

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF MILWAUKEE

Case CXCVII  
No. 24629 ME-1678  
Decision No. 17741

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

AFSCME District Council 48, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes of the City of Milwaukee who are employed in the Central Board of Purchases; and a hearing in the matter having been held on January 17, 1980 at Milwaukee, Wisconsin, before Douglas V. Knudson, Examiner; and the distribution of transcript and submission of post-hearing briefs having been completed on March 6, 1980; and the Commission, having considered the evidence and being satisfied that questions concerning the appropriate bargaining unit and representation have arisen involving certain employes of the City of Milwaukee, makes and issues the following

4. That the Salvage and Sales Coordinator, and, the Assistant Salvage and Sales Coordinator do not exercise sufficient supervisory or managerial duties and responsibilities to constitute them as supervisory or managerial positions.

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

CONCLUSIONS OF LAW

1. That the positions of Salvage and Sales Coordinator, and, Assistant Salvage and Sales Coordinator are municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and therefore, said positions are appropriately included in the bargaining unit described above in Finding of Fact No. 3.

2. That the bargaining unit described above in Finding of Fact No. 3 constitutes an appropriate unit for the purposes of collective bargaining within the meaning of Section 111.70(1)(e) of the Municipal Employment Relations Act, and, that a question of representation, within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act, has arisen among said employees in said appropriate collective bargaining unit.

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

DIRECTION OF ELECTION

It is hereby directed that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees in the Central Board of Purchases of the City of Milwaukee, excluding managerial, supervisory and confidential positions, currently consisting of City Purchasing Agent, Deputy City Purchasing Agent, Management Administrative Assistant I, Clerk Stenographer IV, Specifications Engineer II, Buyers, City Inventory Manager, Duplicating Services Supervisor, Assistant Duplicating Services Supervisor, and, Stores Clerk III, who were employed by the Central Board of Purchases of the City of Milwaukee on April 9, 1980, 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 casting valid ballots desire to be represented by AFSCME District Council 48, AFL-CIO for the purpose of collective bargaining with the Central Board of Purchases of the City of Milwaukee with respect to wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Gary L. Covelli  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

At the hearing, the parties agreed to the following description of the appropriate bargaining unit in this matter: "All regular full-time and regular part-time employees in the Central Board of Purchases of the City of Milwaukee, excluding managerial, supervisory and confidential positions, currently consisting of City Purchasing Agent, Deputy City Purchasing Agent, Management Administrative Assistant I, Clerk Stenographer IV, Specifications Engineer II, Buyers, City Inventory Manager, Duplicating Services Supervisor, Assistant Duplicating Services Supervisor, and, Stores Clerk III." The parties further agreed that if the position of Stores Clerk III is reclassified and given a new title, then the new position title will replace the title of Stores Clerk III in the bargaining unit description. The parties were unable to agree on whether the positions of Salvage and Sales Coordinator, and, Assistant Salvage and Sales Coordinator should be included or excluded from the bargaining unit. The City, contrary to the Union, contends that said two positions are managerial and supervisory in nature, and therefore, should be excluded.

The Central Board of Purchases consists of four divisions under the direction of the City Purchasing Agent. The Stores Division is administered by the City Inventory Manager, who supervises a staff consisting of one Clerk Typist, two Stores Clerks, one blue collar employee, and, the two positions at issue herein. Harold Hackbarth is the present Salvage and Sales Coordinator. Lois Chicks is the present Assistant Salvage and Sales Coordinator. Hackbarth, with Chicks' assistance, is responsible for the disposition of the City's surplus, obsolete and/or scrap equipment and materials through established procedures. Such disposal can be accomplished through inter-departmental transfers, sales to individual customers, sales by sealed bids, or, auctions. After inspecting and appraising an item, either Hackbarth or Chicks places a monetary value on that item. Said value then determines the procedure to be followed in disposing of said item, since each disposal procedure has an established monetary range to which an item's value is compared. For example, if an item had an appraised value of less than one hundred dollars, it could be sold to any customer. However, if the item's value exceeded two hundred fifty dollars, then it must be sold by a sealed bid procedure. Thus, Hackbarth and Chicks exercise their discretion when appraising the value of an item, although they can, and do, seek advice from their superiors and other employees, such as Buyers. Once the item's value is established, its disposal is accomplished by following an established procedure. Neither individual has the discretion to reject a sealed bid for being too low. Such a decision would be referred to other individuals.

Both Hackbarth and Chicks are involved in the conduct of auctions, especially those involving vehicles. The auctions are set up through an established procedure and are conducted by an outside auction firm. Hackbarth was one of five City employees who were involved in the selection of that firm.

The salvage and disposal operations generated a total of \$256,295.14 in revenues for the City during the calendar year of 1978.

Chicks is also currently involved in the establishment of a store operation for the sale of fixed price surplus items. The operation of that store will involve a considerable amount of Chicks' time in the future. However, it appears that Chicks' involvement in the store operation will consist primarily of duties similar in nature to those she currently performs, such as the receipt and pricing of

various items. Thus, the record does not support a conclusion that Chicks will be performing duties of a managerial nature. If the nature of those duties changes significantly after the store is in actual operation, Chicks' bargaining unit status can be re-examined at that time.

The record reveals that Hackbarth and Chicks primarily function in accordance with established policies and procedures, with minimal, if any, involvement in the establishment of such policies and procedures. The manner and extent to which they exercise certain discretion in performing their duties, e.g., appraisals, is insufficient to confer managerial status to their positions. The financial authority exercised by Hackbarth and Chicks in those functions is ministerial, rather than managerial, in nature. Thus, it is concluded that Hackbarth and Chicks lack both a significant role in the formulation, determination, and implementation of management policy, and, a sufficient financial authority to commit the City's resources, so as to warrant their exclusion from the bargaining unit as managerial employees. Such a conclusion is supported by the fact that the City, in its position inventory, has classified both positions as "General City Non-Managerial/Non-Represented."


Finally, it is necessary to examine the City's contention that Hackbarth and Chicks are supervisors. Such a contention is based on Hackbarth's "supervision" of Chicks, who in turn "supervises" a blue collar employee. In addition to the City Inventory Manager, both Hackbarth and Chicks interviewed applicants for the blue collar position, and recommended to the Manager that the present incumbent be hired. Chicks directs the activities of the blue collar employee and works closely with him, even to the extent of often performing the same duties. Although the present blue collar employee has an attendance problem, Chicks has not attempted to discipline the employee, but rather, merely informs the City Inventory Manager of the employee's attendance record. It appears that Chicks is primarily a working foreman, who at best exercises only incidental supervisory authority, which is de minimus in nature. Similarly, the record reflects a co-worker relationship between Hackbarth and Chicks, rather than a supervisor-employee relationship. They often work independently of each other on different activities. There is no evidence in the record of any exercise of supervisory authority by Hackbarth toward Chicks. On one occasion Hackbarth did recommend that an unnamed employee be disciplined. However, his recommendation was not followed in that instance.

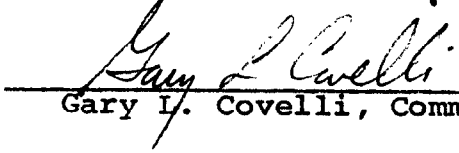
Based on the foregoing factors, the Commission concludes that the positions occupied by Hackbarth and Chicks are not supervisory or managerial in nature, and therefore, said positions are properly included in the bargaining unit.

Dated at Madison, Wisconsin this 9th day of April, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Gary I. Covelli, Commissioner