

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BARRON ELECTRIC COOPERATIVE

Case X
No. 20651 E-2924
Decision No. 14929

Mr. Darold Gust, Manager Personnel and Labor Relations for Dairyland Power Cooperative, appearing on behalf of the Employer.

Mr. A. J. Bailey, International Representative, appearing on behalf of the Union.

Barron Electric Cooperative, hereinafter the Employer, having on July 8, 1976, filed a petition with the Wisconsin Employment Relations Commission wherein it requested that the Commission clarify a certified unit described as the maintenance, construction and operating employees (exclusive of executive, supervisory and office employees) of the Cooperative, to determine whether the position of Engineering Aid should be included or excluded from the unit described above; and a hearing in the matter having been conducted on August 20, 1976, at Barron, Wisconsin, Dennis P. McGilligan, Hearing Officer, being present 1/; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following

That the position of Engineering Aid be, and the same hereby is, included in the above described unit.

Given under our hands and seal at the
City of Madison, Wisconsin this 22nd
day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

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

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

On June 2, 1948, Local Union 953 of the International Brotherhood of Electrical Workers, hereinafter referred to as the Union, was certified as the exclusive collective bargaining representative of certain employes noted above of Barron Electric Cooperative. 2/ On July 8, 1976, the Employer requested that the Commission clarify the bargaining unit status of a newly created position, Engineering Aid.

On June 1, 1976, the Employer appointed Charles Sandmann, who previously had worked as a lineman with the Employer, to the newly created position of Engineering Aid. Thereafter, on June 4, 1976, the Union notified the Employer that it felt said position should be included in the bargaining unit. When the parties were unable to agree on the matter, the Union subsequently filed a grievance which is being held in abeyance at Step 2 of the grievance procedure pending the outcome of the instant proceeding. The lineman vacancy created by Mr. Sandmann's filling the new position has not been filled by the Employer.

The Employer seeks the exclusion of this position presently as managerial. The Union, on the other hand, would include the position in the unit, contending that Sandmann continues to perform many of the same duties previously performed by him as a lineman and included in the collective bargaining unit, and that the unit description based on the aforementioned certification and contained in the Recognition Clause of the parties' collective bargaining agreement does not provide for the exclusion of managerial positions from the bargaining unit.

The Engineering Aid assists both the Line Superintendent and the Manager of the Cooperative in the performance of their work. The Line Superintendent has primary responsibility to direct the Engineering Aid who occasionally makes out work schedules and job assignments in the Line Superintendent's absence. The Line Superintendent and Manager are excluded from the bargaining unit.

At least 35% of the Engineering Aid's time is spent performing linemen work that is performed by bargaining unit employes. However, certain other duties are attached to the position which are not performed by bargaining unit employes. These duties include: the completion of Department of Highway permits, 3/ the preparation of railroad right of way permits, etc.; the assemblage of filed data as directed; the supervision of contractor work to ensure compliance with codes and policies of the Cooperative; and the maintenance of system maps as directed and required.

In addition, the Engineering Aid performs certain engineering and mathematical calculations previously done by the Manager and Line Superintendent. These calculations include: "facility charges for irrigation services, minimum rates for multiphase installations and basic distances for service minimum determination based on average investment." The Engineering Aid and Line Superintendent work together on maintaining the master code book with regard to new services and lines. In the future it is anticipated that the Engineering Aid will

2/ Barron Electric Cooperative, (2074R-896) 6/48.

3/ Bargaining unit employes perform the initial work on these permits but do not have responsibility for the final product.

initiate and develop studies covering the economic size of secondary conductors, transformers and other related fields, a duty previously assigned to, but not performed by, the Line Superintendent due to a lack of time.

The Engineering Aid also participates with other members of the managerial staff in the preparation of the annual budget, primarily by assisting in the gathering of statistics and data. In addition, Mr. Sandmann has certain responsibilities regarding the checking and monitoring of the flow of materials for a particular job.

The Wisconsin Employment Peace Act does not specifically exclude a managerial employe from the definition of the term "employe". Supervisors and executives are excluded from the Act's coverage because such positions are allied with management. It follows that managerial employes are likewise excluded. 4/ In this regard the unit description contained in the parties' collective bargaining agreement and based on the prior certification is consistent with the above statutory mandate. Therefore, the unit description impliedly excludes managerial employes when it refers to the exclusion of supervisory and executive employes.

The question remains whether the position of Engineering Aid is managerial. The Commission has defined managerial employes as those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources. 5/ The record indicates that the Engineering Aid participates in the preparation of the annual budget by gathering statistics and data upon which budget decisions are made. However, there is no indication that the Engineering Aid actually makes decisions in this area, but rather provides technical assistance to those who do.

The record also indicates that the Engineering Aid performs certain engineering and mathematical calculations previously done by non-bargaining unit employes. Nevertheless, these calculations are technical in nature and relate more to the routine carrying out of management policy than the initiation and determination of same. The record further indicates that the Engineering Aid performs certain other duties not performed by bargaining unit employes, involving the completion of permits, maintenance of system maps, data gathering and supervision of contractor work. However, this work is primarily technical in nature; and therefore, the Commission concludes, based upon all of the foregoing, that the Engineering Aid does not participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources at the high level of responsibility necessary to be a managerial employe. The Employer stated at the hearing that in the future, the Engineering Aid would assume additional managerial responsibilities and duties. If these duties and responsibilities are materially different than those present in the instant case, the parties may then petition the Commission to conduct a new hearing in the matter, in order to consider the unit status of the position based on those changed responsibilities.


4/ Holy Family Hospital, (11535) 1/73.

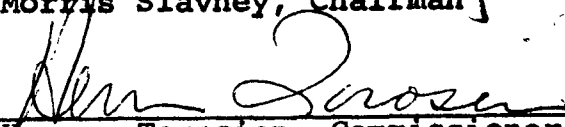
5/ City of Milwaukee, (12035-A) 2/74, 3/2/76, (Wis. Sup. Ct.).

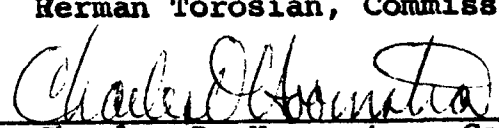
Therefore, based on all of the above, the Commission is satisfied that the newly created position of Engineering Aid is not managerial. Accordingly, said position is included in the bargaining unit.

Dated at Madison, Wisconsin this 22nd day of September, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner