

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
: WISCONSIN COUNCIL OF COUNTY AND :  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : Case XXXII  
: No. 20711 ME-1349  
Involving Certain Employees of : Decision No. 15112  
: CITY OF BELOIT :  
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Appearances:

Mr. Darold O. Lowe, District Representative, appearing on behalf of the Petitioner.

Hansen, Eggers, Berres, & Kelly, S.C., Attorneys at Law, by Mr. Daniel T. Kelley, appearing on behalf of the Municipal Employer.

Mr. William F. Donovan, Attorney at Law, appearing on behalf of the Beloit Police Patrolmen's Association, Intervenor.

Mr. Leroy Waite, President, International Association of Fire Fighters, Local 583, Intervenor.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Petitioner, having on August 4, 1976, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the City of Beloit, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Beloit, Wisconsin, on September 1 and 2, 1976, before Sherwood Malamud, a member of the Commission's staff; and during the course of the hearing the Beloit Police Patrolmen's Association and the International Association of Fire Fighters, Local 583 having been permitted to intervene in the matter on the basis of their claims that certain employees should be included in the units represented by said organizations; and the Commission being fully advised in the premises and being satisfied that questions have arisen concerning representation and appropriate units involving certain employees of the City of Beloit;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time employees of the City of Beloit employed at the Beloit Municipal Center, Engineering Department, Library, Health Department, Fire Department, Police Department, Housing Authority, and Department of Public Works; but excluding law enforcement personnel, fire fighters, supervisory, confidential, craft, professional employees, and all employees of the Department of Public Works presently represented by Local 643, AFSCME, AFL-CIO, who were

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employed on December 29, 1976, 1/ except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Beloit on questions of wages, hours and conditions of employment.

Voting Group No. 2


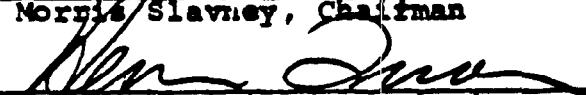

All regular full-time and regular part-time professional employees, consisting of Civil Engineers, Sanitaricians, Milk Sanitaricians, Public Health Nurses, Home Health Nurses, Laboratory Chemists, Librarian I, Librarian II, Planning Associates, and Planning Assistants employed by the City of Beloit, excluding supervisory and confidential employees, who were employed on December 29, 1976, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described in Voting Group No. 1; and (2) whether a majority of such employees voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the City of Beloit on questions of wages, hours and conditions of employment.

Voting Group No. 3

All regular full-time and regular part-time craft employees (Housing Inspectors, Plumbing Inspectors, Electrical Inspectors) employed by the City of Beloit; excluding supervisory and confidential employees, who were employed on December 29, 1976, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining: (1) whether a majority of the employees in said voting group desire to be included in the bargaining unit described in Voting Group No. 1; and (2) whether a majority of such employees voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose of collective bargaining with the City of Beloit on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 29th  
day of December, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman  
  
Herman Torosian, Commissioner  
  
Charles D. Hoornstra, Commissioner

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1/ The parties stipulated to an eligibility date of September 2, 1976. Briefs in this matter were submitted by December 13, 1976. Due to the delay in issuing this Direction, the Commission has established the date of this Direction as the eligibility date for the election.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Petitioner seeks elections among all the unrepresented employees of the Municipal Employer in three voting groups, a non-professional, non-craft unit, a professional unit and a craft unit. Petitioner requests that employees in the professional and craft units be provided the opportunity to determine if they desire to be included in a unit with the non-professional and non-craft employees.

During the course of the hearing, Petitioner amended its original description of the professional and craft units by including planning associates and planning assistants in the professional unit and deleting the electrician in the Department of Public Works from the craft unit. The Municipal Employer concurred with Petitioner's amended description of the three voting groups with the exception of CETA employees employed by the Municipal Employer. Furthermore, although at the commencement of the hearing the Municipal Employer claimed the Assessors were professional, the Municipal Employer, prior to the close of the hearing agreed that the Assessors should be included in the non-professional voting group.

