

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
GENERAL DRIVERS, DAIRY :  
EMPLOYEES AND HELPERS UNION, :  
LOCAL NO. 579, IBT : Case 1  
Involving Certain Employes of : No. 32133 ME-2273  
VILLAGE OF FOOTVILLE : Decision No. 21322  
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Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Frederick Perillo, 788 North Jefferson Street, P. O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of the Union.  
Consigny, Andrews, Hemming & Grant, S.C., Attorneys at Law, by 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 ELECTIONS

General Drivers, Dairy Employees and Helpers Union, Local No. 579, IBT, having, on August 31, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, for the purpose of determining whether certain employes in the employ of the Village of Footville desire to be represented for the purposes of collective bargaining; and hearing having been conducted in Footville, Wisconsin on October 20, 1983 before Douglas V. Knudson, an Examiner of the Commission; and a stenographic transcript having been made of the hearing; and the parties having filed post-hearing briefs which were received by December 1, 1983; and the Commission, having reviewed the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That General Drivers, Dairy Employees and Helpers Union, Local No. 579, IBT, hereinafter referred to as the Union, is a labor organization with offices located at 2214 Center Avenue, Janesville, WI 53545.

2. That the Village of Footville, hereinafter referred to as the Village, is a municipal employer with offices located at the Village Hall, Footville, WI 53537.

3. That the Union initiated the instant proceeding by filing a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time and regular part-time employes of the Village of Footville, excluding professional, confidential, supervisory and managerial employes; and, that at the hearing the Union amended its petition to request a second election among the employes of the Footville Water and Light Commission, if said utility is found to be a municipal employer separate and distinct from the Village.

4. That the Village is governed by a seven member Board of Trustees, one of whom serves as Board President; that the Water and Light Commission, hereinafter referred to as the Utility, was established by a Village ordinance in the 1930s; that the Utility is governed by a five member Board of Commissioners, one of whom is also a Village Trustee, who are appointed by the Village Board; that the Village Board and the Utility Board meet separately to conduct their respective business; that the Utility establishes its own budget without Village approval, maintains its own bank account, collects revenues for its services, and, operates from a separate physical location; that the Utility retains any annual budget

surplus; that the Utility has never ended an annual budget with a deficit, but if such should occur, the Village would allocate money to cover the deficit; that the consumer rates charged by the Utility are regulated by the Public Service Commission; that the Village and the Utility independently set the wages, fringe benefits, hours and working conditions for their respective employees except for Childs; that the benefits of the Utility employees differ from those of the Village employees in the areas of health insurance, holidays, sick leave and retirement plans; that payroll checks for the Utility employees are drawn on the Utility bank account and are issued by the Village Treasurer; that the Utility employs one full-time employee, Dale Kitelinger, one part-time employee, Janet Hartin, and, shares one full-time employee, Ron Childs, on an equal basis with the Village; that the Village, in addition to the one-half employment of Childs, employs one full-time employee, Don Hartin; that the Village pays Kitelinger \$75.00 every two weeks for assisting at the sewerage disposal plant; that Childs is paid by the Village, which invoices the Utility for one-half of the cost of Child's wages and benefits; that Childs was hired by a committee of members from both the Village Board and the Utility Board; and that Childs works with both Don Hartin and Kitelinger on an approximately equal time basis as a trainee for their positions when they retire.

5. That Kitelinger functions as the Water and Light Superintendent for the Utility, which position he has held for fourteen years; that, approximately one year ago through a work-study program, a high school student was employed by the Commission to read meters under Kitelinger's supervision; that Kitelinger did not select the student, and the program is no longer in effect; that Kitelinger attended, but did not participate in, the interviews of the applicants for the position now occupied by Childs; that Kitelinger expressed a preference for Childs being hired; that Kitelinger has no responsibility for Janet Hartin; that Kitelinger's primary duties are reading meters, water testing, and maintaining water and power lines; that Kitelinger obtains assistance from neighboring utilities when additional help is needed; that Kitelinger can alter his normal hours of work, when necessary; that the Utility Commission makes any decision concerning major construction projects; that Kitelinger does not possess or exercise supervisory duties and responsibilities in sufficient combination and degree to render him a supervisory employee; and that Kitelinger does not participate in a significant manner in the formulation, determination and implementation of management policy or have effective authority to commit the employer's resources so as to render him a managerial employee.

