

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
CITY OF WISCONSIN RAPIDS :
Involving Certain Employes : Case LIV
Represented by : No. 31777 ME-2230
WISCONSIN RAPIDS CITY EMPLOYEES : Decision No. 20842-A
LOCAL 1075, AFSCME, AFL-CIO :

Appearances:

- Mr. Steven Riege, Director, Department of Employee Relations, City of Wisconsin Rapids, 444 West Grand Avenue, Wisconsin Rapids, WI 54494, appearing on behalf of the Employer.
- Mr. Malcolm H. Einerson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1908 Vermont Avenue, Stevens Point, WI 54481, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

The City of Wisconsin Rapids filed the instant petition with the Wisconsin Employment Relations Commission, in which it requested that the Commission clarify an existing collective bargaining unit by excluding from it the position of Assistant Assessor. The Commission appointed Christopher Honeyman as Examiner for purposes of conducting a hearing and issuing a decision pursuant to Section 227.09(3)(a), Stats. A hearing was held in Wisconsin Rapids, Wisconsin on August 2, 1983, at which the parties were given full opportunity to present evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on September 19, 1983. The Examiner has considered the evidence and arguments of the parties, and hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Local 1975, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization and is the certified representative of the following appropriate collective bargaining unit: all regular full-time and regular part-time employes employed in City Hall, but excluding elected and appointed personnel, supervisory employes, confidential clerical employes, deputy city clerk, and non-clerical employes in the Engineering Department, and all temporary, casual, and part-time employes. The Union has its offices at 1908 Vermont Avenue, Stevens Point, Wisconsin 54481.
2. The City of Wisconsin Rapids, herein referred to as the City, is a municipal employer and has its offices at City Hall, 444 West Grand Avenue, Wisconsin Rapids, Wisconsin 54494.
3. The Union was certified as representative of the unit of employes described above on August 21, 1970, and at that time the position of assistant assessor was included within the unit. In 1973 the City petitioned to have the position of assistant assessor excluded from the existing bargaining unit on the grounds that it was a professional position, and on May 31, 1973 the Commission determined that the position was not professional and that it should continue to be included in the bargaining unit. Neither the qualifications for nor the functions of the position have changed materially since that time.
4. The evidence contained in the record herein does not establish that the assistant assessor fails to possess a substantial community of interest with other employes in the existing bargaining unit.

Based on the above Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the position of Assistant Assessor is appropriately included within the present bargaining unit within the meaning of Section 111.70(4)(d)2a, Wis. Stats.

Based on the above Findings of Fact and Conclusion of Law, the Examiner makes the following

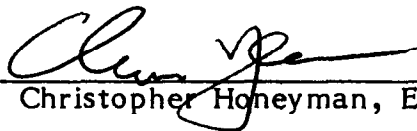
ORDER CLARIFYING BARGAINING UNIT 1/

That the position of assistant assessor is, and shall continue to be, included in the collective bargaining unit described above.

Dated at Madison, Wisconsin this 14th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Christopher Honeyman, Examiner

1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

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 re-

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1/ (Continued)

hearing. 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.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

The City here seeks to exclude the position of assistant assessor, sometimes referred to in the record as deputy assessor, on the basis that the position has no community of interest with other positions in the City Hall bargaining unit. The petition as filed alleged that the position was professional, managerial and supervisory, in addition to the contention already noted; at the hearing, the City withdrew the contentions that the position was supervisory, managerial or professional. The record supports that withdrawal.

In its decision issued on May 31, 1973, finding the assistant assessor position to be not professional and appropriately included within the bargaining unit 2/, the Commission described the position in the following terms:

The qualifications of the assistant assessor position requires(sic) either two years of college training in business education, business law and business communication and two years experience in estimating building and construction costs and appraising real estate, or a college degree in economics, engineering or public administration. The position requires a knowledge of assessment laws and procedures relative to determining construction costs and to the placing of values on real estate and personal property. The position duties include making field inspections of real estate and personal property of individuals and of business, professional and commercial concerns relative to factors having a bearing on their value, calculating assessments of real estate and personal property, preparing legal descriptions and plats of property, assisting in preparing assessment rolls and reports, hearing complaints, and giving information regarding assessments and assessment procedures, and testifying at Board Review hearings on contested assessments. Such duties are performed under the supervision of the City Assessor.

This description remains essentially true today, based on the testimony of all of the witnesses. In 1973 there were two assistant assessors, but there is presently one employe in that capacity. He has a private office to work in, unlike other employes in the bargaining unit, and is paid a \$100 per month mileage allowance, again unlike other employes in the unit. (This mileage allowance is provided for in the parties' collective bargaining agreement.) The City points to these factors, which this position holds in common with certain management positions in the City, and to the relative independence of the assistant assessor's work, as showing that he enjoys no community of interest with the other employes in the bargaining unit. The City also points to testimony that in the City of Stevens Point a comparable position was excluded from a similar bargaining unit by mutual agreement between the parties as evidence that its placement in the unit is inappropriate here.

There is little doubt that the position of assistant assessor enjoys more independence and higher wages than any other position in the bargaining unit. But the fact that a position has some responsibilities and perquisites not shared by other unit positions does not show that it lacks a community of interest with those positions, even at the outset of a collective bargaining relationship. A broad unit of City Hall employes has been found appropriate in a long line of Commission cases, and such a unit by its nature often encompasses a number of different jobs and characteristics. 3/ In making determinations as to the

2/ Decision No. 11897.

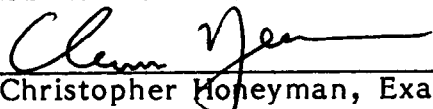
3/ See City of Racine, Decision No. 17724, April 1980, where several classifications of assessors were included in a diverse City Hall unit.

appropriateness of a bargaining unit, the Commission is directed by Section 111.70(4)(d)2a to, in pertinent part, "whenever possible, avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force." The fact that somewhat dissimilar occupations may at times be grouped together is an inevitable by-product of the statutory rule against fragmenting bargaining units.

Here the position at issue has been in the existing unit for thirteen years, and the long-term history of bargaining in which this position has been represented as part of the unit reinforces the community of interest, defined in terms of the statutory section quoted above, which existed initially. Even where a separate union desires to "carve out" from an overall unit a well-defined group of employes with a historical and statutory emphasis on separate bargaining, such as craft employes, a long history of collective bargaining in an overall unit has a tendency to overcome any initial presumption of inappropriateness, and requires a strong factual showing of functional separation and other differences in order to override that history. ^{4/} Here no separate union is petitioning, and the Employer proposes no new unit placement, but rather that the position be defined as non-union. At the same time, there is nothing in the record to establish, and indeed the City has withdrawn any contention, that the position falls into either the professional, managerial or supervisory category. Under these circumstances, the fact that this position has some similarities to certain positions which are outside the unit - at least some of which, according to record testimony, are supervisory positions - carries little weight. The agreement by unrelated parties to exclude a comparable position in the City of Stevens Point, without Commission decision, has no precedential value, particularly in light of the Racine inclusion noted above. Nor can the fact that the Employer itself included this position in a group of otherwise non-union positions for purposes of an outside contractor's study be given weight. The Examiner accordingly concludes that the position of assistant assessor appropriately remains within the collective bargaining unit.

Dated at Madison, Wisconsin this 14th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Christopher Honeyman, Examiner

^{4/} See Mallinckrodt Chemical Works, Uranium Division, 162 NLRB 387.