The International Association of Fire Fighters, Local 583, which is the exclusive collective bargaining representative of fire fighters employed by the Municipal Employer and an intervenor herein, asserted during the hearing that dispatchers employed in the Fire Department should be included in the fire fighter unit rather than in the unit described as Voting Group No. 1. On September 13, 1976, after the hearing in the above matter was closed, the International Association of Fire Fighters, Local 583, by its President, Leroy Waite, advised the Commission, and all parties to the proceeding, that it was withdrawing its claim that dispatchers be included in the fire fighter unit.

The Beloit Police Patrolmen's Association, hereinafter Patrolmen's Association, the exclusive collective bargaining representative of law enforcement personnel in the employ of the Municipal Employer, intervened during the hearing and claimed that the communications operators employed in the Police Department should be included in the law enforcement unit rather than the unit described as Voting Group No. 1. Both Petitioner and the Municipal Employer dispute the latter's claim and assert that the communications operators are properly included in the clerical unit. (Voting Group No. 1).

The Commission has granted Petitioner's request to provide all employees subject to the petition with an opportunity to establish the three separate units. The Commission is satisfied that should either the professional employees, or craft employees, or both, establish separate units, those units would be appropriate for purposes of collective bargaining.

Communications Operators

In the Master List of Assignments of Pay Ranges to Classifications, the nature of the work of a communications operator is described as follows:

"This is varied communications work involving the skillful and prompt operation of police or fire radio, telephone, and teletype.

"Work involves responsibility for the operation of a communications center which serves the police or fire departments for the receipt and transmission of radio and telephone messages over several circuits and for the performance of related recording tasks and other clerical duties. After an

initial training period, employees work with considerable independence subject to special instructions or orders to meet special operating circumstances or emergencies. Work is reviewed through the adequacy of communications services and through the examination of records."

There are four communications operators employed by the Municipal Employer. Each operator works alone on a shift. During part of the second and all of the third shift, the operators are the sole employees present in the jail, and it is their responsibility to monitor all activity in the jail and its environs, via a television and speaker monitoring system. Furthermore, the four operators, who are females, serve as matrons, and they search female prisoners. On occasion, operators accompany police officers when arrests of females are anticipated, and they have been used to act as decoys in sex cases and make drug buys in narcotics investigations. In performing their matron duties, operators have been assaulted with weapons and physically abused by female prisoners.

The communications operators are hired through the Municipal Employer's Personnel Department. Applications for these positions are screened and applicants are interviewed by a panel which normally includes a member of the Police Department. Patrolmen are appointed to the Department by the Police and Fire Commission.

The communications operators presently participate in the same training program for the same number of hours as new patrolmen with the Beloit Police Department. They attend the Police Academy at the Blackhawk Vocational, Technical and Adult Education Institute in a 320 hour program, which includes courses in arrest and search and seizure. It also includes the F.B.I. course in firearms and target shooting. After passing this course, the communications operators assume their job duties. They are issued a communications operator's uniform, but they are not issued any firearms. The purpose of providing the operators with the same training program as a police officer is to enable them to understand the nature of the calls they would receive and the dispatches they would make in the course of their duties.

The Patrolmen's Association argues that the communications operators, by virtue of their training and duties, are closely aligned with patrolmen. It notes that since the patrolmen are often alone in the field, it is the communications operator who must efficiently dispatch officers to assist another officer. Furthermore, it argues that there is nothing in the record which supports a finding of any affinity between communications operators and other clerical employees employed by the Municipal Employer. Finally, it contends that placing the communications operators in a unit other than the law enforcement unit could lead to a "conflict of interest" should they be represented by another labor organization, inasmuch as the latter labor organization and the Municipal Employer could enter into a collective bargaining agreement the terms of which might require the communications operators to perform duties contrary to the policies of the Police Department.

