

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

TEAMSTERS "GENERAL" LOCAL UNION NO. 200,  
AFFILIATED WITH THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA

Case I  
No. 17547 ME-1017  
Decision No. 12718

Involving Certain Employees of

VILLAGE OF GRAFTON  
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Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Alan M. Levy, for the Petitioner.

Peck, Brigden, Petajan, Lindner, Honzik & Peck, S.C., Attorneys at Law, by Mr. Roger E. Walsh, for the Municipal Employer.

DIRECTION OF ELECTION

Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Petitioner, having filed a petition with the Wisconsin Employment Relations Commission on January 11, 1974, requesting that an election be conducted pursuant to Section 111.70, Wisconsin Statutes, among certain employees of the Village of Grafton, hereinafter referred to as the Municipal Employer; and a hearing on such petition having been conducted at Milwaukee, Wisconsin, on January 29, 1974, Stanley H. Michelstetter II, Hearing Officer, being present; and the Commission having considered the evidence and the arguments of the parties and being satisfied that a question of representation presently exists among certain employees of the above named 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, among all regular full-time hourly paid employees of the Department of Public Works of the Village of Grafton, excluding clerical, supervisory, confidential, managerial, executive employees, and all other employees, who were employed on May 21, 1974, 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 Teamsters "General" Local Union No. 200, affiliated with the International Brother-

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Background:

On January 11, 1974, Teamsters "General" Local Union No. 200, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Teamsters, filed a petition with the Commission requesting the Commission to conduct an election among all hourly paid employees of the Department of Public Works in the employ of the Village of Grafton. There are approximately ten employees employed in the Public Works Department.

During the course of the hearing there was submitted into evidence a document entitled "Contract Between Grafton Village Board and Grafton Public Works Department." Said document contains provisions relating to wages, hours and working conditions of the employees in the Department of Public Works and contains the following provision regarding recognition of the bargaining agent of the employees involved:

"The Village of Grafton hereby recognizes the Committee as appointed by the Department of Public Works employees, as the exclusive collective bargaining agent for all employees with the exception of the Supt. of Public Works."

The document also provides that it "shall become effective the 1st of day of January, 1973, and terminate December 31st, 1974." It also contains the following provision entitled "Wage Negotiations":

"Negotiations for wages and benefits will be bargained for annually, or as other wise contracted, by the representative committee selected by the employees of the Department of Public Works."

Four of the employees were the primary negotiators on behalf of the Department of Public Works employees. Although they were not selected as the negotiators, they did act as such since they were available during the bargaining sessions because of their shift or particular position. At the final bargaining session held on April 12, 1973, all ten employees appeared. All but one of the ten employees initially refused to approve said agreement, and among those so refusing were three of the primary negotiators. Thereupon the representative of the Municipal Employer indicated that the employees could "forget about it" in future years "if they were not faithful to the agreement." After such statement each of the ten employees affixed their signatures to the agreement. During the hearing a member of the four-employee negotiating team testified that neither members of the bargaining team, nor any other employee, had been designated to administer the agreement. Meetings have not been held, and further, the Municipal Employer has never consulted with, nor contacted such team, with respect to the agreement. It should be noted that the document does not contain a grievance or arbitration provision.

Positions of the Parties:

Teamsters contend that the agreement does not constitute a collective bargaining agreement within the meaning of the Municipal Employment Relations Act, since it is not a product of negotiations

between a representative of a viable labor organization and the Municipal Employer, and, therefore, such agreement should not be given any effect. In the alternative, Teamsters argue that the present representative is defunct.

The Municipal Employer asserts that the document is a valid collective bargaining agreement, and therefore bars the instant petition, or in the alternative, that there is a time bar and other reasons not to conduct an election for at least a one-year period from the date of the hearing.

A bargaining representative need not be a labor organization. It may be an individual selected by employees to represent them for the purposes of collective bargaining, or it may be a committee selected by, or acting on behalf of, the employees for that purpose. Furthermore, there is no requirement that the nature of the participation of employees be any more formal than desired by the employees themselves.<sup>1/</sup> The fact that all ten employees signed the document does not affect the status of the document as a collective bargaining agreement. Therefore, we conclude that there presently exists a collective bargaining agreement covering the wages, hours and working conditions of the employees of the Village of Grafton employed in the Department of Public Works. However, we do not deem that said collective bargaining agreement results in an untimely filing of the petition, nor does it constitute a bar to a present election, since there is no time set forth in said agreement for the reopening of the agreement for negotiations on the succeeding agreement, although it may be "negotiated annually." Our conclusion in that regard does not void the provisions of the existing agreement. Should the employees select Teamsters as their bargaining representative, it will administer the existing agreement for the remainder of its term and, of course, it will have the right to bargain for a succeeding agreement.<sup>2/</sup>

During the course of the hearing an issue arose as to whether the foreman Richard Johnson is a supervisory employee. Johnson performs the functions of the Director of Public Works, in the latter's absence, which is only on an occasional basis. Johnson routinely makes work assignments, prepares time sheets and plans work. Johnson is free to go from job site to job site; however, he spends approximately 90 percent of his daily time in performing the same work as is performed by his fellow employees. Teamsters contend that Johnson is not a supervisor as contemplated in the Act, and argues that Johnson's duties are routine in nature and at the most performs his duties as a leadman. While Johnson has been expected to evaluate employees for promotions and/or merit pay, he has refused to do so and, in fact, has never made any recommendations with regard to promotions. On one occasion he recommended an employee for reassignment. Since Johnson's "supervisory and managerial" duties are minimal in nature, and since he spends approximately 90 percent of his time performing the same work performed by employees, we conclude that Johnson is an employee within the meaning of the Act and therefore eligible to vote in the election.

Teamsters request a unit consisting of "all hourly paid employees of the Department of Public Works, excluding all other employees, clerical, guards and supervisors." The Municipal Employer contended the unit should be described as follows:

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<sup>1/</sup> Manitowoc County (10899) 3/72.

<sup>2/</sup> City of Green Bay (6558) 11/63.


"All regular full-time hourly paid employes of the Department of Public Works of the Village of Grafton, excluding clerical, supervisory, confidential, managerial, executive employes, and all other employes."

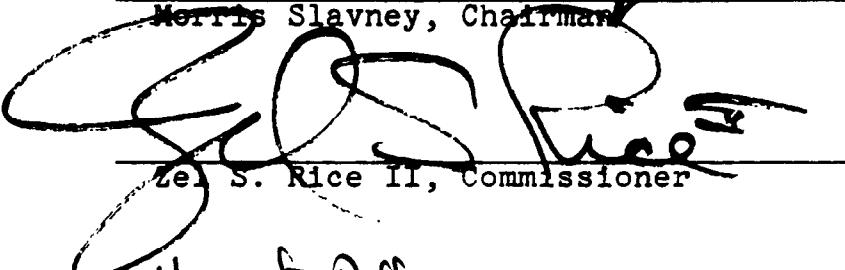
Testimony indicated that the Municipal Employer has in the past employed summer seasonal help but that it does not expect to engage in that practice. No other part-time or seasonal help have been employed. We adopt the description of the unit as proposed by the Municipal Employer as being appropriate, and, therefore, have directed an election therein.


Dated at Madison, Wisconsin, this 21st day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

  
Howard S. Bellman, Commissioner