

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

GENERAL DRIVERS AND DAIRY EMPLOYEES
UNION LOCAL NO. 563, affiliated
with INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Case LXVI
No. 18959 ME-1173
Decision No. 13611-A

For Clarification of the Bargaining
Unit of Certain Employes of

CITY OF APPLETON

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. Gerry M. Miller,
appearing on behalf of the Petitioner.

Mr. David G. Geenen, City Attorney, appearing on behalf of the Municipal
Employer.

ORDER CLARIFYING BARGAINING UNIT

General Drivers and Dairy Employees Union Local No. 563 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Petitioner, having petitioned the Wisconsin Employment Relations Commission to determine whether a Federally Funded Laborer position should be included in an existing collective bargaining unit of employes of the Street, Sanitation and Maintenance Division of the Department of Public Works, including office clerical employes of the Department of Public Works who are employed in the Municipal Service Building, exclusive of Supervisors, Professional and Managerial, Foremen, Superintendents, Confidential employes and other clerical personnel, in the employ of the City of Appleton; and hearing on such petition having been conducted at Appleton, Wisconsin, on May 22, 1975, Douglas V. Knudson, Hearing Officer having been present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and files the following

ORDER

That the collective bargaining unit consisting of all employes of the Street, Sanitation and Maintenance Division of the Department of Public Works, including office clerical employes of the Department of Public Works who are employed in the Municipal Service Building, exclusive of Supervisors, Professional and Managerial, Foremen, Superintendents, Confidential employes and other clerical personnel, appropriately includes the Federally Funded Laborer position.

Given under our hands and seal at the
City of Madison, Wisconsin, this 24th
day of July, 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

On an unspecified date prior to July 1, 1974, the Job Service (formerly known as Wisconsin State Employment Service) office in Menasha requested the Municipal Employer to employ two individuals as Laborers through a program entitled "Operation Mainstream". The Job Service explained that there would be no cost to the Municipal Employer for employing said individuals. The Municipal Employer did agree to employ said two individuals and on July 1, 1974, one of said individuals, Fernald Calvert, began working as a Laborer in the Sanitation Division of the Municipal Employer's Department of Public Works. Calvert has spent the vast majority of his employment as a picker on a three-employee crew assigned to a garbage collection truck. Said crew consists of two pickers and a driver. The other two crew members are in the bargaining unit and are covered by a collective bargaining agreement between the parties. Calvert works the same daily and weekly schedule, takes the same daily rest breaks, punches his time card at the same time clock, and receives his daily assignments in the same manner as do the other employees. Calvert is paid \$3.00 per hour for each eight hour day, but does not receive any additional payment when he works more than eight hours per day. However, he has received holiday pay as a result of the action of his supervisor in recording forty hours of work on Calvert's timesheets for those weeks when a holiday has occurred on a week-day. Said timesheets are forwarded to the Job Service, from which Calvert receives a State of Wisconsin payroll check on a biweekly basis. The other Laborers, with whom Calvert works, receive the contract rate of \$4.20 per hour. Except as noted above on holidays, Calvert has not received any of the fringe benefits provided in the contract between the parties. Calvert is covered by Workmen's Compensation through the State of Wisconsin.

When Calvert was hired, the Job Service informed the Municipal Employer that his position was funded through December 31, 1974. Subsequent to that date, the Job Service funded Calvert's position through June 30, 1975.

The Municipal Employer argues that Calvert was hired solely because his wages were paid by the State of Wisconsin, and further, that Calvert is a temporary employe without a reasonable expectancy of continued employment. In support of its position, the Municipal Employer cites County Work Experience Project Workers, Local Union Number 1 v. W.E.R.C. (1973), Dane County Circuit Court, Case No. 138-154, enf'g. W.E.R.C. 11411. In said case, the dismissal of the petition for election was based on the conclusion that:

"The positions in issue are not to be included in any existing bargaining unit or in a separate unit since they do not possess sufficient interests in common with employes in any existing unit, primarily on the basis that they are temporarily employed in 'make-work' positions."

In the instant matter, Calvert performs the same duties and works the same hours as other employes of the Municipal Employer, although Calvert is paid directly by the State of Wisconsin and does not receive the fringe benefits afforded to the other employes. The Commission has held that employes will not be excluded from a collective bargaining unit solely on the basis of the federal or state source of funding for that employe's position. 1/ Calvert's continued employment status, which is dependent on

1/ Vernon County (Sheriff's Department), (13451) 3/75; Weyerhaeuser Joint School District No. 3, (13395) 3/75.

fresh federal or state appropriations for the following fiscal year, is no different than positions previously included in bargaining units by the Commission. 2/ Furthermore, his situation is distinguishable from that of the employes in the County Work Experience case, supra, in that they were required to hold their positions to qualify for financial assistance from the County, and they were being counseled respecting job-holding in general, as well as working for the County. Also, they were terminated after a certain period on the ground of having received the program's "maximum benefit." The Commission concludes that the Laborer position, currently occupied by Calvert, is properly included in the existing collective bargaining unit.

Dated at Madison, Wisconsin, this 24th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

2/ Adams-Friendship Area Schools, (11881) 5/73.