

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF GREEN BAY (DEPARTMENT OF
PUBLIC WORKS)

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Case LXV
No. 22801 ME-1523
Decision No. 16399-C

Mr. Charles Grapentine, Personnel Director, on behalf of the City of Green Bay.

**FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER WITH RESPECT TO CHALLENGED BALLOT**

Pursuant to a Direction of Election previously issued in the above-entitled matter, the Wisconsin Employment Relations Commission, herein the Commission, on June 28, 1978, conducted an election among certain employes of the City of Green Bay (Department of Public Works) for the purposes of determining whether said employes desire to be represented for the purposes of collective bargaining by Green Bay Public Works Department Employees Association, or by Teamsters Local No. 75, or by Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, or by none of said organizations; and during the conduct of the election the City having challenged the ballot of James DeGreef; and following the conduct of the election the City having notified the Commission that it was withdrawing its challenge to the ballot of DeGreef; and that notwithstanding the City's withdrawal the ballot of DeGreef remains in issue in that the Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, indicated it would have challenged DeGreef's ballot had the City not done so; and the Commission, being satisfied that said challenged ballot may affect the results of the election, set hearing in the matter; and said hearing having been held before Examiner Peter G. Davis at Green Bay, Wisconsin on August 21, 1978; 1/ and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Determining Challenged Ballot.

FINDINGS OF FACT

1. That, pursuant to a Direction of Election previously issued by it, the Commission June 28, 1978, conducted an election among employees in the following described appropriate bargaining unit:

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.

"all employees in the City of Green Bay Public Works Department in the Street Division, Sanitation Division and Sewer Division, excluding seasonal, supervisory, managerial, confidential, office and clerical employees, who were employed by the Municipal Employer on April 27, 1978, except such employees as may prior to the election quit their employment to be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Green Bay Public Works Department Employees Association, or Teamsters Local No. 75, or Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO, or by none of said organizations, for the purposes of collective bargaining with the City of Green Bay with respect to wages, hours and conditions of employment."

2. That during the course of the balloting, the Commission's agent conducting the election challenged the ballot of David Heath on the basis that Heath's name did not appear on the eligibility list; that also during the course of the election the ballot of James DeGreef was challenged by the City's observer, on the claim that DeGreef was a supervisor; that on a date subsequent to the election, and prior to any further action by the Commission, the Commission was advised that none of the parties involved objected to the eligibility of Heath, and that, while the City was withdrawing its challenge to the ballot of DeGreef, the Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO indicated, had not the City challenged DeGreef's ballot, that it would have done so.

3. That, thereafter, and on July 31, 1978, pursuant to the consent of the parties, the Commission opened the envelope containing the ballot of Heath; that the inclusion of Heath's ballot in the results of the election indicated said results to be as follows:

1.	Eligible to vote	170
2.	Ballots cast	141
3.	Ballots challenged	1
4.	Valid ballots counted	140
5.	Ballots cast for Green Bay Public Works Department Employees Association	13
6.	Ballots cast for Teamsters Local No. 75	70
7.	Ballots cast for Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO . . .	57
8.	Ballots cast for no representation	0

4. That since the above tally indicated that no choice on the ballot received a majority of votes cast, and further that the ballot of DeGreef, if DeGreef was found to be eligible to vote, might affect the results of the election, the Commission ordered that hearing be held to determine the employee status of DeGreef; and that hearing thereon was held on August 21, 1978.

5. That the evidence adduced during said hearing established that DeGreef is employed in a non-supervisory capacity.

That upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That James DeGreef, on the date of the election, was a municipal employe within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act. Therefore DeGreef was eligible to vote in the election involved herein.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission issues the following

ORDER

1. That the challenge of Wisconsin Council of County and Municipal Employees, Council 40, AFSCME, AFL-CIO to the ballot of James DeGreef shall be, and hereby is, denied.

2. That the ballot of James DeGreef shall be opened and included in the final tally of ballots on Friday, September 15, 1978 at 1:00 p.m. at the Commission's offices, 30 West Mifflin Street, Room 910, Madison, Wisconsin.

Given under our hands and seal at the
City of Madison, Wisconsin this *6th*
day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER WITH RESPECT TO CHALLENGED BALLOT

AFSCME challenged the ballot cast by James DeGreef on the grounds that he is a supervisor. DeGreef has been employed as an assistant foreman in the City's Department of Public Works (Sewer Division) for approximately one year. He in essence functions as an aide to the Sewer Division foreman, who is responsible for the operation and maintenance of the City's sewer system. He has never disciplined, hired or evaluated an employee, nor has he effectively recommended same. DeGreef does not maintain employee records, has no involvement in the contractual grievance procedure, and lacks independent authority to authorize overtime. He does not schedule or assign work and has never exercised any substantial amount of discretion to alter the foreman's decisions with respect thereto. DeGreef is paid an hourly wage which is 10¢ per hour above Sewer Division employees classified as laborers and truck drivers. He receives additional compensation for overtime hours and punches a time clock. During the three or four weeks per year during which the foreman is absent, DeGreef is responsible for the operation of the Sewer Division.

Section 111.70(1)(o)1 of MERA defines the term "supervisor" as follows: "As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment."

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline, or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment and discretion exercised in the supervision of employees. 2/

In light of the foregoing statutory criteria and indices of supervisory status and duties performed by DeGreef, we conclude that DeGreef is not a supervisor. Although he does assume the foreman's responsibilities when said individual is absent, that fact is not, in and of itself,

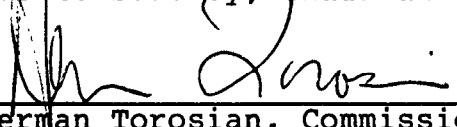
sufficient to warrant a finding of supervisory status. Having reached said conclusion, the Commission has therefore determined that DeGreef is an "employee" under the Municipal Employment Relations Act and therefore his ballot is to be included in the final tally.

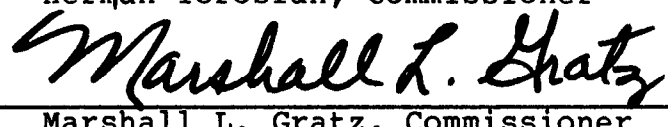
Dated at Madison, Wisconsin this 6th day of September, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

