

Walter Bvocik, Jr. - Equipment Operator
Milo J. Marks, Jr. - Utility Tradesman
David Dorn - Water Dept.
Rick Nelson - Equipment Operator
Patrick F. Gaffney - DPW, Mechanic
Joe O'Conner - DPW, Labor
William Koehn, Jr. - DPW, Truck Driver & Labor
Tom Ryan - DPW, Equipment Operator

and that also as part of that stipulation the parties agreed that the following individuals, if they appeared at the polls to vote, should vote by challenged ballot, since the parties could not then agree as to whether said individuals should be included in the unit involved:

Roy F. Marks II - Admin. Asst., Engineering Dept.
Jeffory Marschke - DPW, Foreman
Gary Winzenried - Water Dept., Foreman

4. That the Commission conducted the election in the above described unit, wherein all eleven employes voted, with the last three individuals casting challenged ballots; that all eight remaining individuals voted in favor of being represented by the Union, and since the three challenged ballots did not affect the results of the election, the Commission, on May 13, 1980 certified the Union as the exclusive collective bargaining representative of the employes in the above described unit.

5. That on May 2, 1980 the Union filed a petition, instituting the instant proceeding wherein it requested the Commission to determine whether Marks, Marschke, and Winzenried should or should not be included in the above described bargaining unit; and that the Union, contrary to the Village, contends that they should be included, while the Village argues that Marks is not employed in the Department of Public Works, Sewer and Water, and that Marschke and Winzenried are supervisory employes.

6. That an examination of the "organizational chart" of the Village indicates that it operates and maintains a Police Department (employing officers and "civilians"), a Fire Department (employing a Chief, with volunteer Firefighters), an Assessor, an Engineering Department (wherein Marks is employed), a Department of Public Works (included therein are the Water, Sewer, Parks, and Cemetary Departments), a Recreation Department, a Clerk-Treasurer (wherein clericals are employed), and Building Inspection (wherein Building, Planning and Electrical Inspectors are employed).

7. That the Administrative Assistant, Marks, performs his duties in the Village Hall, as well as throughout the Village, in the issuance of zoning permits, in the inspection of building plans, in the inspection of new construction, and the maintenance inspection, including the facilities of the Village, e.g. the sewer system; and that in the latter regard Marks comes in contact with employes in the bargaining unit; that while Marks has hours which differ than those of bargaining unit members, and receives overtime in the form of compensatory time, rather than time and one-half, other conditions of employment are comparable to those in the unit; that Marks is supervised by the Village Administrator, but on occasion he will receive direction from the Superintendent of Public Works, who is the primary supervisor of the employes in the unit; and that Marks, like the employes in the unit, spends most of his time performing duties in the field, performing "blue collar" tasks related to construction and maintenance of existing facilities.

8. That Marschke and Winzenried, who occupy the classification of Foreman, direct the work of five and four employes respectively; that Winzenried is the only licensed operator for the Village's sewer and water utility; that Marschke's crew perform their tasks throughout the Village, e.g. streets, parks, cemetary; that both Foremen meet with the Superintendent of Public Works each morning to receive the work assignments of their respective crews; that when an assigned task is completed for the day, the Foreman has the authority to assign additional work, and the Foreman may also assign duties in the case of an

emergency, and at the same time authorize overtime for such work; that generally the Superintendent visits work sites on the average of three times per day; that both Foremen spend from one to one and one-half hours per day in overseeing the work of their crew members, and spend the remaining hours in performing tasks and duties similar to those performed by crew members; that both Foremen receive thirty-six cents per hour over and above the labor rate received by the highest paid crew members; that, while the Foremen play a part in the hiring of employes, in that hiring is a group endeavor, effective recommendations regarding discipline and discharge matters lies with the Superintendent and not the Foremen; and that, therefore, at the most, both Marschke and Winzenried, are working foremen.

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

CONCLUSIONS OF LAW

1. That, in order to carry out the policies expressed in Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, the position of Administrative Assistant presently occupied by Roy F. Marks II, is appropriately included in the collective bargaining unit of employes of the Village of Pewaukee, which unit is presently represented by District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO.

2. That the positions of Foreman, presently occupied by Jeffory Marschke and Gary Winzenried, are not "supervisory" positions within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, but rather said positions are occupied by "employes" as that term is defined in Section 111.70(1)(b) of the 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

1. That the positions of Administrative Assistant and Foreman employed in the Department of Public Works be, and the same hereby are, included in the collective bargaining unit involved herein, and that in said regard the Commission hereby amends the description of said unit to read as follows:


Equipment Operators, Mechanics, Truck Drivers, Utility Tradesmen, Laborers, and Working Foremen, employed by the Village of Pewaukee (Department of Public Works, Sewer and Water, including Administrative Assistant - Engineering Department), excluding confidential, supervisory, managerial, professional and office clerical employes.

Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Herman Torosian, Commissioner

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

In this proceeding the Union contends that the three individuals occupying the one position of Administrative Assistant in the Engineering Department, and the two Foreman positions in the Department of Public Works, including the Sewer Department, are "employees" within the meaning of MERA, and therefore should be included in the bargaining unit represented by the Union. The Village on the other hand contends otherwise.

The Administrative Assistant

The Village would exclude Marks, who occupies the position of Administrative Assistant, from the unit, claiming that the work performed by Marks is dissimilar from those employees presently in the unit. Section 111.70(4)(d)2.a. provides in part as follows:

The commission shall determine the appropriate bargaining unit . . . and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

The description of the unit involved herein was agreed upon by the parties, as was the identity of the employees to be included in said unit, except for those individuals occupying the positions in issue herein. The parties agreed that the ballots of said individuals would be challenged if they would appear to vote. They did so appear and their ballots were challenged. Since said challenged ballots did not affect the results of the election, the Union was certified as the bargaining representative. Now the Commission must determine whether said three individuals should be included or excluded from said unit.

The following factors are taken into consideration by the Commission in the establishment of appropriate collective bargaining units: 1/

1. The duties and skills of employees in the unit sought as compared with duties and skills of other employees.
2. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.
3. Whether the employees in the unit sought have separate or common supervision with all other employees.
4. Whether the employees in the unit sought have a common work place with the employees in said declared unit or whether they share the work place with other employees.

1/ See Kenosha Unified School District No. 1, (13431), 3/75; Hartford Union High School, (15745), 8/77; Madison Joint School Dist. No. 8, (14814-A), 12/76; Lodi Joint School District No. 1, (16667), 11/78.

5. Whether the unit sought will result in undue fragmentation of bargaining units.
6. Bargaining history.

While Marks has supervision which differs from the employes in the unit, and while certain conditions of his employment differ, he spends a considerable portion of his time and duties relating to "blue collar" maintenance and construction. The established unit consists of the Village's "blue collar" maintenance and construction. The established unit consists of the Village's "blue collar" employes, except for craft employes, if any, who are entitled to their own craft unit. The Commission has, in the past, determined that an over all "blue collar" unit is appropriate in village settings involving relatively few employes, 2/ despite the somewhat imperfect groupings that inevitably result. To conclude otherwise risks offending the statutory proscription on fragmentation of the placing of a position in an even less appropriate collective bargaining unit. We therefore conclude that the Administrative Assistant position is included in the existing unit.

The Foremen

Section 111.70(1)(o)1 of the Municipal Employment Relations Act defines the term "supervisor" as follows:

". . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgement."

The Commission has considered the following factors in determining whether positions are or are not supervisory: 3/

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

2/ Village of Union Grove (15599) 6/77.

3/ Fond du Lac County (10579-A) 1/72; Eau Claire County (17488) 12/79.

