

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CLINTONVILLE UTILITY EMPLOYEES
ASSOCIATION

Involving Certain Employees of

CITY OF CLINTONVILLE (UTILITY
COMMISSION)

Case IX

No. 27542 ME-1969

Decision No. 18747

Appearances:

Mr. Frank Sinkewicz, Agent, 85 Torrey Street, Clintonville, Wisconsin, on behalf of Clintonville Utility Employees Association.

Mr. Richard Everson, President, City of Clintonville Utility Commission, 65 East 12th Street, Clintonville, Wisconsin, on behalf of City of Clintonville Utility Commission.

Mr. Ralph M. Lauer, City Attorney, 6 Tenth Street, Clintonville, Wisconsin, on behalf of the City of Clintonville.

Coughlin, Herrling, Swain & McCanna, Attorneys at Law, by Mr. Dennis W. Herrling, 120 North Morrison Street, Appleton, Wisconsin, on behalf of the Clintonville Street Department Association.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND DIRECTION OF ELECTION

Clintonville Utility Employees Association having, on February 17, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the City of Clintonville Utility Commission to determine whether said employees desired to be represented for the purposes of collective bargaining by said Petitioner; and hearing in the matter having been conducted on April 1, 1981 at Clintonville, Wisconsin before Examiner Christopher Honeyman, a member of the Commission's staff, during the course of which the City of Clintonville, as well as the Clintonville Street Department Association were permitted to intervene on the basis of claiming an interest in the matter; 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

1. That Clintonville Utility Employees Association, hereinafter referred to as the Utility Association, is a labor organization and has its offices at Clintonville, Wisconsin.

2. That the City of Clintonville Utility Commission hereinafter referred to as the Utility, operates a water and electric utility in the City of Clintonville, Wisconsin; that the Utility has its offices at Clintonville, Wisconsin; that the Utility was created by the City of Clintonville, pursuant to Sec. 66.068, Wis. Stats.; and that the Utility is managed by a five member commission, who has the authority to employ and fix the compensation of subordinates, including employees.

3. That the Utility Association is an organization consisting of employees of the Utility, who have organized and engaged in concerted activity seeking status as the representative of employees of the Utility, for the purposes of collective bargaining with representatives of the Utility on matters affecting the wages, hours and working conditions applicable to Utility employees.

4. That the City of Clintonville, hereinafter referred to as the City, is a municipal employer maintaining and operating various departments and functions separate and apart from the functions maintained and operated by the Utility; and that the City has its offices at Clintonville, Wisconsin.

5. That the Clintonville Street Department Association, hereinafter referred to as the Street Association is a labor organization, which has among its members employees of the City employed in its Street Department, and the Street Association has its mailing address in care of its Counsel, 120 North Morrison Street, Appleton, Wisconsin.

6. That on September 10, 1979 the Street Association filed a petition with the Wisconsin Employment Relations Commission, hereinafter referred to as the WERC, requesting that an election be conducted among all full-time and regular part-time employees of the Street Department of the City to determine whether said employees desired to be represented for the purposes of collective bargaining with the City; that on the date of the hearing on said petition the Street Association and the City executed a stipulation requesting such an election, and as part of the stipulation the Street Association and the City agreed upon a list of employees, allegedly employed in the Street Department, who would be eligible to vote in said election; that included in said list of eligibles were twenty three named individuals agreed upon as being employed by the City in its Street Department, when in fact nine of said individuals were employed by the Utility, a fact then unknown to the WERC; that, pursuant to said stipulation the WERC on November 2, 1979 directed an election among the Street Department employees of the City to determine whether they desired to be represented by the Street Association; that, however, the conduct of the election was delayed because of a protest by seven of the Utility employees that they should not have been included among the eligibles; that as a result, the parties agreed that should Utility employees present themselves to vote in the election they would vote by challenged ballot; that the election was conducted on April 9, 1980; that none of the Utility employees appeared to vote; and that nevertheless, thirteen of the eligible employees voting cast ballots in favor of being represented by the Street Association, while one employee voted against such representation; and that on April 24, 1980 the WERC certified the Street Association as the exclusive collective bargaining representative of the employees employed by the City in its Street Department.

7. That on February 17, 1981 the Utility Association filed the instant petition seeking a representation election among employees of the Utility; that contrary to the Utility, the City takes the position that the Utility is not a separate municipal employer under the Municipal Employment Relations Act, and that therefore, the City is the employer of the employees employed in the Utility for purposes of collective bargaining; and that the Street Association has not expressed a position with respect to said issue between the Utility and the City.

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

CONCLUSIONS OF LAW

4. That a question concerning representation, within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act, has arisen involving the employees of the City of Clintonville Utility Commission in the appropriate collective bargaining unit set forth in para. 3 hereof.

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

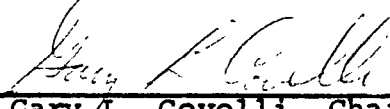
DIRECTION OF ELECTION

IT IS DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date hereof, in the collective bargaining unit consisting of all full-time and regular part-time employees of the City of Clintonville Utility Commission, but excluding all executive, managerial, supervisory and confidential employees, who were employed on June 9, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether the required number of such employees desire to be represented by the Clintonville Utility Employees Association for purposes of collective bargaining with the City of Clintonville Utility Commission.

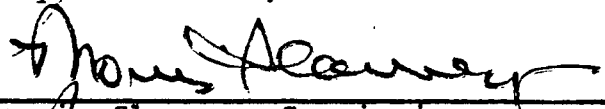
Given under our hands and seal at the
City of Madison, Wisconsin this 9th
day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner

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

The first two issues involved in this proceeding are whether the Clintonville Utility Commission is a municipal employer separate and apart from the City; and if not, whether the Utility employees may constitute a bargaining unit separate and apart from the unit consisting of the Street Department employees of the City.

The record herein shows a number of respects in which, in past years, the Utility Commission has treated employees in that Department differently from the City's treatment of employees in other departments. The salient instance, however, occurred in 1975, when the Utility Commission granted its employees a wage increase of ten percent at about the same time that City employees were granted a six percent increase by the City Council. The City Council ordered the ten percent increase granted to Utility employees reduced to six percent to match City employees' increase, and several Utility Commission employees sued the City for the difference. A trial court's ruling in favor of the Utility employees was appealed by the City on substantially the same grounds that it argues here, namely, that the City of Clintonville and not the Utility Commission is allegedly the employer of the employees of the Utility. On June 9, 1979 the Wisconsin Supreme Court issued its decision ^{1/} upholding the trial court's ruling, in which it plainly stated that the City of Clintonville had no right to rescind the wage increases granted by the Utility Commission and that the latter has, under the statutes, "authority to employ and fix the compensation of such subordinates as shall be necessary to operate the utility." The record herein in no way contradicts that on which the Supreme Court made its decision in Schroeder; and authority to employ and to fix compensation being the hallmarks of the status of employer, the Supreme Court's decision referred to above can only be read as dispositive of the question of separate employer status of the Utility Commission.

The City also contends that the Utility Association is not a labor organization; the record shows, however, that in its present manifestation CUEA was formed by employees of the Utility Commission for the purpose of representing them in negotiations with the Utility Commission concerning wages, hours and other terms of employment. The Utility Association therefore meets the statutory test of labor organization status.

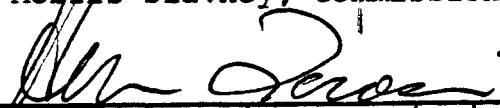
Dated at Madison, Wisconsin this 9th day of June, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

1/ 90 Wis. 2d 457.