

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
MR. DANIEL KLECKLEY
Involving Certain Employees of
CITY OF MILWAUKEE

Case CXLII
No. 17978 ME-1064
Decision No. 13099

Appearances:

- Podell & Ugent, Attorneys at Law, by Mr. Alvin R. Ugent appearing on behalf of the Petitioner and on behalf of District Council No. 48, AFSCME, AFL-CIO, Intervenor.
- Mr. James Morris, Business Representative, appearing on behalf of Municipal Truck Drivers Local Union No. 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
- Mr. Nicholas M. Sigel, Assistant City Attorney, and Mr. James J. Mortier, City Labor Negotiator, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Daniel Kleckley, an employe of the City of Milwaukee, requesting that an election be conducted among certain employes of the City of Milwaukee, and Municipal Truck Drivers Local Union No. 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having been permitted to intervene on the basis of its status as the present bargaining representative of the said employes; and District Council No. 48, AFSCME, AFL-CIO, having been permitted to intervene on the basis of its claim to represent the said employes; and hearing on said petition having been conducted at Milwaukee, Wisconsin on July 9, 1974, Zel S. Rice II, Commissioner, having been present; and the Commission having considered the evidence and arguments, and being satisfied that questions concerning appropriate unit and representation for said employes of the City of Milwaukee had arisen;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Direction among all employes employed in the Service Division of the Bureau of Municipal Equipment, Department of Public Works, City of Milwaukee, Wisconsin, excluding all supervisory, confidential, craft and all other employes, who were employed on October 22, 1974,¹ except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of

1/ In addition, to those presently employed in the unit, employes who have been involved in the Service Division at least six months during the twelve month period immediately preceding the eligibility date will be included among the eligible, provided they are still in the employ of the Municipal Employer.

determining whether a majority of such employes voting desire to be represented by Truck Drivers Local Union No. 242, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; or by District Council No. 48, AFSCME, AFL-CIO; or by no organization.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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

Howard S. Bellman
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The instant petition, timely filed on May 10, 1974, by Daniel Kleckley, an employe of the City of Milwaukee, requested that an election be conducted to determine whether the employes involved in the unit described in the Direction desired to continue their representation by Municipal Truck Drivers Local Union 242, hereinafter referred to as the Teamsters. Prior to the hearing in the matter, the Commission was supplied with showings of interest by the Petitioner and District Council 48, AFSCME, AFL-CIO, hereinafter referred to as AFSCME. Said showings of interest were administratively determined to be sufficient to meeting the Commission's 30% and 10% showing of interest requirements for the filing of said petition and for the intervention by AFSCME. During the course of the hearing, Teamsters was permitted to intervene on the basis that it presently represents the employes involved. AFSCME was permitted to intervene on its claim to represent the same employes, supported by its 10% showing of interest.

During the course of the hearing, Teamsters argued that a complaint filed by it with the Commission, alleging that the Municipal Employer committed prohibited practices, which matter was pending before the Commission at the time of the hearing herein, should "block" the processing of the instant petition. The Petitioner and AFSCME contended that inasmuch as said complaint concerned the Municipal Employer's alleged activity involving only one unit member, the prohibited practice proceeding should not delay the processing of the election petition. Inasmuch as the employe involved in the complaint proceeding is the president of Teamsters, the election petition has been held in abeyance pending the Commission's decision in the complaint matter. The Commission has today issued its decision in the complaint matter. 2/

Teamsters obtained its representative status with the employes involved in an election previously conducted by the Commission. 3/ In that proceeding Teamsters was certified as the representative of the employes in the following unit:

"All employes employed in the Operations Division 4/ of the Bureau of Municipal Equipment, Department of Public Works, City of Milwaukee, Wisconsin, excluding all supervisory, confidential, craft and all other employes."

As of October, 1973, there were approximately 400 employes in said unit.

The Municipal Employer contends that the employes involved herein should be given an opportunity to vote on whether they desire to accrete to the "overall" unit, consisting of approximately 4,200 employes, which includes employes employed in most of the Bureaus of the Department of Public Works. The employes in said "overall" unit are presently represented by AFSCME and the unit is described as follows:

"All regular employes employed in the various bureaus in the Department of Public Works' excluding regular DPW employes

2/ Decision No. 13093

3/ City of Milwaukee (9606), 6/70.

4/ Now named "Service Division".

represented by the 6 AFL-CIO affiliated unions described below, and also excluding DPW employes represented by Municipal Truck Drivers Local Union #242 described below, and also excluding all confidential employes, all craft employes, and all executives and supervisory employes in the DPW. In addition, this bargaining unit represents 'all regular employes' in the Department of Building Inspection and Safety Engineering, except for Plumbing Inspectors and Plumbing Plan Examiners I represented by Local #75, Journeymen Plumbers and Gas-Fitters Union; in the Central Electronic Data Services Department; in the Department of City Development's Planning and Programming Division, Real Estate Division, and Technical and Maintenance Division, except for Firemer represented by Local #317, IUOE, as described below; in the Election Commission; in the Harbor Commission; in the Health Department's Bureau of Consumer Protection and Environmental Health; in the Police Department's Buildings and Grounds Division; in the Public Library; in the Public Museum; and in the Tax Department, excluding all confidential employes, all craft employes, and all executives and supervisory employes."

Teamsters claim that the employes involved in the existing unit constitute craft employes. The classifications included in said unit are as follows:

Clerk Dispatcher II	Special Equipment Operator
Clerk Dispatcher I	Truck Driver (3 1/2 tons and over)
City Laborer (Regular)	Truck Driver (under 3 1/2 tons)
Driver Training Instructor	Special Municipal Equipment Laborer
Field Serviceman	Automotive Mechanic Helper (Garage Custodian)
Special Municipal Equipment Laborer/City Laborer (Regular)	City Laborer (Regular/Seasonal)
	Account Clerk I

The record establishes that a significant number of employes in the existing Service Division, during certain slack periods of the year, because of their seniority, have a right to bump into position in the "overall" unit.

The Commission has previously held that no employe in the existing unit covered by the petition is a craft employe. 5/ Said unit was established prior to the adoption of the Municipal Employment Relations Act (MERA), on the basis that the employes therein were employed in a separate division of the Municipal Employer. In November, 1971, upon the effective date of MERA, the criteria for establishing units in municipal employment was drastically changed. The change resulted in removing the right of employes in separate departments and divisions to establish separate units. Section 111.70(4)2a states in part as follows

taining 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, divisions, 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."

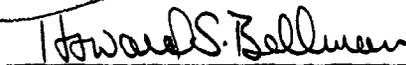
Because of the past bargaining history, and also because of the size of the existing Service Division unit, the Commission will not order an accretion of the employees in the operating division unit to the "overall" unit without permitting the employees some voice in the matter of accretion. In order to satisfy the statutory direction to avoid the fragmentation of units, the Commission has today directed a representation election among the eligible employees employed in the Service Division to determine their choice as to their collective bargaining representative. The ballot involved will afford the employees an opportunity to select either AFSCME, Teamsters, or no organization as their bargaining representative, with the specific understanding that should a majority of the employees voting select AFSCME as their bargaining representative, such result will be deemed an intention that the employees desire to be included in the "overall" unit. Should the employees select Teamsters as the bargaining representative, or should they reject representation, the employees in the Service Division shall remain a separate unit. 6/

Dated at Madison, Wisconsin, this 17th day of October, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

6/ Such determination is not inconsistent with the results and Certification issued by the Commission in City of Milwaukee, Case CXXXVII.