

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
MILWAUKEE DISTRICT COUNCIL 48,  
AFSCME, AFL-CIO and its affiliated  
LOCAL 426

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Case CLXXVII  
No. 21372 ME-1417  
Decision No. 16987  
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Involving Certain Employees of  
CITY OF MILWAUKEE (DEPARTMENT OF  
PUBLIC WORKS)

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Appearances:

Podell and Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock  
Cross, appearing on behalf of the Union.  
Mr. James B. Brennan, City Attorney, City of Milwaukee, appearing  
on behalf of the Employer.  
Mr. Nicholas M. Sigel, Principal Assistant City Attorney, appear-  
ing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT

Milwaukee District Council 48 and its affiliated Local 426, hereinafter the Union, on February 9, 1977 and April 18, 1977 filed a petition and amended petition requesting the Wisconsin Employment Relations Commission to clarify the bargaining unit consisting of certain employees employed in the Department of Public Works of the City of Milwaukee, and hearing in the matter having been conducted on June 2, 1977 and July 12, 1977 in Milwaukee, Wisconsin before Examiner Sherwood Malamud; and the Union filed its brief on April 8, 1978 and the Municipal Employer did not file a brief; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Milwaukee District Council 48, AFSCME, AFL-CIO, and its affiliated Local 426, are labor organizations representing employees for the purpose of collective bargaining. The Union maintains its offices at 3427 West St. Paul Avenue, Milwaukee, Wisconsin.
2. The City of Milwaukee (Department of Public Works), hereinafter referred to as the City is a municipal employer, having its primary office at 200 East Wells Street, Milwaukee, Wisconsin.
3. That on May 6, 1963, the Wisconsin Employment Relations Commission, following an election conducted by it, certified the Union as the exclusive collective bargaining representative of certain employees of the City employed in the various bureaus of the Department of Public Works; that excluded from said unit, as supervisory employees were, among others, the positions of Labor Foreman III, Street Repair Foreman, and Sewer Foreman III; that subsequently the City changed the title of the first three classifica-

tions to Street Repair Supervisor I, Street Repair Supervisor II, and Sewer Repair Supervisor; and that one Sewer Foreman III, whose duties involved sewer examinations was retitled to Sewer Exam Supervisor.

4. That the instant proceeding was initiated by the Union, wherein it is seeking a determination as to whether the occupants of the above-noted classifications should be included in the bargaining unit involved; and that in said regard the Union contends that the occupants thereof are not performing supervisory duties, while the City contends otherwise.

5. That the maintenance of the streets of the City is performed by some 265 personnel under the primary direction of the Street Services Supervisor; that one Asphalt Plant Supervisor and four Street Service District Supervisors report directly to the Street Services Supervisor; that the Street Service District Supervisors organize employees in their respective districts into crews of varying sizes, assign and transfer employees to and between crews, serve as the first written step in the contractual grievance procedure, and make disciplinary determinations, following their own independent investigation of the pertinent facts; that eight Street Repair Supervisors I, who are in pay range 105, and five Street Repair Supervisors II, are in pay range 108, all report to the District Supervisors; that the Street Repair Supervisors I are responsible for one to ten two-employee crack filling crews, or for an 11 to 13 employee paving or cutting subcrew; that the Street Repair Supervisors II are responsible for larger crews or crews performing more complex work; that the Street Repair Supervisors I and II direct the employees in their crews, receive oral grievances and have the authority to resolve same, and make disciplinary recommendations to the District Supervisors; and that neither the Street Repair Supervisors I nor II perform any bargaining unit work.

6. That the Sewer Maintenance Section of the Maintenance and Services Division of the Bureau of Street and Sewer Maintenance consists of some 120 personnel; that the Sewer Services Supervisor is the highest ranking supervisor in the Section, which is separated into two units, namely the Maintenance Services Unit and Inspection and Equipment Services Unit; that 80 to 90 persons are generally employed in the former unit, while the remainder are employed in the latter; that directly under the Sewer Services Supervisor are District Supervisors, who are responsible for the cleaning, maintenance, repair and construction of sewers in four districts of the City; that four of the six Sewer Repair Supervisors each work directly under each of said District Supervisors, and are in charge of work crews, ranging from 25 to 30, throughout the City; that said crews consist of from four to 20 employees; that, although the District Supervisors normally visit each job site every day, the Sewer Repair Supervisor is primarily in charge of supervising and directing the employees in large work crews; that none of said four Sewer Repair Supervisors perform any significant physical labor; that said Sewer Repair Supervisors maintain time sheets, material, equipment and other records and that they initiate disciplinary action involving employees in their crews, and in that regard recommend possible discipline action to their respective District Supervisors.

