

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DRIVERS, WAREHOUSE & DAIRY EMPLOYEES
UNION, LOCAL NO. 75 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN & HELPERS OF AMERICA

:
:
:
Case LVII
No. 19463 ME-1229
Decision No. 14008-A
:
:
:

Involving Certain Employes of
CITY OF GREEN BAY (WATER COMMISSION)

Appearances:

Mr. Glenn Tarkowski, Business Representative, International
Brotherhood of Teamsters, Chauffeurs, Warehousemen and
Helpers of America, 1546 Main Street, Green Bay, Wisconsin,
appearing on behalf of Local No. 75.
Mr. Mark Warpinski, Assistant City Attorney and Mr. Donald A.
VanderKelen, Labor Negotiator, both of 303 South Jefferson
Street, Green Bay, Wisconsin, appearing on behalf of the City.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

Drivers, Warehouse and Dairy Employees Union, Local No. 75, on April 15, 1980, filed a petition requesting the Wisconsin Employment Relations Commission to clarify a collective bargaining unit involving certain employes of the City of Green Bay, and a hearing having been held in the matter on May 15, 1980 at Green Bay, Wisconsin before Examiner James D. Lynch; and a post-hearing affidavit having been filed on the City's behalf by May 28, 1980; and the parties having filed post-hearing briefs by July 16, 1980; and the Commission having reviewed the evidence, arguments and briefs of the parties, and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Drivers, Warehouse and Dairy Employees Union Local No. 75 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, hereinafter referred to as the Union, is a labor organization existing for the purpose of representing employes through collective bargaining, and has its offices at Green Bay, Wisconsin.

2. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer and has its main offices at the City Hall, Green Bay, Wisconsin; and that the City is responsible for, among other items, providing water service to its inhabitants, and in that regard, the City has created a utility known as the Water Commission which is under the direction of its General Manager, Philip J. Utic; that in addition the City employs from time to time in said Water Commission (depending upon the season), some approximately seventy employes, eighteen within its Office Department, thirty-four within its Distribution Division, eight within its Filtration Division, nine within its Pumping Division, and one as a co-op program worker.

3. That on November 3, 1967, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive collective bargaining representative of all regular full-time and regular part-time employes, including custodial employes, in the employ of the Water Commission, excluding Commission officials, clerical employes, and supervisors. 1/

4. That on October 29, 1975, following an election conducted by it, the Wisconsin Employment Relations Commission certified the Union as the exclusive bargaining representative of secretaries, clerks and data processing employees employed by the Water Commission, but excluding Commission officials, supervisors as defined by the Act, employees in the Engineering Department, and all regular full-time and regular part-time employees. 2/

5. That during 1980, the Water Commission reclassified a secretary position, occupied by Kari L. Gardner, as a senior secretary position; and contended that the newly created reclassified position was confidential and therefore should be excluded from the bargaining unit described in Finding of Fact No. 4.

6. That on April 15, 1980, the Union filed the instant petition for unit clarification which recited among other things that:

"4. A question of representation has arisen concerning the employees in the claimed unit in that:

The Employer has unilaterally reclassified the bargaining unit classification of 'secretary' to that of 'senior secretary' and asserts that the classification is not covered by the current certification.

5. Any other relevant facts:

It is the Union's position that this new classification falls within the scope of the current certification."

7. That within the Water Commission's Office Division there are two unrepresented employees, namely, the Office Manager and the Assistant Office Manager; that within the City's Personnel Department, there are two confidential employees; that the Water Commission is represented in its labor relations matters including grievance adjustment, disciplinary matters, labor negotiations and questions regarding the instant reclassification by the City's labor relations representative; that the City has effective control of the labor relations of the Water Commission; that any confidential labor relations matters within the knowledge of the General Manager are minimal in nature and any confidential duties which he might assign to the occupant of the newly reclassified senior secretary position are de minimis.

Based upon the above and foregoing Findings of Fact, the Commission hereby makes and issues the following

CONCLUSION OF LAW

The individual occupying the newly reclassified senior secretary position does not perform sufficient duties of a confidential nature to render it a confidential position, and therefore the incumbent is a municipal employee within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law the Commission hereby makes and enters the following


ORDER CLARIFYING BARGAINING UNIT

IT IS HEREBY ORDERED that the position of senior secretary is properly included in the collective bargaining unit described in para. 4 of the Findings of Fact.

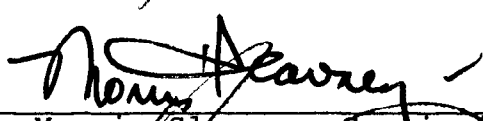
Given under our hands and seal at the
City of Madison, Wisconsin, this 11th
day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

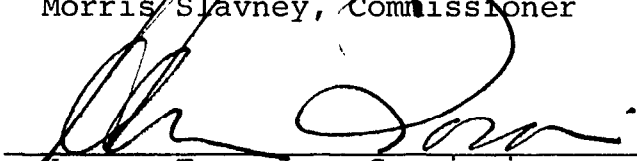
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

The City, contrary to the Union, contends that the secretary position recently reclassified as the senior secretary position at the Water Commission occupied by Kari L. Gardner is confidential and is not appropriately included within the collective bargaining unit. In support of its contention, the City avers that this position is confidential in view of the General Manager's substantial responsibility for labor relations matters existing at the Water Commission. The Union argues that any alleged confidential duties which may be performed by the occupant of the position are de minimis in nature, and are insufficient to warrant depriving the individual of her "employee" status under MERA.


As noted earlier, this position, prior to reclassification, has been included in the bargaining unit since its inception. Thus, the relevant question is whether there has been such a material change in circumstances or job duties to warrant changing the bargaining unit status of this position. While the City contends that the General Manager has substantial responsibility for labor relations matters at the Water Commission and, therefore, is entitled to the services of a confidential employee, the record does not support this contention.


In fact, the record establishes that the Water Commission is represented in its labor relations including grievance adjustment, disciplinary matters, labor negotiations and questions regarding this instant reclassification by the City's labor relations consultant. The record further establishes that the City has effective control of the Water Commission's labor relations. Other than conclusory statements proffered by the City in support of its claim, the record fails to establish that the General Manager has such labor relations responsibilities as would warrant the need for a confidential employee. Therefore, on the basis of the record herein it cannot be said that the incumbent of the senior secretary position performs confidential duties on anything other than a de minimis basis. Accordingly, the incumbent in this position is a "municipal employee" within the meaning of MERA, and remains appropriately included in the clerical collective bargaining unit.

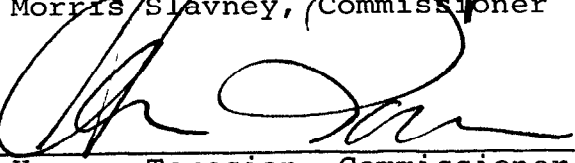
Dated at Madison, Wisconsin, this 14th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner