

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
CITY OF MILWAUKEE : Case CCXXX  
Requesting Clarification of : No. 28646 ME-2053  
Bargaining Involving Certain : Decision No. 18996-B  
Employees of :  
CITY OF MILWAUKEE :  
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ORDER DENYING PETITION FOR REHEARING AS WELL AS REQUEST  
FOR REPRESENTATION ELECTION

The Wisconsin Employment Relations Commission heretofore, and on July 23, 1982, having issued Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit in the above-entitled matter, wherein it ordered the following:

That at such time as employes of the City of Milwaukee, employed as Truck Drivers in the Services Division of the Bureau of Municipal Equipment of the Department of Public Works, become employed in the Bureau of Sanitation and are reclassified as Driver/Loaders, said employes shall be deemed included in the appropriate collective bargaining unit consisting of "all employes employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee excluding supervisors and confidential employes".

and on August 10, 1982, Milwaukee District Council 48, AFSCME, AFL-CIO, as the certified collective bargaining representative of said Truck Drivers while employed in the Services Division of the Bureau of Municipal Equipment of the Department of Public Works of the City of Milwaukee, having filed a petition requesting that the Commission set rehearing in the matter, on the claim that the Commission's decision contains material errors of fact and law, and that should the Commission deny rehearing, it should modify its decision "to allow the affected employes to vote by secret ballot for the representative of their choice"; and District Council 48 having, on August 13, 1982, filed an Affidavit in support of its petition; and the Commission having considered said petition and the response in opposition thereto filed by Public Employees Union Local 61, and being fully advised in the premises, and being satisfied that its Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit contains no material errors of fact or law, and that the request of District Council 48, AFSCME, AFL-CIO that the affected employes be given an election to determine their bargaining election should be denied; and that, therefore, the Order set forth therein should remain in full force and effect;

NOW, THEREFORE, it is

ORDERED 1/

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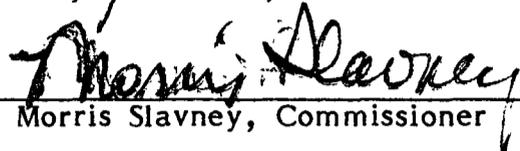
1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.  
(Continued)

That the petition for rehearing filed by District Council 48, AFSCME, AFL-CIO on August 10, 1982, be, and the same hereby is, denied in its entirety.

Given under our hands and seal at the City of  
Madison, Wisconsin this 3rd day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

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1/ (Continued from Page 1)

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

MEMORANDUM ACCOMPANYING ORDER DENYING PETITION FOR  
REHEARING AS WELL AS REQUEST FOR REPRESENTATION ELECTION

The nature of the instant proceeding and the positions of the parties involved were set forth by the Commission in its memorandum accompanying its decision issued on July 23, 1982 as follows: 2/

The City has initiated the instant unit clarification proceeding requesting the Commission to determine whether employes occupying the newly created classification (sic) of Driver/Loader should be accreted to the Bureau of Sanitation bargaining unit presently represented by Laborers, or whether said employes should remain in the "overall" Department of Public Works bargaining unit presently represented by AFSCME. During the proceeding the City has maintained a neutral stance and limited its role to participating in the hearing and making personnel available as witnesses to develop evidence material to the Commission's determination.

Labroers maintain that Driver/Loaders should be included in the Bureau of Sanitation bargaining unit, which it has represented over a period of years, primarily on the basis that the Driver/Loader possess (sic) a close community of interest with the employes in said bargaining unit.

AFSCME to the contrary, contends that Driver/Loaders, since they are primarily truck drivers, should continue to remain in the "overall" Department of Public Works unit, which will still continue to include Truck Drivers who do not become Driver/Loaders. It also claims that the City's proposed reorganization plan is speculative and that the Commission should disregard the testimony relating thereto.

It was apparent, at least at the time of the hearing herein, that the City had just begun the implementation of the reorganization plan by (1) its adoption by the Common Council and the approval of the Driver/Loader classification; (2) the posting for the Dirver-Loader position and the hiring of six Driver/Loaders, (3) the purchase of several pieces of new equipment intended to be manned, in part, by the Driver/Loaders, and (4) initiating the new collection procedure utilizing the new equipment use Driver/Loaders.

AFSCME, in the instant petition, contends that the Commission erred, in that its Findings of Fact are contradictory in describing the bargaining unit in which the Truck Drivers are included, prior to their transfer to the Bureau of Sanitation as "Driver/Loaders". Finding of Fact 9 sets forth that the employes occupying the Truck Driver classification, in May of 1974, participated in an election to determine their bargaining representative, and that if they selected AFSCME as such representative they would be deemed to be accreted to the "overall" Department of Public Works unit, represented by AFSCME. Finding of Fact 10 sets forth the resultant Certification issued by the Commission, indicating that the Truck Drivers had selected AFSCME and therefore were accreted to said "overall" Division of the Bureau of Municipal Equipment which was included in the

Department of Public Works unit presently represented by AFSCME. We concede a technical error, but not a material one, since our conclusions leading to the Order issued in the matter are, in no material way, affected thereby.

The primary basis of our decision rests on the conclusion that, when the Truck Drivers are transferred to the Bureau of Sanitation and are reclassified as Driver/Loaders, they will be represented by the organization presently representing "all employes employed in the Bureau of Sanitation in the Department of Public Works of the City of Milwaukee, excluding supervisors and confidential employes". Should AFSCME desire an election among the employes in the latter unit it has the right to file a petition, supported by a sufficient showing of interest and if a timely question of representation exists, the Commission will direct an election among all employes in the latter appropriate unit.

Dated at Madison, Wisconsin this 3rd day of September, 1982.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner