

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

- - - - -
In the Matter of the Petition of :

GENERAL DRIVERS, DAIRY EMPLOYEES AND :
HELPERS LOCAL UNION NO. 579, :
affiliated with INTERNATIONAL :
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, :
WAREHOUSEMEN AND HELPERS OF AMERICA :

Case I
No. 18449 ME-1120
Decision No. 13400

Involving Certain Employees of :

CITY OF MILTON :
- - - - -

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing on behalf of the Petitioner.
Roethe and Buhrow, Attorneys at Law, by Mr. Jeffrey T. Roethe, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

General Drivers, Dairy Employees and Helpers Local Union No. 579, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, having petitioned the Wisconsin Employment Relations Commission to conduct a representation election, pursuant to the Municipal Employment Relations Act in a bargaining unit consisting of all employees of the City of Milton employed in its Street, Sanitation and Sewer Departments; and a hearing on said petition having been conducted at Milton, Wisconsin, on December 4, 1974, Sherwood Malamud, Hearing Officer being present, and the Commission having considered the evidence, and being satisfied that a question has arisen concerning representation for certain employees of the 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 thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all employees employed on the Street Crew, the Sanitation Department and the Sewage Plant excluding office and clerical employees, supervisory, confidential and managerial employees, and all other employees of the City of Milton, who were employed by the Municipal Employer on February 28, 1975 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 General Drivers, Dairy Employees and Helpers Local Union No. 579, affiliated with International Brotherhood

No. 13400

of Teamsters, Chauffeurs, Warehousemen and Helpers of America, for the purpose of collective bargaining with the above-named Municipal Employer, on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

INTRODUCTION:

At the outset of the hearing, Local 579 moved to amend its petition to include the Water Department employee in an amended unit described as:

"All employees employed by the City of Milton in its Street Department, Water Department, Sanitation Department including Garbage Collectors, and Sewer Department but excluding office and clerical employees, supervisory employees and all other employees."

Local 579 indicated that should the Commission determine to exclude the Water Department employee from the above unit, then it would stand elections in a unit comprised of employees of the Street, Sanitation and Sewer Departments, as well as in a Water Department unit. The Municipal Employer, on the other hand, opposed the Union's attempt to include the Water Department employee in an amended unit, and the Municipal Employer was opposed to the Commission directing an election in the Water Department unit without the Petitioner filing a separate petition and the Commission scheduling an additional hearing thereon. The Hearing Officer deferred ruling on the Petitioner's motion to include the Water Department employee in the unit; however, the parties introduced testimony and presented written arguments on this issue.

During the course of the hearing, two eligibility questions arose concerning the supervisory status of the Superintendent of Streets, Charles Fischer and the Sewage Plant Operator, Jeffrey Rapaal.

Unit Question

The City of Milton employs eight individuals (including Fischer and Rapaal) in its Street, Sanitation and Sewer Departments (these three departments comprise the City of Milton Department of Public Works). David Schultz is the only full-time employee employed in the City's Water Department. Charles Bingham, as Director of Public Works, supervises all employees in the Street, Sanitation and Sewer Departments, and as Superintendent of the Water Department, he supervises the one Water Department employee. The Water Department was organized under Section 198.22 of the Wisconsin Statutes, and as such, it is a municipal corporation which is governed by a Water Commission consisting of five members appointed by the Mayor and approved by the Milton City Council. One of the five members, under the City's ordinance establishing the Water Commission, must be a member of the Milton City Council.

Petitioner maintains that the common supervision of the Street, Sanitation and Sewer employees and the Water Department employee, by Charles Bingham, Director of Public Works, the regular use of employees on the Street Crew to fill in for the Water Department employee on weekends and on his vacations; and the fact that the fringe benefits enjoyed by Schultz, the Water Department employee, are identical to the fringe benefits of City of Milton employees establishes a community of interest between the Water Department employee and the employees in the Street, Sanitation and Sewer Departments, such that the establishment of a unit in the Water Department and one in the Street, Sanitation and Sewer Departments would only serve to fragment employee units in the City of Milton.

The Municipal Employer argues that the Water Department is a separate legal entity with an independent Water Commission charged with the responsibility of managing the Water Department. The City admits that City employees do work at the Water Department, however, the Water Department reimburses the City for such time.

Recently, the Commission in the City of Sparta Water Utility, Decision No. 12912, 8/74, at page 3, determined that it would be inappropriate to include employees of a Water Utility established under Section 198.22 with employees of Sparta's Department of Public Works, because:

"The Water Utility budget and entire operation is independent of any other body. The Water Utility does its own hiring, firing and sets its own salaries, wages, hours, working conditions and other terms of employment without consultation with the City Council, although traditionally, the Water Utility has followed the pattern set by the Council in many of these areas. There is some interchange of equipment between the City and the Water Utility, but unlike other City departments, rent is paid for the use of such equipment."

The City of Milton Water Department is a separate legal entity, and, therefore, the Commission concludes it would be inappropriate to include the Water Department employee in a unit of employees of a separate and distinct Municipal Employer. Therefore, the Commission has today, directed an election among the employees of the City of Milton Street, Sanitation and Sewer Department employees, and the Commission has also directed an election in a separate unit comprised of all employees of the Milton Water Department. 1/

Eligibility

Charles Fischer, as Superintendent of Streets for the City of Milton, is the second ranking official in the City's Department of Public Works, which comprises the City's Street, Sanitation and Sewer Departments. When Fischer was promoted to Superintendent, he received an increase in salary from \$3.74 per hour to a \$10,300 annual salary; despite the fact that Fischer is a salaried employee, Fischer still receives overtime pay. Fischer schedules the daily work for the five-man street crew. He counsels employees whose work is not up to par, and he calls out the crew to clear snow, although the latter function sometimes is exercised only after consulting with the Director of Public Works, Charles Bingham. Fischer spends approximately 95 percent of his time performing the same tasks and duties as other employees on the street crew. He does not possess the authority to hire and fire employees or effectively recommend same. 2/ Due to the size of the crew, Bingham discusses the hiring of prospective employees with Fischer in the same manner that he discussed such matters with him prior to his promotion to the position of Superintendent. The Commission is satisfied that Fischer is a leadman, acting foreman, and thus he is eligible to participate in the election.

Jeffrey Rapaal is the Sewage Treatment Plant operator. He is the only regular full-time employee assigned to the Sewage Treatment

1/ Milton Municipal Water Utility a/k/a City of Milton (Water Dept.)
(Decision No. 13401) 2/75.

2/ The Director of Public Works received only one recommendation from Fischer to hire an employee and that pertained to the hiring of Fischer's son as a part-time employee.

Plant. Every third weekend, Rapaal works in the Water Department. Rapaal spends approximately 30 to 40 percent of his time performing the same tasks and duties as other employees of the street crew. Although Rapaal receives a salary of \$8,500 per annum, this represents approximately the annual wage of an employee at the top rate in the Street and Sanitation Departments. The Municipal Employer claims Rapaal is a supervisor because he has authority to call in employees and assign overtime on those occasions when it is necessary to repair the sewage lifting stations, etc. This authority to call in employees to perform routine work is exercised sporadically by Rapaal; other than the above occasion, Rapaal supervises no one other than himself. In light of Rapaal's lack of authority to hire, fire, discipline or effectively recommend same, the Commission concludes that Rapaal is not a supervisor, and thus he is eligible to participate in the election. 3/

Dated at Madison, Wisconsin this 28th day of February, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney -
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

3/ See City of Lake Mills (Decision No. 9516-B) 1/75, where a Waste Water Treatment Plant superintendent was included in an overall unit of employees.