The critical issue in determining placement in a law enforcement unit is whether the individuals occupying the positions in issue are given the authority to make arrests. 2/ The communications operators

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2/ Waukesha County (Sheriff's Dept.), (14534-A) 10/76; City of Greenfield (Police Dept.), (7252) 8/65; City of Milwaukee (Police Dept.), (8605) 7/68; and Village of Fox Point, (9959-A) 2/71 prior to the enactment of Section III.77 in 1971. See e.g. Douglas County, (10993) 5/72; City of Monroe, (11580) 2/73; City of Wauwatosa, (12032) 6/73; City of Menomonee Falls, (13159-A) 5/75; City of Burlington, (13777) 6/75, subsequent to the enactment of Section III.77 in 1971.

testified that they were never told they had, or did not have, the power to make arrests. Inspector Frank C. Young of the Division of Staff Services testified that it is departmental policy that communications operator is a civilian position within the department and therefore, the operators do not have the power to make arrests.

The power of arrest is one specifically granted to a police officer by statute. 3/ The communications operator position was created as a civilian position to free police officers for patrol and other law enforcement duties. The Commission concludes that the position of communications operator is not cloaked with the authority to make arrests.

Voting Group No. 1 is an overall non-professional, non-craft unit. In light of the strong anti-fragmentation policy expressed in MERA, the Commission finds that the communications operators are appropriately included in the unit described as Voting Group No. 1, rather than in the law enforcement unit.

Employees Whose Employment is Funded Under the  
Comprehensive Employment Training Act

The Municipal Employer employs individuals in the following positions, pursuant to its participation in the CETA program: Police Aides, Dispatcher Aides and clerk typists in the Police Department; clerk typists in the Department of Public Works, the Assessor's Office, Health Department, Purchasing Department and the Library; the custodian aide in the Library and Housing Authority; and animal control aide in the Health Department. The licensed Public Health Nurse in the Health Department is a CETA employee as well. It is apparent from the above recitation that CETA employees are employed throughout city government in many varied classifications.

The Municipal Employer argues that funding for the above CETA positions will terminate January 31, 1977, and therefore, the employees in those positions do not share the same expectancy of employment as do employees hired and paid by the Municipal Employer from its own resources. The Municipal Employer's major argument, however, is that CETA employees have access to and are protected by a grievance procedure afforded only to them. The Municipal Employer notes that after exhausting the procedures available through the Municipal Employer, be it a grievance procedure or civil service appeal, under 29 CFR 98.41-47 a CETA employee may avail himself of an appellate process which commences with the local sponsoring agency up to the Secretary of Labor of the U.S. Department of Labor. It is on the basis of both this unique grievance procedure and the limited funding that the National Labor Relations Board excluded CETA employees from a nursing home unit. 4/

The Commission has often stated that source of funding is not sufficient cause for excluding otherwise eligible employees from a

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3/ See Sec. 62.09(13) Wis. Stats.

4/ The Clark County Mental Health Center d/b/a The Mental Health and Family Services Center and OPEIU Local No. 11, AFL-CIO, 225 NLRB No. 105 (7/29/76).

bargaining unit. 5/ The Commission sees no factual or legal basis for changing this well established policy. It has been the experience of the Commission that CETA contracts, although of limited duration, are renewable and in fact are often renewed. Thus, CETA employees and employees hired under antecedent similar federal programs may achieve five or six years of seniority, yet be the subject of a requested exclusion in an election proceeding. 6/

The fact that CETA employees enjoy a separate statutory or administrative code grievance procedure does not sufficiently imbue them with such a distinctive interest as to warrant their exclusion from the unit. The functional identity of their work and working conditions with other employees is of greater significance. This situation is no different than the cases of women or blacks who have been given additional statutory protections against discrimination by the Equal Pay Act 7/ and Title VII of the Civil Rights Act of 1964. 8/ Although a collective bargaining agreement also may protect them against discrimination, these statutory vehicles grant them de novo administrative avenues of relief 9/ to the extent that an arbitration award under the collective bargaining agreement is not final and binding. 10/ In curing their particular problems, there was no legislative intent to upset the basic principles of labor law. 11/

Based on all of the foregoing, the Commission reasserts its policy of including CETA employees. The Commission finds that the CETA employees are in classifications and positions identical to those filled by municipally funded employees. The CETA employees perform similar duties and enjoy similar conditions of employment as other employees of this Municipal Employer. The Commission concludes that the CETA employees share a community of interest with other employees in the appropriate voting groups. Accordingly, they are eligible to participate in the elections directed herein.

The balloting shall be conducted in the following manner:

Voting Group No. 1

The eligible employees in Voting Group No. 1 will be given the choice to determine if they desire to be represented by the Petitioner.

Voting Group No. 2

(1) The eligible employees in Voting Group No. 2 will be given the opportunity to determine whether they desire to be represented by the

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5/ WERC Digest No. M127.

6/ Gateway Federation of Teachers, Local 1924 (14381), 3/76.

7/ 29 U.S.C. sec. 201 et seq.

8/ 42 U.S.C. sec. 2000 et seq.

9/ In the case of the Equal Pay act, the separate administrative avenue of relief is through the Secretary of Labor; in the case of Title VII, the separate procedure is through the Equal Employment Opportunity Commission. Although Title VII benefits whites as well as blacks, see McDonald v. Santa Fe Trail Transp. Co. (1976), 96 S.Ct. 2574, unquestionably the function of such legislation was to grant equality to these historically discriminated against groups.

10/ Cf. Alexander v. Gardner-Denver Company (1974), 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed. 2d 147.

11/ See Emporium Capwell Co. V. Western Addition Commun. Org. (1975), 420 U.S. 50, 95 S.Ct. 977, 43 L.Ed. 2d 12.

Petitioner and (2) whether they desire to be included in one unit with the employees in Voting Group No. 1. The ballots with respect to unit preference will be counted separately, and should a majority of the employees in Voting Group No. 2 vote to be included in the unit described as Voting Group No. 1 their representation ballots will be co-mingled and counted with the representation ballots cast by the employees in Voting Group No. 1.

### Voting Group No. 3

(1) The eligible employees Voting Group No. 3 will be given the opportunity to determine whether they desire to be represented by the Petitioner and, (2) whether they desire to be included in one unit with the employees in Voting Group No. 1. The ballots with respect to unit preference will be counted separately and should a majority of the employees in Voting Group No. 3 vote to be included in the unit described as Voting Group No. 1 their representation ballots will be co-mingled and counted with the representation ballots cast by the employees in Voting Group No. 1.

The Commission wishes to make clear that should a majority of eligible employees in Voting Group No. 2 not vote in favor of being included in the unit with the employees in voting Group No. 1, the representation ballots cast by the employees in Voting Group No. 2 will be counted separately. Further, in Voting Group No. 3, should a majority of eligible employees therein not vote in favor of being included in the unit with the employees in Voting Group No. 1, the representation ballots cast by the employees in Voting Group No. 3 will be counted separately.

It should be noted that Section 111.70(4)(d)2a of MERA provides, with respect to inclusion of professional and craft employees in a non-professional and non-craft unit, that a majority of the professional employees eligible and a majority of the craft employees eligible must vote for inclusion in the non-professional/non-craft unit in order to be so included. Therefore, in order for the professional and craft employees to be included in the non-professional and non-craft unit a majority of all professional employees and a majority of all eligible craft employees must so vote. If either the professional or craft employees do not so vote, the employees so voting will not be included in the unit described in Voting Group No. 1 but will constitute a separate unit. Should either or both of the employees in Voting Group No. 2 and Voting Group No. 3 vote to be included in the unit described in Voting Group No. 1, the Commission in its certification will amend the description of the unit in Voting Group No. 1.

It should further be noted that the standard for the selection of a bargaining representative only requires that a majority of the employees voting vote in favor of such representation.


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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoonstra, Commissioner