

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN
AND HELPERS UNION LOCAL 446

Involving Certain Employees of
CITY OF MEDFORD

Case VIII
No. 18580 ME-1136
Decision No. 13609

Appearances:

Goldberg, Previant and Uelmen, Attorneys at Law, by Mr. Thomas J. Kennedy, appearing for the Petitioner.
Curran and Brandner Law Office, by Mr. Robert L. Brandner, City Attorney, City of Medford, appearing for the Municipal Employer.

DIRECTION OF ELECTION

Chauffeurs, Teamsters, Warehousemen and Helpers Union Local No. 446 having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the Municipal Employment Relations Act among certain employees of the City of Medford, Wisconsin; and hearing on said petition having been held on January 29, 1975, at Medford, Wisconsin, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the petition and evidence and being satisfied that a question of representation has arisen among certain employees of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Direction in the collective bargaining unit consisting of all law enforcement employees of the City of Medford, excluding supervisors and all other employees of the Municipal Employer, who were employed by the Municipal Employer on May 6, 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 Chauffeurs, Teamsters, Warehousemen and Helpers Union Local 446 for the purposes 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 6th day of May, 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

During the course of the hearing held on January 29, 1975, issues arose as to whether the Petitioner was a labor organization within the meaning of the Municipal Employment Relations Act (MERA), as to whether the petition filed herein should be processed in the absence of a showing of interest by the Petitioner, and as to whether an individual holding the title "Assistant Chief of Police" should be excluded from the unit, either as a supervisor or on the basis of his relationship to the Mayor of the City of Medford.

LABOR ORGANIZATION

Section 111.70(1)(j) of MERA defines "labor organization" as any employee organization in which employees participate and which exists for the purpose, in whole or in part, of engaging in collective bargaining with municipal employers concerning grievances, labor disputes, wages, hours or conditions of employment. The evidence adduced in the hearing establishes that the Petitioner is both a formal organization and is an affiliate of a nation-wide labor organization. Its member employees have a voice and vote in the direction of the organization, and the organization exists for the purposes of collective bargaining. Therefore, there is no doubt that the Petitioner is a "labor organization" as that term is defined in MERA.

SHOWING OF INTEREST

During the course of the hearing the Municipal Employer attacked the petition as being unsupported by any showing of interest and requested that the Petitioner be obligated to demonstrate, to the Commission or to the Hearing Officer, some showing of interest on the part of employees in the proposed bargaining unit. The Municipal Employer urges adoption of a showing of interest test similar to that followed by the National Labor Relations Board. The Hearing Officer denied the Municipal Employer's request at the hearing, and that ruling is re-affirmed here. No labor organization presently represents the law enforcement personnel. In such instances it has been the policy of the Commission to process election petitions without requiring that the labor organization filing the petition, or an intervening organization, demonstrate any showing of interest. 1/

ALLEGED SUPERVISORY STATUS OF ASSISTANT CHIEF

The Medford Police Department operates under the direction of the Mayor and Common Council of the City of Medford, sitting as the Medford Police and Fire Committee. That Committee recently promulgated a revised "police manual" setting forth the organization of the Police Department, the duties of the Chief of Police and the subordinate officers, and the policies of the Department. The Police and Fire Committee hires new employees, receives recommendations of the Chief on discharges of employees, reviews actions of the Chief to reprimand or suspend subordinate employees, and has, heretofore, set wages and benefits for police officers. It is

1/ Two Rivers Memorial Hospital (11513) 1/73; Algoma Memorial Hospital (11801) 4/73

apparent that the elected officials exercise substantial authority with respect to the Police Department and its employes. The Chief's duties are specified in the revised police manual and include the general administration and control of the Police Department. The parties stipulated that the Chief of Police is a supervisor.

The historical organization of the Police Department, as codified in the revised police manual, includes the Chief of Police, one Assistant Chief of Police and three Patrolmen. The City provides around-the-clock police coverage with this staff, all of whom work on a schedule of six days on duty, followed by two days off duty. The City operates one police vehicle. The Chief generally works a shift beginning at 7:00 a.m. and ending at 3:00 p.m. The Assistant Chief works that schedule on the days when the Chief is off duty, but otherwise works from 9:30 a.m. to 5:30 p.m. The Patrolmen are scheduled for shifts of 5:30 p.m. to 1:30 a.m. and 11:00 p.m. to 7:00 a.m., and as replacements for the Assistant Chief on the day shift on his off days. The Assistant Chief is paid a salary approximately \$100 per month greater than that paid to Patrolmen, and approximately \$25 per month less than that paid to the Chief. The Assistant Chief is also designated by the Police and Fire Committee as the "Chief Investigator" and is responsible for the detective function in the Police Department.

The Assistant Chief's involvement with the hiring of new employes has been as a member of a broadly based citizen's committee (along with the Chief and a State Patrol Trooper) which interviewed applicants for a position several years ago. A different hiring procedure was utilized for the most recent hiring of a police officer. While the Assistant Chief has filed charges against a subordinate officer and the Chief of Police to initiate some disciplinary proceedings before the Police and Fire Committee, his authority to reprimand, suspend or recommend discharge of employes was doubtful even to the Chief of Police, who otherwise testified that the Assistant Chief was there to "fill his shoes" when he was absent. There is considerable overlap between the work schedules of the Chief and the Assistant Chief, and only very limited overlap between the schedules of the top officers and those of the Patrolmen. While the Chief and the Assistant Chief have conferred from time to time on certain matters, such as the citizen's committee mentioned above, they do not maintain a regular practice of holding meetings or discussions of an administrative, managerial or supervisory nature. We therefore agree with the City that the title and additional salary of the Assistant Chief are in recognition of his greater seniority in the Police Department and his investigative function, rather than indicia of authority over other employes, and conclude that the Assistant Chief, Walter Pernsteiner, is not a supervisor within the meaning of Section 111.70 (1)(o) of MERA.

FAMILY RELATIONSHIP AS AFFECTING ELIGIBILITY

Walter Pernsteiner was first employed as a police officer some 11 to 13 years ago and has held the title of Assistant Chief of Police, at the selection and recommendation of the incumbent Chief of Police, for the past 11 years. Subsequent to his appointment to that rank, his first cousin, Charles Haffermann, was elected as an alderman and later as Mayor of the City of Medford. Haffermann is the incumbent Mayor, and the Union, citing our decision in City of South Milwaukee (7202) 7/65, 2/

2/ The South Milwaukee case involved children of members of a library governing board being excluded from an election among library employes.

contends that Pernsteiner should therefore not be eligible to vote in a representation election. The City contends that Pernsteiner holds his employment without regard to the recent election of his cousin as Mayor, and that the relationship should not disqualify him from voting in the election. The Commission has never extended the exclusion of relatives of management agents from voting in representation elections to the level of cousins of any degree. We find the first cousin relationship too distant to warrant the exclusion of Pernsteiner from participation in the election which we have directed today. He is eligible to vote along with the three Patrolmen previously stipulated by the parties as eligible voters.

Dated at Madison, Wisconsin, this *btd* 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