Inspection Department to persons as it is necessitated in the performance of their duties, take applications for various types of permits and licenses during the course of the day to day operation of the Inspection Department, and direct information of apparent code violations to the law department for prosecution."

The job duties and qualifications for the position of Inspector have not changed since the Commission's decision in 1966 wherein it found inspectors to be craft employees. The Municipal Employer now

contends that said employees do not actually perform craft work but only use their tools in performing inspection work and that inspectors do not necessarily have to be journeyman craftsman to fulfill the requirements of the job. However, all six of the Inspectors currently employed are journeyman craftsman in their particular trade. In this regard the Municipal Employer, in filling its most recent vacancy, in May 1972, stated, in its announcement for the position of Electrical Inspector, that the Municipal Employer desired a "High school graduate with five years of experience in the electrician trade as a journeyman electrician." A journeyman electrician was hired for the position.

Although there have been no Building or Plumbing Inspectors hired recently, the only available written job description and qualification for said positions require, as desirable training and experience, five years of experience in the plumbing trade as a journeyman, and two years of construction as a journeyman craftsman, for Plumbing and Building Inspectors respectively. Based on the above the Commission finds the Building, Plumbing and Electrical Inspectors to be craft employees.

Given the above facts the Commission is satisfied that a question of appropriate unit, as well as a question of representation of craft employees, as petitioned, exists and that said craft employees, should be afforded the opportunity to determine whether they desire to be included in the overall unit presently represented by Local #71. 2/ They should also be given the opportunity to determine their desires as to representation.

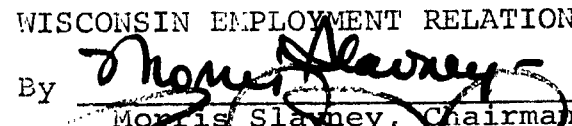
Should a majority of the eligible craft employees vote in favor of being included in the overall unit, the representation ballots cast by them shall be impounded, and the Commission will certify the inclusion of said employees into the existing overall unit, in accordance with Section 111.70(4)(d)3, Wisconsin Statutes.

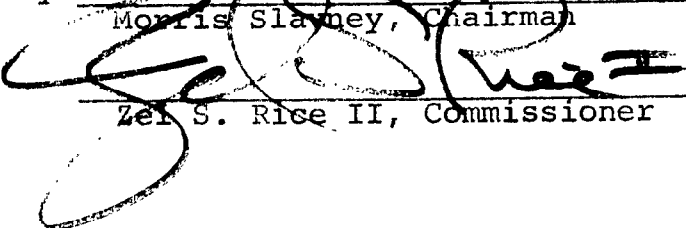
Should the craft employees reject inclusion in the overall unit the appropriate unit shall consist of all Inspectors (Building Inspectors, Plumbing Inspectors, and Electrical Inspectors) employed in the Department of Inspection of the City of Kenosha, but excluding supervisors, confidential and all other employees of the Municipal Employer, and the representative ballots shall be tallied.

Dated at Madison, Wisconsin, this 9th day of April, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Zel S. Rice II, Commissioner

2/ Section 111.70(4)(d)2a of the MERA provides:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. . . . The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit."