

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case LXXIX
No. 19641 ME-1243
Decision No. 14786

Case XXIX
No. 12393 ME-406
Decision No. 8765-E

MILWAUKEE COUNTY

Appearances:

Mr. Erv Horak, Business Representative, appearing on behalf of Milwaukee County District Council 48, AFSCME, AFL-CIO, and its appropriate affiliated local(s).

ORDER CLARIFYING BARGAINING UNIT

Technicians, Engineers and Architects of Milwaukee County (TEAMCO) having filed a petition requesting that the Wisconsin Employment Relations Commission issue an Order determining whether the recently created position of Assistant Construction Superintendent is to be included in, or excluded from, a present existing bargaining unit consisting of all Engineers, Engineering Technicians III, IV, V, Architect, Landscape Architects, Architectural Draftsmen, Design Draftsmen, Construction Superintendent and Draftsman III (Civil Engineer) as included within the Engineering Group defined in Section 17.32(2) of the General Ordinances of Milwaukee County, excluding all other employees which are in currently certified bargaining units, and excluding all other employees, supervisory employees, confidential employees and executives1/; and, pursuant to notice, hearing having been conducted in the matter at Milwaukee, Wisconsin on February 24, 1976, Hearing Officer Marshall L. Gratz appearing on behalf of the Commission; and Milwaukee County District Council 48, AFSCME, AFL-CIO having been granted permission to intervene in the matter on the basis of its representation of certain employees in the aforesaid Engineering Group in another bargaining unit 2/;

1/ Milwaukee County, Decision No. 8765-A (1/69) as amended in Decision No. 8765-C (9/70).

2/ See, Decision No. 7135-Q (4/68).

and the Commission having considered the evidence and arguments presented at the hearing 3/ and the documentary evidence submitted thereafter at the request of the Hearing Officer, and being fully advised in the premises, makes and issues the following:

ORDER

1. That the position of Assistant Construction Superintendent shall be, and the same hereby is, included in the bargaining unit described above and currently represented by TEAMCo.

2. That the Certification of Representatives with respect to the above unit shall be, and the same hereby is, amended so that the unit description contained therein reads as follows:

All Engineers, Engineering Technicians III, IV, V, Architects, Landscape Architects, Architectural Draftsmen, Design Draftsmen, Construction Superintendent, Assistant Construction Superintendents and Draftsman III (Civil Engineer) as included within the Engineering Group defined in Section 17.32(2) of the General Ordinances of Milwaukee County, excluding all other employees which are in currently certified bargaining units and excluding all other employees, supervisory employees, confidential employees and executives.

Given under our hands and seal at the City of Madison, Wisconsin this *20th* day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

3/ The parties waived, in writing, the preparation of a transcript in the instant proceeding and also waived the provisions of Section 227.12 of the Wisconsin Statutes with respect to same.

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

BACKGROUND:

This case involves a dispute concerning in which of two bargaining units the newly created job classification of Assistant Construction Supervisor is to be included.

The classification in question was created on September 22, 1974, and public announcements concerning same were first issued on October 22, 1974. The county has, at all times, treated the classification as not included in any bargaining unit, pending a determination by the Commission.

Originally, the instant classification was one of several contained in a clarification petition filed by the County on April 29, 1975. 4/ TEAMCo was not a party to the proceedings conducted pursuant to said petition. During the course of those proceedings, the County and District Council 48 initially stipulated that the classification in question herein was supervisory. Later, on December 11, 1975, those parties withdrew that stipulation and agreed that the classification should be deemed withdrawn from consideration in that proceeding.

TEAMCo's petition herein was filed on October 1, 1975. District Council 48 and the County have, at all material times, been party to the proceedings conducted pursuant to the instant petition. In said petition, TEAMCo requests, with the County's concurrence, that the classification should be included in the unit represented by TEAMCo. District Council 48 opposes that request and seeks inclusion of said classification in one of the bargaining units of County employees which it and its appropriate affiliated locals represent.

On January 21, 1969, TEAMCo was first certified as a representative of certain employees in the "Engineering Group" as defined in County Ordinances. 5/ Thereafter, TEAMCo petitioned for a WERC order clarifying the status of the Draftsman III (Civil Engineer) and the Construction Superintendent classifications. Pursuant to that petition, a stipulation was executed by TEAMCo, the County and District Council 48 requesting that said classifications be included in the TEAMCo unit. The WERC issued an Order to that effect on September 30, 1970. 6/ As a result, TEAMCo became and has remained the certified representative of the bargaining unit consisting of

All Engineers, Engineering Technicians III, IV, V, Architects, Landscape Architects, Architectural Draftsmen, Design Draftsmen, Construction Superintendent and Draftsman III (Civil Engineer) as included within the Engineering Group defined in Section 17.32(2) of the General Ordinances of Milwaukee County, excluding all other employees, supervisory employees, confidential employees and executives.

District Council 48 and its appropriate affiliated locals are the certified bargaining representative of a number of collective bargaining units of County employees, including a unit consisting of

4/ Milwaukee County, Case LXXVIII, No. 19102, ME-1190, pending WERC determination.

5/ Decision No. 8765-A.

6/ Decision No. 8765-C.

All regular full-time and regular part-time employees of the County of Milwaukee, excluding fire fighting classifications, and other craft employees, registered nurses, and other professional employees, confidential employees, supervisors, department heads and exempt positions. 7/

Among the classifications represented by District Council 48 in that unit are several in the "Engineering Group" referred to in the TEAMCo unit description above. Those Engineering Group classifications represented by District Council 48 are Technicians (formerly referred to as Engineering Technicians I and II) and the following Draftsman classifications: Draftsman I and II (Civil Engineering), Draftsman III (Landscape Architecture), or Draftsman III (Architectural), Draftsman III (Property Records), Draftsman III (Electrical) and Draftsman (Institutions Engineering).

In essence, the Assistant Construction Superintendents assist the Construction Superintendent in inspecting County buildings, recommending major and minor maintenance projects, supervising the work of outside contractors performing such construction projects and coordinating the work of such contractors with personnel in various County offices. There are presently three employees holding positions in the instant classification. They are respectively specialized in roofing work, building equipment work and structural work. It was stipulated that the following description generally describes the range of their duties:

"Under direction, to assist in supervising and coordinating the alteration and repair of large and small county-owned buildings; to inspect, report, and prepare recommendations to implement a preventive maintenance and major maintenance program for existing structures; to coordinate the work of contractors on the job; to act as liaison between field and office operations; to recommend minor alterations in plans and specifications; to interpret contract documents; to advise architects and engineers on practical field applications of proposed designs; to check contractors' billings and make recommendations for payment; to prepare the final checklist with the contractor prior to acceptance of the work; to maintain job records and prepare reports; and to perform such other duties as may be assigned."

The County has established the following educational, experiential skill and knowledge requirements as minimums for the Assistant Construction Superintendent classification:

"MINIMUM QUALIFICATIONS:

Education:	Graduation from high school; accredited college or university training in architecture or civil engineering desirable.
Experience:	Five years' experience in building construction activities, preferably including three years' experience in the construction inspection field.
Skills and Knowledges:	Knowledge of building practices, methods, and techniques relating to general construction work for large and small public building projects; knowledge of mechanical building trades and equipment; ability to prepare and maintain

7/ See, Decision No. 7135-Q (4/68).

inspection reports; ability to read and interpret plans, specifications, and contracts.

. . ."

Of the three individuals hired to fill the Assistant positions, all had a high school degree. In addition, one had a substantial number of college level credits in civil and architectural technology and ten years experience as an architectural designer. The second had two associate degrees in electrical and industrial technology and electronics and seven years experience as an Assistant City Engineer. And the third had thirty credits in architectural design, served an architectural apprenticeship; received A.I.A. Architect Certificate, and had fourteen years experience as a draftsman and an additional thirteen years as an architect.

The Construction Superintendent performs the same duties as the Assistants and directs their work. Since 1965, the educational, experiential, skill and knowledge requirements for the Construction Superintendent position have been as follows:

"MINIMUM QUALIFICATIONS:

Education:	Graduation from high school; graduation from an accredited college or university desirable, with specialization in civil engineering preferred.
Experience:	Eight years' experience in building construction activities, preferably four years of which have been in the inspection field.
Skills and Knowledges:	Thorough knowledge of and familiarity with building practices, methods, techniques, and procedures relating to general construction work; ability to supervise and coordinate the construction of large and small public building projects; considerable knowledge of predominant building crafts and trades involved; administrative ability."

The incumbent Construction Superintendent (and the only person ever to hold the position) has a very limited formal educational background beyond high school. He was hired after more than 15 years of County service as a Draftsman I, II and III.

A review of the position descriptions (including duties and minimum qualifications) of all Engineering Group positions represented by TEAMCo as well as by District Council 48 does not provide a set of clear-cut characteristics that distinguish the two sub-groups. In general, those represented by TEAMCo were required to have more extensive higher education, work at more complex and varied tasks with less direction and supervision, and are more often called upon to engage in liaison work between field and office. There are exceptions, however. For example, a few of the District Council 48 Engineering Group positions formally require at least two years of college coursework whereas a considerable number of TEAMCo positions do not.

