

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
LOCAL 71, WISCONSIN COUNCIL OF	:	
COUNTY AND MUNICIPAL EMPLOYEES,	:	Case XXVII
AFSCME, AFL-CIO	:	No. 18916 MA-1166
	:	Decision No. 13527-A
For Clarification of Bargaining	:	
Unit of Certain Employees of	:	
	:	
CITY OF KENOSHA	:	
	:	

Appearances:

- Mr. Michael Benti, Representative, on behalf of Local 71, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.
- Mr. James G. Warzon, Supervisor of Personnel, on behalf of City of Kenosha.
- Mr. Anthony Paras, Representative, on behalf of Amalgamated Transit Union - Division 998.

ORDER CLARIFYING BARGAINING UNIT AND DIRECTING ELECTION

Local 71, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, herein Local 71, having filed a petition with the Wisconsin Employment Relations Commission, herein Commission, wherein it requested that the Commission determine whether the Secretary to the Mayor, Secretary to the Director of Parks, Electricians, Manager of Airport Operations, Transit Dispatchers, Transit Service Attendants, and Golf Course Supervisor, all employed by the City of Kenosha, herein City, should be included in or excluded from, an existing collective bargaining unit represented by Local 71; and hearing on said petition having been held on May 8, 1975, at Kenosha, Wisconsin, before Hearing Officer Amedeo Greco; and Amalgamated Transit Union - Division 998, herein Division 998, having intervened in the proceeding because of its interest in representing the Transit Dispatchers and Transit Service Attendants 1/; and Local 71 and the City having there agreed that the Secretary-Stenographer to the Director of Parks 2/ should be included in the unit; and Local 71 and the City having further agreed that Electricians were craft employes who should be accorded a separate representation election to determine whether they wish to be included in the unit represented by Local 71; and Local 71 and the City having orally stipulated that the Commission should also determine the status of a classification which was not listed on the petition, i.e., the Clerk Stenographer III in the Comptroller's office, hereinafter referred to as the Payroll Clerk; and the Commission having considered the petition, and the record and the arguments of the parties;

1/ Division 998's interest at the hearing was limited to these two classifications. As a result, it took no position regarding the status of the other remaining disputed classifications.

2/ Designated on the petition as Secretary to the Director of Parks.

NOW, THEREFORE, it is

ORDERED

That the Secretary to the Mayor, the Payroll Clerk, the Manager of Airport Operations, the Transit Dispatchers and Transit Service Attendants are excluded from the unit involved; and that the Secretary-Stenographer to the Director of Parks, and the Golf Course Supervisor are included in said unit; and that therefore the unit involved is hereby clarified to read:

"Employees of the City of Kenosha employed in the Central Service, Street, and Waste Divisions of the Department of Public Works, the Department of Parks, in the Construction, Filtration, Pumping and Meter Divisions of the Water Department, in the Sewage Treatment plant, in the Parking Commission, in the Department of Finance (including Purchasing Division), Police Department, Department of Inspection, Administration, and Engineering Divisions of the Department of Public Works, Department of Health and the Office Division of the Water Department represented by Local 71, AFSCME, including the Secretary-Stenographer to the Director of Parks and the Golf Course Supervisor."

IT IS FURTHER ORDERED 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 which all Electricians, exclusive of supervisors, employed by the City of Kenosha on August 26, 1975, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of such employes desire to be represented by Local 71, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the above-named Municipal Employer on the question of wages, hours, and conditions of employment; and (2) whether they wish to be included in the above noted collective bargaining unit presently represented by Local 71, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

Given under our hands and seal at the
City of Madison, Wisconsin this *26th*
day of August, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING
BARGAINING UNIT AND DIRECTING ELECTION

As noted above, it was agreed at the hearing that the Secretary-Stenographer to the Director of Parks should be included in the unit. Therefore, such position is included in the unit. Additionally, it was stipulated that Electricians were craft employes, and that they should be accorded a separate election to determine whether they desired to be included in the unit represented by Local 71. The Commission will therefore direct a representation election among that group. Those employes will first vote on whether they desire Local 71 to represent them for collective bargaining purposes and, secondly, whether they wish to be included in the above-described unit. Should the Electricians vote for such inclusion, the unit will be so clarified. 3/

As to the remaining disputed classifications, Local 71 maintains that the Secretary to the Mayor, the Payroll Clerk, the Golf Course Supervisor, the Supervisor of Airport Operations, the Transit Dispatchers, herein Dispatchers, and Transit Service Attendants, herein Attendants, all share a community of interest with the unit employes which Local 71 represents, and that, therefore, they should be included in the unit. Division 998, on the other hand, claims that the Dispatchers and Attendants share a community of interest with the other transit employes which Division 998 represents, and that said two classifications should be included in the transit unit. The city opposes the requested inclusion of the Secretary to the Mayor and the Payroll Clerk, contending that they are confidential employes. Further, the City maintains that the Supervisor of Airport Operations and the Golf Course Supervisor are supervisory or managerial employes and that they, too, should be excluded from the unit. Lastly, the City claims that the Dispatchers and Attendants should be included in the unit represented by Division 998 because of the community of interest which those two classifications share with transit employes.

The Secretary to the Mayor

The employe in this classification, Ms. Joyce Halland, works directly for the Mayor of Kenosha as his personal secretary. Ms. Halland answers the telephone, sorts mail, takes dictation, types and files correspondence, and attends various meetings between the Mayor and other City officials. In all of these various activities, Ms. Halland has direct access to matters affecting the City's labor relations. Thus, Ms. Halland assists in typing and preparing the City's collective bargaining proposals, before they are presented to various unions. Ms. Halland also attends confidential meetings where City officials discuss the status of collective bargaining negotiations. Further, Ms. Halland reads all correspondence to and from the Mayor, including those referring to collective bargaining matters, grievances, and other confidential personnel matters. Ms. Halland performs all of the foregoing activities on a regular and frequent basis.

Accordingly, because Ms. Halland has direct access to confidential matters relating to the City's labor relations, we find that the position

3/ That election will be conducted pursuant to Section 111.70(4)(a)2a of MERA which provides for the establishment of separate units for craft employes and which also states that, if they so choose, craft employes can be included in a unit of non-craft employes. City of Oak Creek (10890) 3/72, Portage County (11038) 9/72.

of Secretary to the Mayor is a confidential employe 4/ and therefore, is excluded from the collective bargaining unit. 5/

The Payroll Clerk

The employe in this classification, Ms. Carol Stancato, works in the Comptroller's office. She supervises the payroll for all City employes, helps prepare the City's budget, and analyzes financial records. Additionally, Ms. Stancato calculates the cost of the various contract proposals submitted by the City and unions in collective bargaining negotiations, and meets with City representatives at closed budget meetings to discuss the cost of such proposals and the status of negotiations, where said representatives determine what contract proposals can or cannot be met. Ms. Stancato also helps type some City contract proposals before they are presented to the unions. Moreover, Ms. Stancato has direct access to the files of all City employes, which include confidential personnel matters.

Inasmuch as Ms. Stancato regularly performs the above duties, we find that she has access to confidential matters affecting the City's labor relations and that, therefore, she occupies a position which is confidential in nature, and therefore she is excluded from the collective bargaining unit. 6/

The Supervisor of Airport Operations

This is a newly created position which its occupant, Roger Chapman, has held for only a few months. The City has recently established this position as part of its plans to enlarge its airport facilities. Presently, Chapman performs some manual labor at the airport such as cutting grass, plowing snow, cleaning culverts, etc. Additionally, since no other city employes work at the airport, Chapman does not supervise anyone. While these factors tend to support Local 71's claim that Chapman should be included in the unit, the record reveals other countervailing factors which indicate that Chapman is a managerial employe, in that Chapman serves as the City's liaison representative with the Federal Aviation Administration, establishes airport policies, conducts flight seminars, and attends various conferences dealing with airport operations. Further, Chapman is responsible for supervising construction and maintenance work by outside contractors at the airport, assuring compliance with specifications, and has the authority to order the work be altered or redone to meet contract specifications. Chapman has also negotiated airport leases with various vendors and he has made recommendations as to whether said leases should be accepted by the City. Chapman has the authority to make small purchases on behalf of the airport, and it is contemplated that his discretion to commit the City's financial resources will be expanded as he gains experience in his position and as the reorganization of the airport operations takes place. Moreover, once the airport is enlarged, Chapman will then be in direct charge of day-to-day operations, will supervise airport employes, and will make budget recommendations.

4/ In so finding, the Commission is aware of Local 71's claim that Ms. Halland, like Ms. Stancato, infra, had had dues deducted under the contractual fair share requirements. This factor, however, standing alone, is not dispositive of an employe's legal status in a collective bargaining unit especially where, as here, the evidence conclusively shows that such an employe must be excluded from the unit because of the statutory proscription which excludes confidential employes in such units.

5/ See Village of Greendale (11019) 5/72 and Appleton Water Dept. (13130) 10/74.

6/ Ibid.

The Commission concludes that these latter factors outweigh the former and that the Supervisor to Airport Operations is a managerial position, which warrants exclusion from the unit. 7/

Golf Course Supervisor

The occupant of this position, Martin Matye, is responsible for maintaining the City's nine hole golf course. Matye spends the vast bulk of his time performing routine maintenance work on the course, with the remainder being spent on directing the work to be done, keeping records, ordering chemicals, fertilizers and equipment. Matye is directly supervised by the Superintendent of Parks, Santo Principe, who is responsible for the City's recreation program. Matye is assisted by two employes, a regular full-time employe, Gary Haubrich, and a regular part-time seasonal employe. Matye assigns them overtime, pursuant to the City's fairly well established procedure as to when such overtime is needed. When these two employes desire sick or vacation leave, they contact Principe, not Matye. While Matye can recommend which seasonal employes should be retained, he neither hires nor fires employes. Similarly, Matye has never disciplined any employe, adjusted any grievances, or evaluated employes for promotion purposes. As to levels to compensation, Matye is salaried and earns approximately a dollar an hour more than Haubrich, who is paid on an hourly basis. However, whereas Matye is given compensatory time for working overtime, Haubrich is directly paid for such overtime. Furthermore, with respect to Matye's degree of authority, Principe, Matye's direct supervisor, acknowledged at the hearing that Matye does not have any more supervisory authority than does Parks Foreman George Hoffman, who is a leadman and who is in the collective bargaining unit.

Based upon the foregoing factors, the Commission finds that Matye is primarily a working foreman, 8/ who at best exercises only incidental supervisor authority, which is de minimus in nature. Therefore the Commission finds that the position of Golf Course Supervisor is included in the collective bargaining unit.

Dispatchers and Attendants

Inasmuch as these two separate classifications center on the City's transit operations, they are considered together.

The record shows the two Dispatchers primarily schedule and dispatch bus drivers, call in replacement bus drivers, recommend discipline of drivers and help maintain records. The Dispatchers earn about 50 cents an hour more than the drivers, and it appears that driving experience is a necessary prerequisite for the Dispatcher job. The Dispatchers work the same hours and days as do the drivers. The Dispatchers and drivers presently work out of a municipal garage in which the buses and other municipal equipment are maintained. The City plans on opening a new bus facility in October, 1975 which will house only its bus operations. At that time, the Dispatchers and all other bus personnel will be transferred to the new facility. Thus, all bus personnel, including the Dispatchers, will be under the common supervision of the Terminal Operations Manager.

Turning to the Attendants, the record shows that the employes in this classification will not be hired until the new bus facility opens in

7/ See City of Ashland (11860-A) 6/73.

8/ Juneau County (12814) 5/75 and Greenfield School District No. 6 (10788) 2/72.

October, 1975. Nonetheless, the parties agreed at the hearing that the Commission should determine the status of this classification based upon the contemplated duties which these employes will perform. As to that, the evidence discloses that the Attendants will primarily wash, clean, and fuel buses, check oil and water levels, check tire pressures, tow buses for repairs, and maintain cleanliness of the shop area by performing janitorial tasks. The Attendants will work approximately the same hours and on the same days as the bus drivers. Like the Dispatchers, the Attendants will be under the common supervision of the Terminal Operations Manager.

In support of its position, Local 71 points out that it presently represents Bus Mechanics and argues that the Dispatchers and Attendants share a community of interest with the Mechanics and that, as a result they should be included in the same unit. However, the record reveals that the Mechanics will be under separate supervision at the new facility and that they, unlike the Dispatchers and Attendants, will not be supervised by the Terminal Operations Manager. Moreover, it is significant that the latter classifications do not in any way assist the Mechanics in the performance of their duties. Accordingly, and because the record establishes, for the reasons noted above, that the Dispatchers and Attendants share a greater community of interest with the bus drivers presently represented by Division 998, the Commission will exclude these classifications from the unit represented by Local 71.

Dated at Madison, Wisconsin this *26th* day of August, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

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