

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XV
No. 18285 ME-1101
Decision No. 13173

Voting Group No. 3

All regular full-time and regular part-time professional engineers, excluding supervisory, managerial, confidential, and all other employees of the City of New Berlin.

Voting Group No. 4

All regular full-time and all regular part-time craft employees (Plumbing Inspectors, Electrical Inspectors and Building Inspectors), excluding supervisory, managerial, confidential, and all other employees of the City of New Berlin.

The eligible employees in Voting Groups No. 2, 3 and 4 who were employed on November 21, 1974, except such employees as may prior to the election quit their employment or be discharged for cause, shall be given the opportunity to determine:

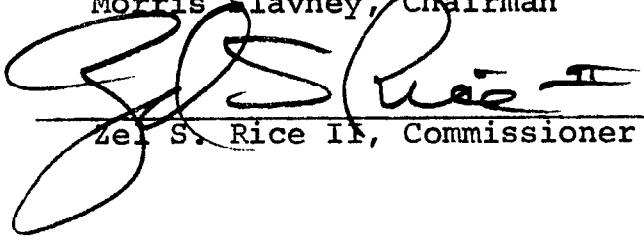
- (1) Whether a majority of the employees in each voting group desire to be included in a bargaining unit consisting of the employees set forth in Voting Group No. 1; and
- (2) Whether a majority of such employees voting in each voting group desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of New Berlin on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 21st
day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

APPROPRIATE UNIT

During the course of the hearing, the Petitioner requested a residual unit of all presently unrepresented employees, 1/ namely:

"All regular full time and regular part time employees of the City of New Berlin excluding elected officials, department heads, supervisory employees, seasonal employees, and employees in previously certified bargaining units."

The Municipal Employer objected to the phrasing of the appropriate unit on the basis that the City of New Berlin is likely to experience rapid construction requiring a rapid expansion of the municipal work force. It was suggested that the unit should be limited to departments or classifications within departments. It further objected to the inclusion of three Park and Recreation Department employees on the basis that by virtue of their outdoor, manual work, they lacked a community of interest with the remaining employees in the desired unit, which consists of office and clerical employees.

The evidence submitted by the Municipal Employer indicates that it will experience a high growth rate in industry and housing in approximately five years. There are currently no plans for immediate expansion of the municipal work force. The submitted evidence indicates that growth is expected to be similar to past patterns of growth. Further evidence indicates that the sought unit includes the park maintenance workmen and one park maintenance handyman. The park maintenance workmen perform general maintenance, groundskeeping, forestry, construction work; maintain and repair vehicles, equipment and machinery. The park maintenance handyman performs routine and moderately difficult manual work in the maintenance of park areas and facilities. While these duties are predominately outdoor, manual, the remainder of the sought unit is almost all indoor, technical or clerical.

In establishing bargaining units pursuant to Section 111.70(4)(d) 2a 2/ we ordinarily include in a single bargaining unit employees employed in related classifications, requiring similar education and/or training and in which the included employees share similar backgrounds and aspirations, 3/ to avoid fragmentation of bargaining units, a policy set forth in said statutory provision. Expanding unit considerations are, in part, also based upon avoidance of a large group of new employees with dissimilar interests. 4/ In view of the probable length of time it will take for this unit to expand, all remaining considerations are adequately pro-

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- 1/ Teamsters Local 200 presently represents Highway Department employees in one unit, and employees in the Sewer and Water Department is another unit.
- 2/ All citations unless otherwise noted are to the Municipal Employment Relations Act.
- 3/ Dane County (10492-A) 3/72.
- 4/ Cf., Family Heritage Nursing Home (8265) 11/65, p. 4.

tected by the right to a subsequent election where there exists a question of representation. 5/ We, therefore, have established a unit of related classifications and have excluded therefrom the Park Maintenance Workman and Park Maintenance Handyman classifications, which positions clearly do not have the same interests as the remainder of the sought unit.

Professional, Craft and Confidential

During the course of the hearing, the parties stipulated that Engineer, John Graber, is a professional employe within the meaning of Section 111.70(1). Issues arose as to the professional or craft status of the Children's Assistant Librarian, Reference Cataloger, Plumbing Inspector, Electrical Inspector and Building Inspector, and the confidential status of the Deputy City Clerk.

Children's Assistant Librarian

While this position requires two years of applicable college courses in library science or administration, we conclude that such position is not a professional position since the requirements thereof do not meet the criteria set forth in the statutory definition of the term "professional employe" and, therefore, the Children's Assistant Librarian is included as an eligible in Voting Group No. 1.

Reference Cataloger

The Reference Cataloger, Genevieve Harrison, presently possesses a college degree in library science. The position description requires such degree and states the duties of the position as follows:

"POSITION DESCRIPTION/FUNCTIONS: Performs complex classification and cataloging, reference and research and book selection activities; assists in planning and developing library programs; performs various library administrative duties in assisting the City Librarian."

We hold such is a professional position.

Plumbing Inspector

The position description requires a master's plumbing license for this position. Section 145.01(2) and 145.06 make it clear that a master plumber possesses qualifications beyond those of a journeyman. Section 111.70(1)(f) states:

"(f) 'Craft employe' means a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft."

