

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
DISTRICT COUNCIL 48, AFSCME, AFL-CIO	:	Case IX
Involving Certain Employes of	:	No. 13542 ME-534
CITY OF WEST ALLIS	:	Decision No. 9555-A
	:	
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In the Matter of the Petition of	:	
LOCAL 228 AND MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO	:	Case XXXIV
Involving Certain Employes of	:	No. 20243 ME-1301
CITY OF WEST ALLIS	:	Decision No. 14616-A
	:	
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In the Matter of the Petition of	:	
CITY OF WEST ALLIS	:	Case XXXVI
Involving Certain Employes of	:	No. 20435 ME-1325
CITY OF WEST ALLIS	:	Decision No. 14617-A
	:	
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Appearances:

Goldberg, Previant & Uelmen, S.C., Attorneys at Law, by  
Mr. Thomas J. Kennedy, appearing on behalf of Local 228  
and Council 48.  
Mr. Richard Featherly, Secretary-Treasurer, appearing on behalf  
of the Intervenor.  
Mr. William T. Schmid, City Attorney, and Mr. Michael J. Sachen,  
Assistant City Attorney, appearing on behalf of the  
Municipal Employer. 1/

ORDER AMENDING CERTIFICATION OF REPRESENTATIVE

Local 228 and Milwaukee District Council 48, AFSCME, AFL-CIO, hereinafter jointly referred to as AFSCME, having filed a petition with the Wisconsin Employment Relations Commission, requesting that the Commission amend the certified collective bargaining unit composed

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1/ After the first two days of hearing and prior to the third, Mr. Sachen became City Attorney and Mr. Schmid ended his representative capacity for the Municipal Employer.

of certain employes of the City of West Allis represented by said Union; and hearing having been held on April 26 and 30, 1976 at West Allis, Wisconsin before Ellen J. Henningsen, a member of the Commission's staff and having been continued until a later date; and during the course of the hearing the West Allis Engineering Technicians and Aides Association, hereinafter referred to as the Association, having been permitted to intervene on the basis of its claim that it represents certain of the employes involved herein; and the City of West Allis, hereafter referred to as the Municipal Employer, having filed a petition with the Commission on April 30, 1976 requesting further amendment of the unit represented by AFSCME; and the Commission on May 7, 1976 having ordered the petitions of both parties consolidated for purposes of hearings; and further hearing having been held on May 21, 1976; and during the course of the hearing, AFSCME and the Municipal Employer having verbally agreed to withdraw certain positions from their respective petitions; and on July 6, 1976 AFSCME and the Municipal Employer having filed with the Commission a written agreement setting forth the above verbal agreement; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1. That the description of the collective bargaining unit represented by Local 228 and Milwaukee District Council 48, AFSCME, AFL-CIO is hereby amended to read as follows:

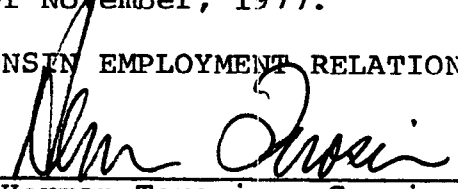
"All administrative and clerical employes of the City of West Allis who are employed in the following departments and divisions: Offices of the City Assessor, City Clerk, City Treasurer, City Comptroller, City Planner and City Sealer; Building and Zoning Department, Engineering Department, Department of Forestry and Public Grounds (City Hall); Health Department, Library Department, Public Works Department (City Hall); Purchasing Division; and the Police Department (including radio operators and parkettes), excluding supervisory and confidential employes, policemen, nurses, dental hygienists, engineering technicians and aides and all other employes."

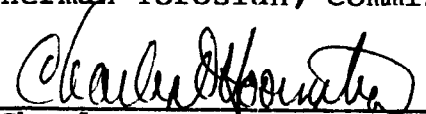
2. That since the position of Secretary I (Library), presently occupied by Ruth Boyle, is a confidential position, said position is excluded from the above-described bargaining unit; but that, however, since the positions of Account Clerk I (Health Department), presently occupied by Laverne Eisemann, and the position of Secretary I (Engineering Department), presently occupied by Dorothy Kochinski, are not confidential positions, they are included in the above-described bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER  
AMENDING CERTIFICATION OF REPRESENTATIVE

AFSCME is the certified collective bargaining representative of all employees in the collective bargaining unit consisting of all administrative and clerical employees of the Municipal Employer who are employed in the following departments and divisions: Offices of the City Assessor, City Clerk, City Treasurer, City Comptroller, City Planner and City Sealer; Building and Zoning Department, Department of Forestry and Public Grounds (City Hall); Health Department, Library Department, Public Works Department (City Hall); Purchasing Division; and the Police Department (including radio operators and parkettes), excluding supervisory and confidential employees, policemen, nurses and dental hygienists and all other employees. 2/ The composition of the unit was voluntarily agreed upon by AFSCME and the Municipal Employer prior to the representation election conducted in said unit.

In its petition, filed on March 2, 1976, AFSCME requested the Commission to clarify the above-described bargaining unit so as to include the following positions: Law Secretary I; Law Secretary II; Deputy Assessor; Assistant Assessor; Personnel Secretary; Assistant City Clerk; Assistant Treasurer; Comptroller; Deputy Comptroller; Accountant; Auditor I; Supervisor Data Processing; Programmer Analyst; Purchasing Agent; Director of Building and Zoning; Plumbing Inspector Supervisor; Electrical Inspector Supervisor; Secretary Stenographer (Engineering Department); City Planner; Planning Technician; Secretary Stenographer (Fire Department); Secretary to Mayor; Supervisor, Environmental; Licensed Practical Nurse; Librarian I; Librarian II; Librarian III; Secretarial Stenographer (Library); Administrative Clerk II (Public Works Department); and Secretary Stenographer (Public Works Department). On March 30, 1976, AFSCME amended its petition and requested that the unit also include the positions of Engineering Technician II, III, IV and V. At the hearing, AFSCME further amended its petition to include the positions of Engineering Aide and Engineering Technician I. The Association was permitted to intervene in the matter on the basis of its claim that it presently represents the Aide and Technicians.

After two days of hearing the Municipal Employer on April 30, 1976 filed its petition for unit clarification, claiming that the positions of Account Clerk (Department of Building and Zoning), Secretary (City Clerk's Office) and Account Clerk I (Health Department) should be excluded from the collective bargaining unit represented by AFSCME. The Municipal Employer also claimed in its petition that the following positions should be placed in a separate collective bargaining unit: Plumbing Inspector; Electrical Inspector; Building Inspector; Field Service Representative I, Field Service Representative II; Real Estate Agent; Environmentalist I; Engineering Technician I; Engineering Technician II; Engineering Technician III; Engineering Technician IV; Engineering Technician V; Engineering Aide; Plumbing

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2/ City of West Allis (9555) 4/70.

Inspector Supervisor; Electrical Inspector Supervisor; Deputy Assessor and Assistant Assessor. The Commission on May 7, 1976 ordered the petitions consolidated for purposes of hearing. The hearing on both petitions was concluded on May 21, 1976.

On July 6, 1976 AFSCME and the Municipal Employer filed with the Commission a "settlement agreement", wherein they agreed that the Municipal Employer would withdraw from its petition all positions except Account Clerk I (Health Department) and that AFSCME would withdraw from its petition, as amended, all positions except Secretary I (Library) (previously listed as Secretarial Stenographer), Secretary I (Engineering Department) (previously listed as Secretary Stenographer), Engineering Aide and Engineering Technicians I through V. AFSCME and the Municipal Employer also agreed that the positions of Assistant Assessor, Auditor I, Programmer Analyst, Planning Technician, Licensed Practical Nurse and Administrative Clerk II (Public Works Department) were to be included in the bargaining unit represented by AFSCME.

Thus, the issues to be determined by the Commission herein are whether the clerical positions, noted above, are or are not confidential employes, and whether the Engineering Aide and Engineering Technician positions should be included in the collective bargaining unit presently represented by AFSCME.

#### THE ALLEGED CONFIDENTIAL EMPLOYES

AFSCME contends that the individuals occupying the positions of Secretary I (Library), Account Clerk I (Health Department) and Secretary I (Engineering Department) are not confidential and, therefore, should be included in the bargaining unit presently represented by AFSCME. The Municipal Employer contends that the individuals occupying said positions perform confidential duties and, therefore, should be excluded from said bargaining unit. It is to be noted that confidential employes are excluded from the description of the existing bargaining unit.

#### Secretary I (Library)

Approximately twenty-five people work at the main library and two branch libraries which are physically separate from City Hall. Except for the Librarians and the Secretary I, who are not represented, Library employes are represented for collective bargaining purposes by AFSCME or Local 80. The Secretary I, Ruth Boyle, works for the Chief Librarian. Boyle is the only secretary employed by the Library Department, although Library Aides occasionally perform routine typing duties. Boyle opens and sorts mail, prepares the payroll, prepares purchase orders, answers the phone, types informational staff memos, types reports submitted to the Library Board and types Library Board minutes. Boyle maintains the Library's personnel files, the contents of which, except for pre-employment recommendations, are available to individual employes. The collective bargaining agreement between AFSCME and the Municipal Employer states that:

The personnel record of an employee in the bargaining unit would not be considered confidential except for:

- 1) Recommendations prior to employment with the City.
- 2) Recommendations as to promotion to a position outside the bargaining unit.

- 3) Records which might reflect upon the character of the employee, where the employee did not wish the Union to see the same.
- 4) Medical reports.

Boyle performs all the typing relating to personnel matters for the Library. She types the Chief Librarian's recommendations to the Library Board concerning hiring, promotion and discipline of employees, concerning reclassification, creation and deletion of staff positions and concerning alteration of library hours. These recommendations are not public knowledge, except that recommendations for or against promotion are discussed with the particular employee before the Chief Librarian makes her recommendation to the Board.

Boyle assists the Chief Librarian in the preparation of the proposed Library budget and types the Chief Librarian's budget recommendation to the Library Board. These recommendations are not public information. The Chief Librarian's proposed budget contains recommendations about reclassifications and about salary increases for unrepresented personnel. At the request of the Chief Librarian, Boyle also has gathered and typed statistical information for use by the Municipal Employer's negotiating team. Although Boyle would know who needed the information and why, she is not told what bargaining posture results from the information she provides.

Under AFSCME's contract with the Municipal Employer the Chief Librarian represents the Municipal Employer at the second level of the grievance procedure. She also becomes actively involved in the first step of the grievance procedure. When requested by the Chief Librarian, Boyle compiles information and types any materials, such as the personal notes of the Chief Librarian, concerning a grievance. No grievances have arisen involving bargaining unit employees during the last three years; Boyle has not been involved in grievance matters for a number of years. Should the need arise, Boyle would compile and type any information required for arbitrations and for hearings before the Commission concerning the Library; however, she has not been called on to do so for a number of years.

The Commission is satisfied that because of Boyle's participation in the preparation for the bargaining process and the grievance procedure, as noted above, we deem the position of Secretary I (Library) to be confidential, and, therefore, said position is excluded from the bargaining unit.

#### Account Clerk I (Health Department)

Laverne Eisemann has served as Account Clerk for several years and, as such, acts as secretary to the Health Commissioner, the head of the Health Department. Approximately thirty-three people are employed in this department, which is located in a building several blocks from City Hall. Most of these employees are represented for collective bargaining purposes either by AFSCME, Local 80, or a third labor organization. Eisemann opens and sorts mail, receives and records all revenue, issues purchase orders for supplies and keeps track of expenditures so that the budget is not exceeded. She prepares the payroll for part-time employees of the department and records the leave time and the overtime worked by all department employees. She maintains the personnel files on all department employees, the contents of which,

except for pre-employment references, are available to individual employes.

In conjunction with the Health Commissioner who has the final word on the amounts to be proposed, Eisemann prepares departmental budget recommendations for the Common Council based on the prior year's expenses and projected expenditures for the coming year. These proposals become public when submitted to the City Council. Recommendations for additional positions, as well as recommendations to decrease positions, are often included; this information is public after approval by the Council. Eisemann types the Commissioner's final budget recommendations. She also types the Commissioner's correspondence to the Civil Service Commission concerning promotions and reclassifications; such information becomes public when recommendations are adopted. Eisemann has never typed any document concerning the Commissioner's recommendations to the Municipal Employer's bargaining team, although she would be assigned to do so if the need arose. She compiles information used by the Municipal Employer to formulate bargaining proposals but does not know the proposals or strategy which the Municipal Employer takes as a result of that information. She has never typed an answer to a grievance, although the Health Commissioner is the person to whom grievances arising under the contract between AFSCME and the Municipal Employer are presented at either the second or third step of the grievance procedure.

Based on the above, it appears that Eisemann spends the vast majority of time on matters and information which is available to the public, or individual employes. Therefore, we conclude that Eisemann, as Account Clerk I (Health Department) did not perform sufficient confidential duties so as to exclude her from the bargaining unit.

#### Secretary I (Engineering Department)

Dorothy Kochinski works as the Secretary I in the Engineering Department and is the only employe in that department who performs secretarial work. A total of twenty-one people work in the Engineering Department which is located in City Hall. The employes in the department are either not represented for collective bargaining purposes or are represented by the Association. Kochinski's immediate supervisor is the City Engineer, who serves as the head of the department. Kochinski opens and sorts all departmental mail, records leave time and overtime worked and types construction contracts, construction project specifications and routine department correspondence. She maintains personnel files, the contents of which are available to individual employes. She assists the City Engineer in the preparation of his recommended departmental budget and types his final recommendations. The recommendations become public knowledge when presented to the Common Council. The recommended budget has included recommendations concerning the addition, deletion and reclassification of positions and concerning the promotions of employes. This information is made public when approved by the Council. Kochinski also types the City Engineer's correspondence to the Civil Service Commission regarding similar proposals. Again, this information becomes public knowledge when said proposals are adopted by the Commission. She has not had occasion to type any documents relating to disciplinary matters or grievances since at least 1973 as none have arisen; she would have been assigned to type them, however, had any such matters arisen. The City Engineer, like all department heads, is asked during contract negotiations, either orally

or in writing, to comment on the effect of negotiation demands by a union (in this case Association) and to make recommendations regarding those demands. The Engineer's response is usually communicated orally, but Kochinski has typed any written responses authored by the City Engineer.

Kochinski's duties are similar to those of Eisemann and, therefore, the Commission concludes that the amount of confidential duties performed by Kochinski are, at the most, minimal, and, therefore, Kochinski, as Secretary I (Engineering Department), is included in the unit.

#### Engineering Aides and Technicians

AFSCME asserts that the positions of Engineering Aide and Engineering Technicians I, II, III, IV and V should be included in the administrative and clerical bargaining unit represented by it 3/ because of a shared community of interest: fringe benefits are the same; some Technicians perform an inspection function similar to the inspection function performed by certain employes represented by AFSCME; the Technician V comes in contact regularly with employes represented by AFSCME and some Technicians spend a substantial period of time working in the field as do certain employes represented by AFSCME. In addition, inclusion of the Aide and Technician positions in the administrative and clerical unit would fulfill the mandate expressed in sec. 111.70(4)(d)2.a of MERA to avoid the fragmentation of bargaining units. Finally, AFSCME notes that the Commission has never determined the unit placement of the Aide and Technician positions.

The Municipal Employer and the Association maintain that the Engineering Aide and Technicians have a distinct community of interest from that of the employes represented by AFSCME. The Municipal Employer notes that the Aide and Technicians have been represented for collective bargaining purposes since 1968 by the Association. The Municipal Employer also argues that since AFSCME agreed to exclude the Aide and Technicians from the collective bargaining unit prior to the representation election, AFSCME is precluded from seeking to include those positions in the unit it represents.

The Engineering Department of the Municipal Employer consists of the positions of a City Engineer, several Civil Engineers, one Secretary, numerous Engineering Technicians and one Engineering Aide. The Municipal Employer employs two Engineering Technician II's, six Engineering Technician III's, two Engineering Technician IV's and one Engineering Technician V. The positions of Engineering Technician I and Engineering Aide are not filled. The Technicians and Aide perform drafting, inspection and surveying duties of varying degrees of

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3/ At the hearing, AFSCME asserted that the positions of Aide and Technicians should be included either in the unit represented by Local 228 or the unit represented by Local 80. It did not raise the claim concerning Local 80 in its post-hearing brief, however. Local 80 is also affiliated with Milwaukee District Council 48, AFSCME, AFL-CIO and is the voluntarily recognized bargaining representative of all employes, except supervisory, of the Water Department, Department of Forestry and Public Grounds, Electrical Division, Street and Sewer Division, Sanitation Division, Building and Sign Division, Repair Division, Yard Service Division and Custodians.

complexity and responsibility. Intervenor, West Allis Engineering Technicians and Aides Association, has been the collective bargaining representative for all the Technicians and Aide positions since it was voluntarily recognized by the Municipal Employer in 1968. Collective bargaining has occurred since that time and culminates in what the Association and the Municipal Employer call a "Summary of Negotiated Settlement." At the time of the hearing in this matter, they had entered into such a settlement for the 1976 calendar year.

AFSCME and the Municipal Employer previously agreed in 1970 to the composition of the bargaining unit represented by AFSCME. The disputed positions of Aide and Technicians were in existence at the time of that agreement. 4/ Although their agreement did not exclude the Technician and Aide positions by name, they were implicitly excluded since the Engineering Department was not included in the list of departments and divisions whose employes were to compose the bargaining unit. Generally, in a unit clarification proceeding, the Commission will not change the compliment of the bargaining unit which was voluntarily agreed upon as being appropriate, except where the compliment of the unit contravenes the provisions of MERA. 5/ As the parties have previously agreed to exclude the positions of Engineering Technicians and Engineering Aide and as their exclusion does not contravene the provisions of MERA, the Commission will not disturb the agreement of the Union and the Municipal Employer.

In addition, the Commission will not disrupt the composition of the bargaining unit of Technicians and Aide which is presently represented for collective bargaining purposes. AFSCME has the right to file a timely petition for election with the necessary showing of interest with respect to that unit, or any portion thereof. Should such a petition be filed, the Commission would then determine any issues raised in such proceeding.

AMENDMENT TO UNIT DESCRIPTION


It should be noted that we have amended the description of the collective bargaining unit to reflect the determinations made herein by the Commission.

Dated at Madison, Wisconsin this 14th day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner

4/ The position titles were different at that time.

5/ Milwaukee Board of School Directors (13134-A) 1/76; City of Cudahy (12997) 9/74.