POSITIONS OF THE PARTIES:

District Council 48 concedes that if the classification in question is held by the Commission to be craft or professional, that it should be included in the TEAMCo unit. It contends, however, that said classification

is neither craft nor professional within the meaning of MERA, on the grounds that they are not required to have either a "journeyman status" or an engineering degree as prerequisites for hire. District Council 48 further contends that the TEAMCo unit was originally formulated and has been maintained on the premise of membership limited to employees who were both in the County's "Engineering Group" as defined by Ordinance, and who were craft or professional employees within the meaning of MERA, that Section 111.70(4)(d)2a of MERA gives professional and other craft employees the right to determine for themselves as a group whether to be included in a unit with nonprofessionals; that for those reasons, it would be contrary to the premise on which the TEAMCo unit was established and contrary to the spirit of MERA to include the instant non-craft, non-professional positions in the otherwise exclusively professional TEAMCo unit; that, therefore, Assistant Construction Superintendents should, instead, be included in the "residual" overall unit represented by District Council 48; and that the prior Commission order including the Construction Superintendent in the TEAMCo unit ought not be given any weight in the instant determination since said Order was predicated only upon a bare stipulation for inclusion by the parties rather than upon an evidentiary review and determination by the Commission.

TEAMCo and the County argue in the alternative. They assert that the classification is professional and/or craft within the meaning of MERA; and that it should be included in the TEAMCo unit; that, in any event, the holders of those positions have a clear community of interest with others in the TEAMCo unit, especially the Construction Superintendent with whom they work closely, and that they lack such a community of interest with any of the "Engineering Group" employees represented by District Council 48; that said community of interest calls for inclusion in the TEAMCo unit; and that such inclusion is not foreclosed by the express provisions of MERA, even if it results in a mixing of nonprofessionals or noncraft employees with professional or craft employees. The County and Petitioner further argue that they never entered into any stipulation or other understanding to the effect that the TEAMCo unit was limited to craft and professional employees; and that the Commission clarification order including the Construction Superintendent in the TEAMCo unit should be given weight herein since it was based upon a stipulation to which District Council 48 was a party.

The petition for election that ultimately resulted in TEAMCO's above-noted January 21, 1969 certification was initially filed with the Commission on October 3, 1968. 8/ As of the time of that filing by TEAMCo, District Council 48 and its appropriate affiliated locals were already the certified representative of the noncraft, nonprofessional unit described above. 9/ It is therefore reasonable to conclude that the TEAMCo unit consisted only of craft and/or professional employees, and that the unit was established upon the implicit premise that it would include only such employees. We therefore concur in District Council 48's assertion that unless the instant classification is craft or professional, it ought to be included in the District Council 48 unit noted above.

The remaining issue, then, is whether the Assistants are either craft or professional employees within the meaning of MERA.

8/ Decision No. 8765 (11/69) at p. 1.

9/ See text accompanying Note 7, above.

Section 111.70(1)(1) defines the term "professional employe" as follows:

- "1. Any employe engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employe who:
 - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;
 - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1."

We are satisfied that the Assistant Construction Superintendents satisfy all of the requirements of subsection 1 above. The bulk of their described duties are not mechanical or physical and they do not appear to be of a merely routine nature. Instead, the work is varied and intellectual in character to a substantial degree. The described duties also appear to involve consistent exercise of discretion and judgment in their performance, the fruits of which cannot be standardized in relation to a given period of time. Finally, the work appears to require knowledge of an advanced type in fields of learning customarily acquired by a prolonged course of instruction and study in an institution of higher education. For example, the County's minimum qualifications for the job, which presumably reflect the county's view of the customary source of acquisition of the knowledge required for the position, indicate that "accredited college or university training in architecture or civil engineering" is "desirable" in addition to the required experience in building construction activities. It may also be noted that each of the incumbents in the instant positions each have such higher education in their backgrounds. While the knowledge in fact required for performance of the Assistants' job duties might be acquired through training on the job, as appears to be the case in the background of the incumbent Construction Superintendent, it nonetheless appears to be customarily acquired through the sort of specialized, advanced and prolonged instruction and study in institutions of higher education contemplated in 1.d. above. 10/

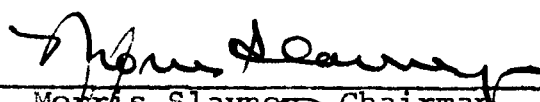
10/ Contrary to District Council 48's position herein, the Commission has previously held that Section 111.70(1)(1) does not limit professional employes to only those possessing college degrees. City of Appleton, Decision No. 11784 (8/72).

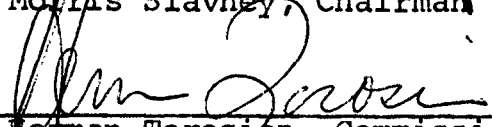
For the foregoing reasons, we conclude that the Assistant Construction Superintendents are professional employees within the meaning of MERA. They have therefore been expressly included in the unit currently represented by TEAMCo.

Dated at Madison, Wisconsin this 20th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner