

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of | : | |
| DISTRICT COUNCIL 40, AFSCME, AFL-CIO | : | |
| Involving Certain Employees of | : | Case XXIV |
| CITY OF NEW BERLIN | : | No. 20066 ME-1279 |
| | : | Decision No. 14809 |

Appearances:

Mr. Robert W. Lyons, Business Representative, District Council 40, AFSCME, AFL-CIO, appearing on behalf of Petitioner.
 Hayes and Hayes, Attorneys at Law, by Mr. Tom E. Hayes, for the Municipal Employer.
 Goldberg, Previant and Uelmen, S.C., Attorneys at Law, by Mr. Alan M. Levy, appearing on behalf of the Intervenor.

ORDER DETERMINING APPROPRIATE BARGAINING UNIT
 AND CONDITIONAL DIRECTION OF ELECTION

District Council 40 of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, having, on January 15, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to Sec. 111.70 (4) (d) of the Municipal Employment Relations Act, among certain employes of the City of New Berlin, to determine whether said employes desire to be represented by the Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Milwaukee, Wisconsin, on March 26, 1976, Stanley H. Michelstetter II, Hearing Officer, being present; and during the course of the hearing 1/ Teamsters General Local #200 having been permitted to intervene in the matter on the basis of its claim to be the present representative of the instant employes; and the Commission having considered the evidence and being fully advised in the premises, and being satisfied that questions have arisen concerning the appropriate collective bargaining unit and, possibly, representation of certain employes of said Municipal Employer;

NOW, THEREFORE, it is

ORDERED

1. That all regular full-time and regular part-time employes employed by the City of New Berlin in its Sewer and Water Department, excluding managerial, supervisory, confidential and other employes, is deemed by the Wisconsin Employment Relations Commission not to be an appropriate unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.
2. That the existing collective bargaining unit consisting of all regular full-time and regular part-time employes of the City of New Berlin

1/ The parties and Intervenor waived, in writing, the preparation of a transcript of the proceeding and the provisions of Sec. 227.12 of the Wisconsin Statutes.

employed in its Highway Department and Sewer and Water Department, excluding managerial and supervisory personnel, confidential employes, office employes, professional employes and craft employes, constitutes an appropriate unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

3. That, inasmuch as, during the course of the hearing, District Council 40, AFSCME, AFL-CIO having indicated that, should the Commission determine that the appropriate unit consists of the unit set forth in para. 2, supra, it desired to participate in an election to determine the bargaining representative of the employes in said appropriate unit, and that since the showing of interest filed by said Labor Organization to initiate the instant proceeding was not sufficient in number to proceed to an election in said appropriate unit, the Commission hereby grants said Labor Organization fourteen (14) days from the date hereof to obtain the sufficient showing of interest to warrant an election in the instant matter; and that should said Labor Organization submit such sufficient showing of interest, the Commission shall thereupon issue a Direction of Election in the appropriate unit involved in order that the eligible employes therein may have the opportunity to determine whether they desire to be represented by District Council 40, AFSCME, AFL-CIO, or by Teamsters General Local #200, or by neither of said organizations.

Given under our hands and seal at the
City of Madison, Wisconsin this 29th
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

MEMORANDUM ACCOMPANYING ORDER DETERMINING
APPROPRIATE BARGAINING UNIT AND CONDITIONAL
DIRECTION OF ELECTION

Petitioner filed its petition January 15, 1976, accompanied by a showing of interest of at least thirty percent of the employes in the sought unit, consisting of employes of the Municipal Employer's Sewer and Water Department. Teamsters 200 was permitted to intervene on the basis of its claim that it is the voluntarily recognized representative of employes in a unit consisting of Highway Department and Sewer and Water Department personnel. The Municipal Employer and Teamsters 200 are parties to a collective bargaining agreement expiring March 31, 1976, covering employes in said unit. Said agreement contains no discernible date for the commencement of negotiations with respect to a succeeding agreement and consequently there does not exist a specific identifiable period of time for the timely filing of a petition. Since the petition herein was filed approximately 2 1/2 months prior to the expiration of the collective bargaining agreement, and given no other relevant facts regarding timeliness, the Commission concludes the collective bargaining agreement does not constitute a bar to the instant petition.

Teamsters 200 and the Municipal Employer contend that the unit consisting of only employes in the Water and Sewer Department is inappropriate. Teamsters 200 does not desire to appear on the ballot should the Commission direct an election in the sought unit.

At the time of the creation of the Highway Department unit in 1963, 2/ the Municipal Employer performed no sewer maintenance work and had no water facility. Thereafter, Teamsters 200 was recognized as the representative of the employes in the Highway Department. In 1969 the Sewer and Water Department of the Municipal Employer was fully functioning as a separate department, and in 1974 the Municipal Employer recognized Teamsters 200 as the representative of the employes in the Sewer and Water Department, and in that regard, Teamsters 200 and the Municipal Employer executed a collective bargaining agreement which contained the following recognition clause:

"ARTICLE I - RECOGNITION

The City recognizes and acknowledges that Chauffeurs, Teamsters and Helpers 'General' Local Union No. 200 of the I.B. of T.C.W. & H. of A. is the exclusive representative of the employees of the City of New Berlin Highway Department and Sewer and Water Department, excluding office employees, professional employees, guards, craftsmen and supervisors, for the purposes of collective bargaining."

At the time of hearing herein, the Municipal Employer maintained a work force of 133 full-time employes organized as follows:

"White collar" classifications:

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| Police bargaining unit | 45 |
| Clerical bargaining unit | 28 3/ |

2/ City of New Berlin (6198), 12/62 and 1/63.

3/ City of New Berlin (13173), 1/75.

"Blue collar classifications:

| | |
|--|----|
| Park and Recreation Department | 3 |
| Highway Department | 26 |
| Sewer and Water Department | 6 |
| Managerial and supervisory personnel, including 3 police cadets | 28 |

Neither labor organization nor the Municipal Employer contend that the employes in the Park and Recreation Department should be included in either a unit of the employes in the Sewer and Water Department, or in a unit consisting of employes in both the Highway and Sewer and Water Departments.

Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act sets forth that the Commission maintain "as few units as practicable in keeping with the size of the total municipal work force." Said section also provides that the Commission may combine employes in separate departments into a single collective bargaining unit.


The Municipal Employer's organizational chart discloses that in its Highway Department it employs, in addition to mechanics, equipment operators and truck drivers, 7 laborers. There are 6 laborers employed in the Water and Sewer Department. There are no employes in the Park and Recreation Department which are classified as laborers. If the Commission were to establish two separate units, it is quite possible that the Municipal Employer would be required to bargain with two separate organizations for employes in the same classification, namely, laborers. Therefore, the Commission concludes that the appropriate unit consists of otherwise eligible employes in both departments.


Since the original showing of interest of District Council 40, AFSCME, AFL-CIO, supported a petition for an election in the unit consisting of only Sewer and Water Department employes, and since we have found the appropriate unit to include both employes in the Highway and in the Sewer and Water Departments, and further, since said Petitioner indicated a desire to be on the ballot should the Commission find the latter unit to be appropriate, we are affording said Petitioner fourteen days in which to enlarge its showing of interest. If said additional showing of interest, together with the original showing of interest, constitutes at least 30 percent of the eligible employes in the appropriate unit, the Commission shall direct an election to determine what representation, if any, the employes therein desire. 4/

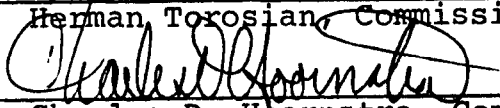
Dated at Madison, Wisconsin this 29th day of July, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

4/ During the course of the hearing the record indicated that there were 26 employes employed in the Highway Department and 6 in the Sewer and Water Department. Therefore, the necessary showing of interest to warrant the election would require authorizations by at least 10 employes.