7. That Wilbert Nornberg, also classified as a Sewer Repair Supervisor, at the time of the hearing was approaching retirement age; that Nornberg monitors employee absences, i.e., primarily when an employee has taken sick leave, Nornberg will visit the home of the employee to verify the fact that the employee was ill; and that Nornberg reports the results of his investigation, which may lead to some form of discipline if, in fact, the employee is not ill; and

that, in the performance of his duties, Nornberg does not work with or supervise other employees.

8. That Lester Boettcher, also classified as a Sewer Repair Supervisor, does not work in the field, nor does he supervise any employees; that Boettcher's duties consist of compiling a sewer cleaning program and he reports to the Street and Sewer Services Supervisor; and that Boettcher neither evaluates nor directs any employee's work performance.

9. That in 1963, at the time of the Commission's original decision to the effect that the Sewer Exam Supervisor was found to be a supervisor, the occupant of the position worked with inspection crews in the field; that at the time of the hearing herein, because of new techniques in inspection, the occupant of the position no longer goes into the field, but rather, he now reviews television tapes of the sewers to determine necessary repairs, etc.; that although the Sewer Exam Supervisor trains employees in the inspection crews, he exercises no supervision over any employees.

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

#### CONCLUSIONS OF LAW

1. That the individuals occupying the classification of Street Repair Supervisor I, Street Repair Supervisor II and Sewer Repair Supervisor (with exception of the positions occupied by Nornberg and Boettcher) are supervisors within the meaning of Section 111.70(1)(c) of the Municipal Employment Relations Act.

2. That, since Sewer Repair Supervisor Nornberg performs duties which are deemed confidential and closely relate to possible disciplinary action of employees, Nornberg is not a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

3. That Sewer Repair Supervisor Boettcher and the occupant of the position of Sewer Exam Supervisor are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law the Commission makes and issues the following

#### ORDER CLARIFYING BARGAINING UNIT

That Sewer Repair Supervisor Boettcher and the occupant of the position of Sewer Exam Supervisor are properly included in the collective bargaining unit involved herein, while the other positions involved herein continue to be excluded from said unit.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of April, 1979.

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, CONCLUSIONS  
OF LAW AND ORDER CLARIFYING BARGAINING UNIT

As amended, the Union's petition requests an order that the positions noted in Findings of Fact 3 be included in the collective bargaining unit involved. Said positions were excluded from the unit in the 1963 determination thereof by the Commission. Contrary to the statement of Union's counsel to the effect that in the 1963 proceeding the Commission's determination "was perfunctory and made quickly without going into detail on the job descriptions and the particular performance of the individual employees involved in those positions," it should be noted that in the 1963 proceeding representatives of the parties stipulated that the Commission could make its determination with respect to the managerial, supervisory and confidential status of said positions, as well as other positions, on the basis of the then current job descriptions, and the Commission made such determinations based on said job descriptions. However, the City does not object to the Union's request that the status of said positions be reconsidered by the Commission, and in that regard the City contends that the positions should remain excluded from the unit.

The determination of supervisory status is based on the presence in sufficient weight of one or more of the following criteria:

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. 1/

The Commission has reviewed the duties and responsibilities of the occupants of the positions in issue. We conclude that the duties and responsibilities of the Sewer Repair Supervisor I, Street Repair Supervisor II and Sewer Repair Supervisor (with the exception of the positions occupied by Nornberg and Boettcher) are sufficient in number and degree so as to establish that the individuals occupying same

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1/ Green Lake County (16050) 5/78; Wauwatosa Board of Education (6219-D); Racine County (8330) 12/76.

are supervisors within the meaning of Section 111.70(1)(o) of the Municipal Employment Relations Act. Further, the facts do not establish that Sewer Repair Supervisor Boettcher and the occupant of the position of Sewer Exam Supervisor perform tasks which qualify them as supervisors and therefore they are employees and included in the unit. In addition, the duties of Nornberg are so closely related to activity which could lead to disciplinary action of employees, and therefore his duties are confidential and he too is excluded from the unit on the latter basis. The record established that Nornberg was close to retirement. Should a new employee be performing the duties performed solely by Nornberg, that employee should be deemed excluded from the unit on the same basis.

Dated at Madison, Wisconsin this 24th day of April, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner