

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE

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Case CLXIX
No. 20943 ME-1379
Decision No. 15848

Mr. Nicholas M. Sigel, Principal Assistant City Attorney, appearing on behalf of the Municipal Employer.

The City of Milwaukee on October 26, 1976, having requested the Wisconsin Employment Relations Commission to determine whether the position of "Management Assistant Automotive Mechanic Foreman" should be included in, or excluded from, the existing certified collective bargaining unit, represented by District Council 48, AFSCME, AFL-CIO, consisting of: ". . . all regular employees employed in the various bureaus in the Department of Public Works of the City of Milwaukee, excluding engineers and architects, craft employees receiving prevailing construction and building trade rates, confidential employees, supervisors and executives and also excluding bridgetenders and boat operators in the Bureau of Bridges and Public Buildings, clerks II - field (who are scalesmen), crane men, furnace men, incinerator plant maintenance workers, garbage disposal laborers, garbage collection laborers, machinery operators, maintenance mechanics, maintenance mechanic foremen and boiler repairmen employed in Incinerator Plants of the Disposal Division of the Bureau of Garbage Collection and Disposal; and garbage collection laborers employed in the Collection Division of the Bureau of Garbage Collection and Disposal; and machinists, blacksmiths, laborers (Electrical Services), mechanic helpers and city laborers employed in the Machine Shop of Shops and Yard in the Division of Street Services of the Bureau of Traffic Engineering and Electrical Services; . . ."; and hearing in said matter having been held at Milwaukee, Wisconsin, on November 29, 1976, Douglas V. Knudson, Examiner, being present, during the course of which a request was made to determine whether the classification of Tire Shop Foreman should be included in or excluded from said unit; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

That, since the incumbents of the positions of Management Assistant Automotive Mechanic Foreman and of Tire Shop Foreman at the Municipal

Garage are supervisors within the meaning of Sec. 111.70(1)(G) of the Municipal Employment Relations Act, they are excluded from the bargaining unit described above.

Given under our hands and seal at the City of Madison, Wisconsin this 30th day of September, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hooijstra
Charles D. Hooijstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

At the hearing the Municipal Employer was permitted to orally amend its Petition to reflect that, instead of three incumbents with the title of "Management Assistant Automotive Mechanic Foreman", there were two incumbents with said title, and one incumbent with the title of "Tire Shop Foreman".

In January of 1974, the title of the position of Assistant Automotive Mechanic Foreman was changed to Management Assistant Automotive Mechanic Foreman. At the same time, the title of the position of Assistant Garage Foreman was changed to Tire Shop Foreman.

In a previous Clarification of Bargaining Unit decision, 1/ the Commission concluded that the Assistant Garage Foreman was not a supervisory employee, and therefore, was included in the certified bargaining unit. The sole evidence, upon which said conclusion was based, consisted of the job description.

At the outset of the hearing, the Union moved for a dismissal of the instant proceeding on the basis that the issues herein had previously been determined by an Arbitrator in a final and binding Award dated September 10, 1976. In said arbitration proceeding, the basic issue was whether the City violated the collective bargaining agreement when it removed the Management Assistant Automotive Mechanic Foreman positions from the bargaining unit, on the basis that said positions were supervisors. The Arbitrator's discussion reveals that the City presented no witnesses to describe the duties being performed by the position's incumbents, but rather, relied on the job descriptions for said positions. The Arbitrator stated as follows:

"The Union, on the other hand, presented evidence through witnesses' testimony to the effect that the actual performance of duties by the three affected individuals has remained practically unchanged from the duties performed by such employees prior to the reclassification and at the time that they were in the bargaining unit. The totality of the evidence presented with respect to the actual performance of job duties and supervisory and management functions was minimal. On the basis of such minimal evidence as was entered into the record in this case, the arbitrator is of the judgment that the City has failed to persuade the undersigned by any substantial evidence that such newly created positions are in fact supervisory and managerial in nature or that they are different in any material respect from what they were during the time that they were within the bargaining unit. This is not to say that at some future point in time that the City cannot establish the supervisory nature of such positions. The undersigned only concludes that in the subject proceedings held in this case, the City did not meet its burden of persuasion to the fact that such positions are in fact supervisory." 2/

1/ City of Milwaukee, Decision No. 6215-M, 9/66.

2/ City of Milwaukee and District Council 48, AFSCME, (Grievance 127-74), pages 7-8, Robert J. Mueller, Arbitrator, 9/76.

The Arbitrator then directed that said positions "should remain a part of the bargaining unit." 3/

The Union's motion to dismiss, upon which the Examiner reserved ruling, is denied by the Commission. The arbitration award, previously referred to, is only one element of the record presented to the Commission. Further, the Commission has been granted the exclusive jurisdiction to determine the composition of certified collective bargaining units, and, retains the exclusive authority to determine how the statutory exclusions apply to specific positions whose bargaining unit eligibility are in dispute, e.g., are individuals supervisors within the meaning of the act. 4/ Although the Commission may give weight to arbitration proceedings concerning the contractual rights of employees, it will not be bound by an arbitrator's award with respect to issues over which it has exclusive jurisdiction, especially if such deferral would result in the inclusion in a bargaining unit of individuals who should be excluded by statutory mandate. 5/ Therefore the Commission finds it necessary to examine the entire record of the instant proceeding, including the arbitration award.

All three of the contested positions are located at the Municipal Garage, a multi-floor operation under the overall direction of the Garage Supervisor (O. Halvorsen), a non-bargaining unit position. The ground floor houses the tire shop, which inventories, repairs and replaces tires for the Municipal Employer's fleet of approximately eight hundred vehicles. The tire shop has a staff of twelve employees, including the Tire Shop Foreman (E. Makowski). Minor vehicle repair work is performed on the first floor by fifteen employees, including the Management Assistant Automotive Mechanic Foreman (K. Braun). The second floor houses the machine shop and stockroom, and, is the area where major repairs of vehicles are performed. There are approximately fourteen employees, including the Management Assistant Automotive Mechanic Foreman (J. Hughes), assigned to the second floor area. Major repairs on light equipment are performed on the third floor under the direction of the Automotive Mechanic Foreman (W. Tellier), which position is excluded from the bargaining unit.

None of the three Foremen, i.e., Makowski, Braun and Hughes, are expected to perform the repair work or other duties which the other bargaining unit employees perform. Each Foreman spends approximately seventy-five to eighty percent of his time in assigning and overseeing the work efforts of the other employees on their respective floors of the Garage. The remainder of their time is spent in a variety of activities such as making telephone calls, filling out forms, record keeping, diagnosing necessary equipment repairs, etc.

Two of the Foremen have issued oral warnings. None of the Foremen have been involved in more severe disciplinary actions, such as the issuance of written warnings, suspensions or terminations, although they have been told that they have the authority to recommend such discipline. There is no evidence in the record to show that any of the employees supervised by the three Foremen have received any discipline from the supervisors to whom the Foremen report.

3/ Id. at page 9.

4/ Municipal Employment Relations Act, Section 111.70(1)(0)1.

5/ Id. at (1)(b).

Each of the three Foremen has received and responded to oral grievances of employees, which actions constitute the first step of the contractual grievance procedure. The Foremen have received written grievances. However, most written grievances have been filed with the Garage Supervisor per his instructions. The written responses to said grievances have been signed either by the Garage Supervisor, or, by one of the Foremen. Each response, signed by the Garage Supervisor, has identified the Foremen with whom the grievance was discussed prior to its being answered by the Garage Supervisor.

The Garage Supervisor usually reviews applicants for promotions with the Foremen prior to selecting one of three top applicants. Similarly, after conducting interviews of prospective employees, the Garage Supervisor reviews their background and qualifications with the Foremen prior to offering employment to one of the applicants.

The record clearly demonstrates that each of the three Foremen exercises independent judgment when instructing, assigning and overseeing the work of the employees on their respective floors. Further, the Foremen rarely perform work normally performed by other employees.

Supervision of work is different than supervision of employees, and standing alone, would not be dispositive of the supervisory status question. In the instant matter, however, the two types of supervision are highly integrated, and, therefore, the incumbents' supervision of the work must be considered along with the other indicia of supervisory authority. As stated previously, the Foremen have resolved oral grievances and effectively recommended responses to written grievances; issued verbal warnings; and, participated in the selection and promotion of employees. In a relatively stable and skilled work force, such as apparently exists at the Municipal Garage, supervisory authority may be exercised less frequently than in other work environments. However, the Foremen have demonstrated their possession of such authority, when it has been required.

If the three Foremen were to be included in the bargaining unit, then there would be only two non-unit supervisors to supervise the employees and to direct the activities located on four separate floors of the Municipal Garage. The record is clear that said two supervisors do not have regular contact with the employees working on the ground, first and second floors, but rather rely on the three Foremen to supervise those employees and their activities. The Commission believes on the basis of the record that, since the two non-unit supervisors could not efficiently direct supervisory responsibility over all of the employees working in the Municipal Garage, such an extension of responsibility would create an unrealistic supervisor-employee ratio.

The Commission concludes that the record establishes the supervisory status of the two Management Assistant Automotive Mechanic Foremen and the Tire Shop Foreman. The Commission has considered both the Arbitration award and its previous decision, as cited above, but based on the totality of the evidence presented herein, it is compelled to reach a conclusion contrary thereto. It should be noted that neither of those two proceedings contained testimony from the incumbents of the positions at issue herein, as did the instant record. Having concluded that the positions are supervisory, the Commission must

exclude said positions from the bargaining unit, so as to be consistent with the statutory mandate that supervisors be excluded from a bargaining unit of municipal employees.

Dated at Madison, Wisconsin this 30th day of September, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Tarosian
Herman Tarosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner