

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
CITY OF SHEBOYGAN
For Clarification of Bargaining Unit
of Certain Employes of
CITY OF SHEBOYGAN

Case XXVI
No. 19139 ME-1193
Decision No. 14359

Appearances:

- Mr. Clarence H. Mertz, City Attorney, appearing on behalf of the Municipal Employer.
- Mr. James L. Koch, Business Representative, AFSCME, AFL-CIO, Council #40, appearing on behalf of City of Sheboygan Employees, Local 2039.

ORDER CLARIFYING BARGAINING UNIT

The City of Sheboygan, hereinafter the Municipal Employer, having on April 25, 1975, filed a petition with the Wisconsin Employment Relations Commission wherein it requested that the Commission clarify a certified unit described as all regular full-time and regular part-time employes of the City of Sheboygan employed in the Street and Sanitation Department, Park Department, Municipal Auditorium and Armory, 7001 House Office, Wildwood Cemetary and Sewerage Treatment Plant, excluding elected officials, department superintendents, assistant superintendents, supervisors and City Hall employes, to determine whether the positions of Public Works Foreman I and Public Works Foreman II should be included or excluded from the unit described above; and a hearing in the matter having been conducted on May 30, 1975, Sherwood Malamud, Hearing Officer, being present; and the parties having submitted briefs by October 7, 1975; and the Commission having considered the evidence and briefs of the parties and being fully advised in the premises, makes and issues the following

ORDER

That the positions of Public Works Foreman I and Public Works Foreman II be, and the same hereby are, excluded from the above described unit.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of February, 1976.

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 July 15, 1966, the Commission directed that a representation election be held among certain employees in the Department of Public Works. (The complete description of the unit appears in the attached Order.) In its Direction of Election, the Commission determined that certain Public Works Foreman I and II positions were not supervisory and, therefore, were included in the unit. 1/ Thereafter, an election was held and WCCME, AFSCME, City of Sheboygan Employees, Local 1750 2/ was certified by the Commission as the exclusive bargaining representative for the unit.

The Municipal Employer has filed a petition for clarification of the bargaining unit with the Commission, requesting that the four Public Works Foreman I and the two Public Works Foreman II positions, presently included in the unit pursuant to the Commission's original decision, be excluded therefrom. 3/ The Employer maintains that the positions are now supervisory within the meaning of Section 111.70(1)(0)1, Wisconsin Statutes, since the job duties presently performed by the incumbents are substantially different from those performed when the Direction of Election was issued. The Union contends that the positions are not supervisory and should continue to be included in the unit.

The Commission originally concluded that the individuals occupying the positions of Public Works Foreman I and II ". . . exercise little independent judgment in assigning work and directing the work force and have limited effective authority to discipline employees. Generally they spend a majority of their time performing duties similar to those performed by employes in their various crews and they receive no additional wages for performing supervisory duties". Accordingly, the foremen were found to be working foremen, not supervisors. 4/

Some of the foremen's functions remain unchanged, despite the changes instituted in 1972 or 1973. The Foremen's supervisors, either the Assistant Superintendent of Streets and Sanitation, or the Assistant Superintendent of Parks and Forestry, continue to be primarily responsible for the planning and scheduling of work and the assignment of labor and equipment. The foremen do not have the authority to grant vacation time or sick leave or to impose a disciplinary layoff. They get approval from the Assistant Superintendent prior to granting an employe's request to take compensation time or to leave work due to illness.

However some of the duties presently performed by the incumbents differ from those performed when the Commission issued its Direction.5/ The substantial majority of the foremen's time is now spent supervising employes. They no longer work alongside the crew members, except on rare occasions, or when instructing employes. The Union has in fact objected to the Employer on an occasion when one of the foremen involved performed work normally done by the employes he directs.

1/ City of Sheboygan, Decision No. 7665, July, 1966. Three Public Works Foreman I and two Public Works Foreman II positions were found not to be supervisory; a fourth Public Works Foreman I position was found to be supervisory; no determination was made concerning a fifth Public Works Foreman I position, since no evidence was adduced with regard to the position.

2/ The present representative is Local 2039. No explanation for the change appears on the record.

3/ Those holding the positions of Public Works Foreman I are N. Johnson, G. Raml, W. Mark and J. Scheidel. A. Champeau and R. Mahler occupy the positions of Public Works Foreman II.

4/ Above note 1.

5/ The changes in job duties occurred in 1972 or early 1973.

When an employe who has worked under a Public Works Foreman I and/or II is being considered for promotion, his foreman or foremen rate the employe. A poor rating eliminates the individual from contention. A foreman also rates an employe twice during his six month probationary period and, if he does not give the employe a satisfactory rating, the employe is dismissed.

Although the foremen have the authority (at least since 1971) to initiate written warnings to employes for rule violations, and to recommend discipline, they have never done so. They have, however, given verbal warnings to employes.

The Commission is satisfied that the changes in the job duties of Public Works Foreman I and II are sufficient to reclassify the positions from working foremen to supervisor. Accordingly, the positions of Public Works Foreman I held by N. Johnson, G. Raml, W. Mark and J. Scheidel and the positions of Public Works Foreman II held by A. Champeau and R. Mahler should be excluded from the unit.

Dated at Madison, Wisconsin this 23rd day of February, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner