

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL 40, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO

Involving Certain Employees of

VILLAGE OF WILLIAMS BAY

Case I
No. 27948 ME-2001
Decision No. 18972

Appearances:

Mr. Robert M. Chybowski, District Representative, Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, 30203 Poplar Drive, Burlington, Wisconsin 53105, appearing on behalf of the Union.
Wickhem, Consigny, Andrews and Hemming, S.C., Attorneys at Law, by Mr. Richard R. Grant, 303 East Court Street, P. O. Box 1449, Janesville, Wisconsin 53547, appearing on behalf of the Village.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DIRECTION OF ELECTION

Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO having on May 4, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among employees of the Village of Williams Bay employed in the Streets, Parks, Sewerage and Water Departments, and a hearing on said petition having been conducted at Williams Bay, Wisconsin, on July 16, 1981, by Dennis P. McGilligan, Examiner; and a transcript having been prepared and the parties having completed their briefing schedule on August 19, 1981; and the Commission, having considered the evidence and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the Union, is a labor organization with its offices at 30203 Poplar Drive, Burlington, Wisconsin.

2. That Village of Williams Bay, hereinafter referred to as the Village, is a municipal employer with its offices at the Village Hall, P. O. Box 580, Williams Bay, Wisconsin.

3. That in its petition initiating the instant proceeding the Union seeks an election among the following employees of the Village to determine whether said employees desire to be represented by the Union for the purposes of collective bargaining:

All employees of the Village of Williams Bay in the Streets and Parks Department, the Sewerage Department and the Water Department, excluding supervisors.

4. That in the aforesaid Departments the Village employs eighteen employees, nine of whom are regular seasonal or part-time employees; that during the course of the hearing herein the parties agreed that Police Department employees are not to be included in any bargaining unit determined by the Commission to be appropriate herein; that the parties also agreed that two maintenance employees of the Village, who are employed on a casual basis are excluded from said unit; that the parties

further stipulated that the seasonal and part-time employees are included in the unit; that, however, contrary to the position of the Union, the Village contends that there should be two collective bargaining units, one consisting of the Streets and Parks Department, and the other consisting of Water and Sewer Departments; and that, in addition, also contrary to the Union's position, the Village maintains that the positions of Superintendent of Streets and Parks, Superintendent of the Water Department and Superintendent of the Sewer Department should be excluded from any unit based on their supervisory and managerial duties.

5. That the employees in the Streets and Parks Department, and the Water and Sewer Departments, perform basically "blue collar" tasks including, but not limited to, maintenance and construction, cleanup, equipment repair, operation of vehicles and other machinery, seasonal work such as the cutting of weeds at the lakefront and snow removal and responding to citizen complaints; that Water Department and Sewer Department employees occasionally help out with work in the Streets and Parks Department and vice versa; that there is some sharing of equipment and vehicles between said departments; that employees in said departments wear similar uniforms, and that employees in said departments punch a time clock and receive time and one-half for overtime.

6. That Ken Wendza occupies the position of Superintendent of Streets and Parks Department; that in said capacity Wendza has near exclusive authority and responsibility for directing and assigning the work force and exercises that responsibility daily; that Wendza personally hired the only employee added during his tenure; that Wendza responds to employee grievances and complaints; that Wendza has disciplined employees, including suspending an employee in the Streets division for two weeks; that Wendza has the authority to effectively recommend discharge of employees, and in said regard issued an employee in the Parks division a two-week notice that if the involved employee continued to show up late for work over said period of time he would be terminated; that Wendza is compensated at \$13,000.00 per year, as opposed to \$11,500.00 paid to the full-time street employees and \$10,400.00 to the newly-hired parks full-time employee; that the higher payment is for Wendza's supervisory duties as opposed to a higher skill level; that Wendza prepares the budget for the aforesaid department and his recommendations regarding same are generally followed by the Village Trustees; that Wendza institutes new programs, projects and work methods for his department; and that Wendza determines monetary expenditures except for the very largest of expenditures for items such as trucks.

7. That John Okell occupies the position of Superintendent of the Water Department; that in said capacity Okell has the sole authority to direct and assign the work force and engages in these activities repeatedly on a day-to-day basis; that Okell effectively recommended the hiring of a person for the one position filled during his tenure as Superintendent; that Okell responds to employee grievances and complaints; that Okell has disciplined employees, including suspending employees on at least two occasions, giving them one-day suspensions; that Okell has the authority to effectively recommend the discharge of employees; that Okell is paid \$13,000.00 annually, as compared to \$10,300.00 paid to the two employees in said Department; and this difference in pay is based on his supervision of the department; that Okell is responsible for developing a budget for the first time for his department and submitting it to the Village; that Okell has established work rules; and that Okell determines what supplies or equipment need be purchased or replaced, and is responsible for the services provided by the Water Department.

8. That Dan Mullis occupies the position of Superintendent of the Sewer Department; that in said capacity Mullis directs and assigns the work force on a daily basis; that Mullis has interviewed and hired employees entirely on his own, as well as effectively recommended same; that Mullis has disciplined employees on at least three occasions for reporting to work late, going to lunch too early, and not doing a job properly; that Mullis suspended at least one employee for three days with no pay; that Mullis has effectively recommended the discharge of

three employees; that Mullis is paid a salary of \$14,000.00 based, in material part, on his supervisory duties compared to the salary of \$10,300.00 paid the other employee in his department; that Mullis personally makes decisions in purchasing unless it involves large sums of money; that Mullis solely determines the policies for the personnel in his department and that Mullis is responsible for the operation of his department and implementing any standards or programs mandated by the DNR or the Village.

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

CONCLUSIONS OF LAW

1. That the establishment of two collective bargaining units, one consisting of the Streets and Parks Department and the other consisting of the Water and Sewer Departments, would constitute an undue fragmentation of bargaining units consisting of "blue collar" personnel in the employ of the Village of Williams Bay, within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act, and that therefore all regular full-time, regular part-time and regular seasonal employees of the Village of Williams Bay, employed in the Streets and Parks Department, and in the Water and Sewer Departments, excluding managerial, supervisory and confidential personnel, constitute an appropriate collective bargaining unit within the meaning of the statutory provision noted above.

2. That the incumbents of the positions of Superintendent of the Streets and Parks Department, Superintendent of the Water Department and Superintendent of Sewer Department, are supervisors within the meaning of Section 111.70(1)(c)1, of the Municipal Employment Relations Act, and therefore the occupants of such positions are excluded from the appropriate collective bargaining unit set forth above.

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

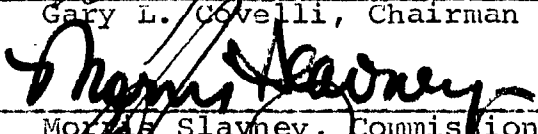
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive among all regular full-time and regular part-time employees, as well as regular seasonal employees in the employ of the Village of Williams Bay employed in the Streets and Parks Department and the Water and Sewer Departments, but excluding managerial, supervisory and confidential personnel, who were employed on September 18, 1981, 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 voting desire to be represented for the purposes of collective bargaining by Wisconsin Council 40, American Federation of State, County and Municipal Employees, AFL-CIO, on matters relating to wages, hours and working conditions.

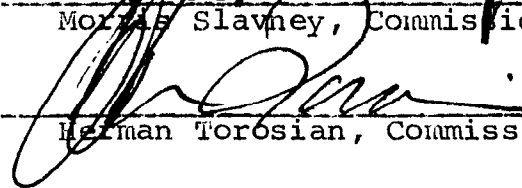
Given under our hands and seal at the
City of Madison, Wisconsin this 18th
day of September, 1981.

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

In this proceeding the Village contends that there should be two collective bargaining units, one consisting of the Streets and Parks Department and the other consisting of the Water and Sewer Departments. The Village also contends that the three individuals occupying the positions of Superintendent of Streets and Parks, Superintendent of the Water Department and Superintendent of the Sewer Department are supervisory and managerial employees within the meaning of MERA and therefore should be excluded from the proposed bargaining unit. The Union on the other hand takes the opposite position.

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

The Commission has, in the past, determined that an over all "blue collar" unit is appropriate in village settings involving relatively few employees, 2/ despite the somewhat imperfect grouping that inevitably results. In the instant case the Union petitioned for

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.

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

employees in the aforesaid departments who perform basically "blue collar" tasks. In addition employees from said departments occasionally perform work for each other as well as share equipment and tools. Finally, the aforesaid employees wear the same uniforms and share many of the same working conditions.

Based upon the above, and in order to avoid undue fragmentation of bargaining units in the Village, 3/ we therefore conclude that "blue collar" employees in the Streets and Parks Department, Water Department and Sewer Department constitute an appropriate collective bargaining unit within the meaning of the Municipal Employment Relations Act.

The Superintendents

Section 111.70(1)(c)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 employees, 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, in determining whether the statutory criteria are present in sufficient combination and degree in order to warrant a conclusion that the position in question is supervisory, 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 of 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. 4/

The Commission has held that it is not necessary that all of the above factors be present, but that if there is present a sufficient combination of factors, it will find the employee to be a supervisor. 5/

3/ See Village of Pewaukee (Department of Public Works), (17771-A) 4/81.

4/ City of Milwaukee (6960) 12/64; Eau Claire County (17488-A) 3/81.

5/ Eau Claire County, supra.


We would note that all three of the Superintendents are essentially totally responsible for scheduling and assigning the work in their respective departments and establishing personnel policies for the employees under them. All three Superintendents receive a higher level of pay based on their supervisory authority. Nenúza hired one full-time employee for his department while Okell effectively recommended same. Mullis has hired employees entirely on his own as well as effectively recommended said action. All three Superintendents have disciplined employees, including issuing suspensions and all three people have the authority to effectively recommend discharge, although only Mullis has exercised same.


On the basis of the duties, responsibilities and authority of the incumbents in the Superintendent positions, as detailed in the Findings of Fact, we are satisfied that there are a sufficient number of the necessary factors present to conclude that said positions are supervisory in nature, and therefore cannot be included in the unit. Having arrived at this conclusion, we find it unnecessary to reach the question of whether said employees should also be excluded from the bargaining unit based on their managerial responsibilities.

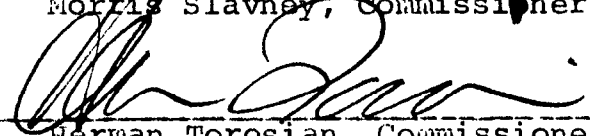
Dated at Madison, Wisconsin this 18th day of September, 1981.

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