We hold the Plumbing Inspector is a craft employe.

Electrical Inspector

The position description of this position requires the following qualifications:

"More than three years of experience as an electrician including considerable knowledge of the methods and practices involved in constructing, installing and operating a variety of electrical

5/ Cf. Harnishfeger Corporation (1178) 12/46; St. Francis Hospital (4340) 9/46; Family Heritage Nursing Home, supra.

installations, equipment and appliances, and of standard testing devices."

We find that the Electrical Inspector is a craft employee.

Building Inspector

The position description of this position specifically requires that the inspector be a journeyman carpenter or its equivalent. We find that the Building Inspector is a craft employee.

Deputy City Clerk

The Municipal Employer contended that the Deputy City Clerk, Florence Greve, should be excluded from the instant unit as confidential. The Petitioner contended that such is not presently a confidential position. The parties stipulated that there is presently excluded no confidential clerical employee. Although the Municipal Employer indicates that it intends to assign confidential duties to Greve, she has not been present in any executive session of the Common Council, collective bargaining sessions, or grievance meetings or disciplinary matters. The previous grievance matter which arose in another bargaining unit was entirely handled by supervisory and managerial personnel. Such employee has never been privy to any confidential matters dealing with the Municipal Employer's labor relations.

Since there is no evidence indicating that the Deputy City Clerk performs confidential duties on a regular basis, we will not speculate as to the future status of such position. 6/ The Deputy City Clerk is, therefore, included among the eligibles in Voting Group No. 1.

VOTING GROUPS AND UNITS

Section 111.70(4)(d)2a of the Municipal Employment Relations Act provides that:

"2.a. 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, 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. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit."

The Commission is satisfied that the two professional positions, namely, the Reference Cataloger and Engineer have an insufficient community of interest to place them in a single professional voting group or unit, and, therefore, we have placed such positions in two separate voting groups. However, there exists a community of interest among the Plumbing, Electrical and Building Inspectors sufficient to place them in a single voting group since such positions involve the building trade crafts.

6/ Juneau County (Pleasant Acres Infirmary) (12814) 5/74; Outagamie County (11923) 6/73.

The Petitioner seeks to represent all the otherwise eligible employees, that is, the non-craft and non-professional employees as well as the craft and professional employees, in a single unit. The Commission has no lawful authorization to place craft and/or professional employees in a unit of non-craft and non-professional employees. However, the above-quoted Section of MERA permits the Commission to provide craft and professional employees an opportunity to vote for inclusion in the non-craft and non-professional unit. The representation ballots cast by the employees in the two professional voting groups will be challenged by the Commission's agent who conducts the balloting. The Commission's agent will also challenge the ballots cast by the employees in the craft voting group. The sequence of counting the ballots shall be as follows:

1. (a) The ballots cast by the professional employees in each separate professional voting group as to their desire to be included in the non-craft/non-professional voting group will be counted first.

(b) If a majority of the eligible professional employees in each professional voting group do not vote in favor of inclusion in the non-craft and non-professional unit, the challenged representation ballots cast by the professional employees will be opened and counted separately. If the professional employees vote in favor of being included in the non-craft/non-professional voting group, the Commission's agent shall open the challenged ballots and deposit said challenged ballots in the ballot box, utilized in the non-craft/non-professional voting group election in such a manner so as to preserve the secrecy of the ballots.

2. (a) The ballots cast by the craft employees as to their desire to be included in the non-craft/non-professional unit will then be tallied.

(b) If a majority of the eligible craft employees do not vote in favor of inclusion in the non-craft/non-professional voting group, the challenged representation ballots cast by the craft employees will be opened and counted separately. If the craft employees vote in favor of being included in the non-craft/non-professional voting group, the Commission's agent shall open the challenged ballots and deposit said ballots in the ballot box utilized in the non-craft/non-professional voting group election in such a manner so as to preserve the secrecy of the ballots.

3. The ballots cast by the non-craft/non-professional employees will then be counted, together with the co-mingled ballots, if any, of the professional and/or craft employees.

In the event that the employees in the professional and craft voting groups vote for inclusion in the non-craft/non-professional unit, the appropriate bargaining unit shall consist of all regular full-time and regular part-time employees, including craft and professional employees of the City of New Berlin, excluding elected officials, department heads, supervisors, confidential employees, seasonal employees and employees employed in previously certified bargaining units.

Should the professional and/or craft employees in any of the professional or craft voting groups reject inclusion in the non-professional/

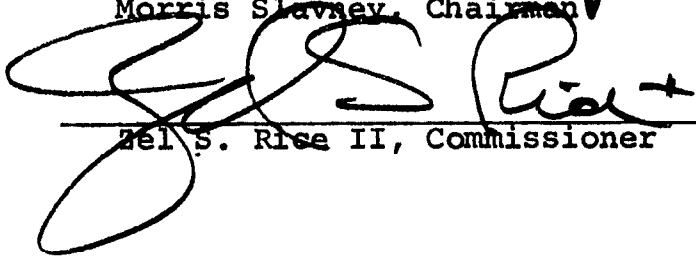
non-craft unit, such professional and/or craft voting groups shall constitute separate units or unit, as the case may be.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner