

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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INTERNATIONAL ASSOCIATION OF	:	
MACHINISTS AND AEROSPACE WORKERS,	:	
AFL-CIO, DISTRICT NO. 10	:	
	:	Case CXXXVII
Involving Certain Employes of	:	No. 17791 ME-1045
	:	Decision No. 12805-A
CITY OF MILWAUKEE	:	
FIRE DEPARTMENT - REPAIR SHOP	:	
	:	

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ORDER SETTING ASIDE RESULTS OF ELECTION  
AND DIRECTION OF NEW ELECTION

Pursuant to a Direction of Election issued by it, the Wisconsin Employment Relations Commission, on July 2, 1974, conducted an election among all regular full-time and all regular part-time Fire Equipment Mechanics, Fire Equipment Repairmen, Maintenance Workers, Maintenance Mechanics, Mechanics Helpers and Stores Clerks employed by the City of Milwaukee in its Fire Department at its 118 West Virginia Street location, excluding professional employes, craft employes, fire-fighters, supervisors, managerial, executive and all other employes for the purpose of determining whether such employes desired to be represented by International Association of Machinists and Aerospace Workers, AFL-CIO, District No. 10, or by Milwaukee District Council 48, AFSCME, AFL-CIO (and its affiliated Local 33) or by no organization, for the purposes of collective bargaining with the City of Milwaukee with respect to wages, hours and conditions of employment; that the result of such election was as follows:

1. Total number claimed eligible to vote.....20
2. Total ballots cast.....16
3. Total ballots challenged..... 1
4. Total valid ballots counted.....15
5. Ballots cast for International Association of  
Machinists & Aerospace Workers, AFL-CIO, Dist.  
No. 10.....15
6. Ballots cast for Milwaukee District Council 48,  
AFSCME, AFL-CIO, and its affiliated Local 33..... 0
7. Ballots cast for no representation..... 0

That on July 17, 1974, the Commission issued a Certification of Representatives wherein it certified International Association of Machinists & Aerospace Workers, AFL-CIO, District No. 10 as the collective bargaining representative of the employes in the above-described unit; that thereafter, and on August 15, 1974, the above-named Municipal Employer filed, with the Milwaukee County Circuit Court, a petition for review of the Commission's Certification; that on December 20, 1974, after the Commission caused the tape recording of the hearing to be reduced to transcript form, and furnished copies thereof to all interested parties and to the Court; that following a hearing on said petition for review, honorable George A. Burns, Jr.

of the Milwaukee County Circuit Court, on March 14, 1975, ordered that the Commission's Certification be vacated and that the entire record be remanded to the Commission for further proceedings; that accompanying said judgment, Judge Burns issued a Memorandum Decision finding, among other things, that the Commission had not complied with Chapter 227.12 of the Wisconsin Statutes in that since the Commission did not hear or read all the evidence, since no transcript of the hearing before the Hearing Officer was prepared, and since the Hearing Officer did not submit a summary of the evidence together with his recommendations to each party, and that, thereby, the substantial rights of the City of Milwaukee had been prejudiced; and in order to comply with the Judgment of the Court, the Commission is satisfied that the original Direction of Election issued herein, as well as the Certification of Representatives also issued herein be set aside and further, the Commission having reviewed the transcript of the hearing and being fully advised in the premises, issues the following

ORDER

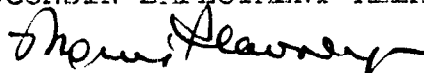
1. That the Direction of Election previously issued herein on June 18, 1974, be, and the same hereby is, set aside.
2. That the Certification of Representatives issued by the Commission herein on July 17, 1974, be, and the same hereby is, set aside.
3. That the Commission now issues the following new Direction of Election:

IT IS DIRECTED that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of this Directive among all regular full-time and all regular part-time Fire Equipment Mechanics, Fire Equipment Repairmen, Maintenance Workers, Maintenance Mechanics, Mechanics Helpers and Stores Clerks employed by the City of Milwaukee in its Fire Department at its 118 West Virginia Street location, excluding professional employes, craft employes, firefighters, supervisors, managerial, executive and all other employes, who were employed on May 21, 1975, except such employes who quit their employment or are terminated for cause prior to the election, for the purpose of determining whether such employes desire to be represented by International Association of Machinists and Aerospace Workers, AFL-CIO, District No. 10; or by Milwaukee District Council 48, AFSCME, AFL-CIO (and its affiliated Local 33); or by no organization, for the purposes of collective bargaining with the City of Milwaukee with respect to wages, hours and conditions of employment.


Given under our hands and seal at the City of Madison, Wisconsin this 21<sup>st</sup> day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

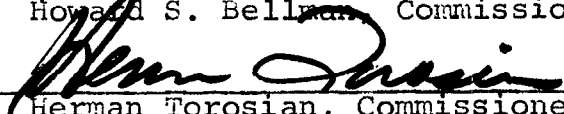
By



Morris Slavney, Chairman



Howard S. Bellman, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER SETTING ASIDE  
RESULTS OF ELECTION AND DIRECTION OF NEW ELECTION

In the Order issued today, the Commission has set aside the original Direction of Election and Certification of Representatives previously issued by it, pursuant to the judgment of the Milwaukee County Circuit Court. Pursuant to the remand of the Court, the Commission has now reviewed the written transcript made from the tape recording and has considered the evidence adduced and the arguments of the parties made during the course of the hearing.

The unit desired consists of all the employes, 20 in number, currently employed in the Bureau of Construction and Maintenance in the Milwaukee Fire Department except a firefighter, who the parties stipulated should be excluded as a professional firefighter, and one Fire Equipment Mechanic III. The parties stipulated that all employes in the instant unit perform the same maintenance and repair functions as similar positions in the Repairs Division, Bureau of Municipal Equipment, Department of Public Works, except that, because of the nature of the equipment repaired, the instant employes are on call for 16 hours in addition to their normal eight-hour day, once every five days in a five-week period followed by two days off. On occasions certain classifications in the desired unit are directed to the scene of a fire to perform repairs and related duties on equipment being utilized by the firefighters in the firefighting activities. Further evidence indicated that the instant employes receive the same wages and benefits as employes in the related Bureau of Municipal Equipment classifications. Although promotions are made first from within the instant unit, vacancies not thus filled are filled from the related Bureau of Municipal Equipment classifications and hiring lists therefor. Of the 20 employes in the desired unit, only five have transferred from the Repairs Division of the Bureau of Municipal Equipment, the last of such transfers being made sometime in 1969. Transfers from any other division of the City to the Bureau of Construction and Maintenance of the Milwaukee Fire Department are not automatic. That is to say, the Chief interviews such applicants to determine whether they are qualified to perform the duties required of a vacant classification. The last applicable collective bargaining agreement between Intervenor Milwaukee Fire Fighters and the Municipal Employer provided:

- "1. Insofar as is applicable and possible, shop and clerical personnel in the Fire Department shall receive the same general salary increases and benefits as employes in classes represented by District Council 48. For purposes of information, salary increases are noted below:

. . ."

The employes in the desired unit are under the ultimate supervision of the Fire Chief and are subject to the rules of the Fire and Police Commission rather than the rules of the City Service Commission.

POSITION OF THE PARTIES:

The Petitioner contends that although the employes covered by the petition perform similar tasks to those tasks performed by the

employees in the Repair Division in the Bureau of Municipal Equipment, employees involved in the petition have indicated a desire to be represented by the Petitioner, and further that said employees operate under supervision separate and apart from those in the Repair Division, they have a different bargaining history and are assigned additional responsibilities over those assigned to the employees in the Repair Division of the Bureau of Municipal Equipment. The Petitioner further contends that should the Commission find that the unit sought by the petition is not an appropriate unit under the Act that, at least, said employees should be given the opportunity to determine for themselves whether they desire to constitute themselves a separate unit.

The City and Intervenor AFSCME argue that the employees covered by the petition do not constitute an appropriate unit, since the Act discourages fragmentation of bargaining units. They further argue that the employees involved herein share a community of interest with the employees occupying similar positions in the Repair Division of the Bureau of Municipal Equipment, and that therefore the positions involved should accrete to the existing unit which includes the employees in the Repair Division of the Bureau of Municipal Equipment. AFSCME seeks to be included on the ballot in any election the Commission would direct. Although the Fire Fighters intervened on the basis of their former representative status, during the course of the hearing, the Fire Fighters indicated they did not desire to be placed on any ballot.

Also during the course of the hearing, issues arose with respect to supervisory status of the Fire Equipment Mechanic III. Petitioner and AFSCME contend that the position is not supervisory, while the Employer contends otherwise.

#### DISCUSSION:

The primary issue herein is whether the employees covered by the petition constitute an appropriate unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act which states in relevant part as follows:

"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. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit." (Emphasis added)

The Employees involved in the petition, prior to the adoption of MERA in November, 1971, constituted an appropriate bargaining unit under the then existing Section 111.70 and were represented for the purposes of collective bargaining by firefighters. Apparently the latter labor organization has abandoned its representative status of said employees. The majority of units consisting of employees in the employ of the various Bureaus of the City of Milwaukee were established under the original Section 111.70, which provided that employees engaged in separate divisions or departments could establish themselves into separate bargaining units. Such units were established regardless of the nature of the work performed. In other words, the same classification appears in more than one unit and the employees occupying said classification in the different units are represented by different

labor organizations. While the present statute encourages the Commission to avoid fragmentation wherever possible, because of the existing fragmentation of units among the employes in the employ of the City, we conclude that it would not violate the intent or spirit of the Act to maintain the employes involved in the petition in a separate bargaining unit. While there exists some semblance of a community of interest with employes in the Repair Division of the Bureau of Municipal Equipment, because of the nature of the work performed and because of similar wages and fringe benefits such community of interest is diminished by the fact that the employes are under distinct separate supervision and subject to the jurisdiction of the Fire and Police Commission. We therefore find that the unit petitioned for is appropriate and have directed an election to determine what, if any, representation the employes therein desire for the purposes of collective bargaining.

Dated at Madison, Wisconsin this *21<sup>st</sup>* day of May, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

*Herman Torosian*  
Herman Torosian, Commissioner