6. That Don Hartin has been the Village's Superintendent of Public Works since 1975; that Hartin primarily is responsible for maintaining the streets, parks and sewerage disposal plant; that Hartin does call in persons to help him with such things as mowing lawns and snow removal, when necessary; that said persons are utilized through the Village Board's approval of Hartin's recommendations; that Hartin has directed the work of seasonal employees who were employed during the summer under a federal government C.E.T.A. program; that the Village has not utilized any seasonal or on-call employees since Childs was hired in July 1983; that Hartin's normal work week is forty-five (45) hours, although he can alter his work schedule without approval, when necessary; that Hartin can make purchases of equipment and supplies with a value of up to five hundred dollars (\$500.00) without prior approval; that the Village Board usually approves Hartin's recommendations for purchases of greater value, such as it did recently for a tractor; that Hartin performs his work with only general direction from the Village Board; that Hartin does not possess or exercise supervisory duties and responsibilities in sufficient combination and degree to render him a supervisory employee; and that Hartin does not participate in a significant manner in the formulation, determination and implementation of management policy or have effective authority to commit the employer's resources so as to render him a managerial employee.

7. That Childs works full-time, but splits his time on an approximately equal basis between the Utility and the Village; and that Childs is being trained to assume the duties now performed by Kitelinger and Hartin when they retire.

8. That Janet Hartin works part-time for the Utility to perform billings, collections, and record-keeping.

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

#### CONCLUSIONS OF LAW

1. That the Footville Water and Light Commission is a municipal employer within the meaning of Section 111.70(1)(a) of the Municipal Employment Relations Act (MERA), and that all regular full-time and regular part-time employees of the Footville Water and Light Commission, excluding confidential, supervisory and managerial employees constitute an appropriate collective bargaining unit within the meaning of MERA.

2. That all regular full-time and regular part-time employees of the Village of Footville, excluding confidential, supervisory and managerial employees constitute an appropriate collective bargaining unit within the meaning of MERA.

3. That the occupants of the positions of the Utility's Water and Light Superintendent and the Village's Superintendent of Public Works do not exercise duties and responsibilities in sufficient combination or degree so as to constitute either supervisors within the meaning of Section 111.70(1)(o) of MERA, or, managerial employees within the meaning of Section 111.70 of MERA.

4. That Ron Childs does not exercise duties and responsibilities in sufficient combination or degree so as to constitute either a supervisor or a managerial employee within the meaning of Section 111.70 of MERA and that, since Childs works approximately equal amounts of time for both the Utility and the Village, he is eligible to vote in both elections directed herein.

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

#### DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the following collective bargaining units to determine whether a majority of employees voting in each unit desire to be represented for the purpose of collective bargaining with their respective employers over wages, hours and conditions of employment by General Drivers, Dairy Employees and Helpers Union, Local No. 579, IBT:

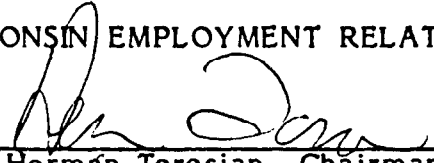
1. All regular full-time and regular part-time employees of the Village of Footville, excluding supervisory, managerial and confidential employees, who were employed on January 17, 1984, except such employees as may prior to the election quit their employment or be discharged for cause.

2. All regular full-time and regular part-time employees of the Footville Water and Light Commission, excluding supervisory, managerial and confidential employees, who were employed on January 17, 1984, except such employees as may prior to the election quit their employment or be discharged for cause.


Given under our hands and seal at the City of  
Madison, Wisconsin this 17th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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

Separate Employer:

The Village, contrary to the Union, contends that the Utility is a separate municipal employer whose employees should be in a separate bargaining unit.

Sections 198.02 and 198.22, Wis. Stats., provide that, once created, municipal power and water districts are municipal corporations. The Commission previously has found a Water and Light Department 1/ as well as Water Departments 2/ to be separate municipal employers.

From the evidence in the record, it is clear that the Utility is a separate municipal employer. The Utility establishes its own budget which is funded by the revenues derived from the sale of its services. To date, the Village has neither contributed to the Utility's budget, nor, received any of the year-end budget surpluses. Although the members of the Utility Commission are appointed by the Village Board, and one Commission member is also a Village Trustee, the Commission holds separate meetings and conducts its business, such as the construction of power lines, without the approval of the Village. The rates charged by the Utility are set by the Public Service Commission, rather than the Village Board. Payroll checks to Utility employees are signed by the Village Treasurer, but are drawn on the Utility's checking account.

The Utility and the Village have not coordinated wages and fringe benefits for their respective employees. The Village pays one Utility employee directly for his additional work for the Village. Even though the Village and the Utility hired Childs on a joint basis, the two government bodies have continued to share his cost, with the Village paying Childs for all hours worked and then billing the Utility for one-half of the amount.

Since the Utility is a separate legal entity, the Commission concludes it would be inappropriate to include the Utility employees in a bargaining unit with the employees of the Village, which is a separate municipal employer. 3/ While the Village and the Utility could be found to be a joint employer with respect to Childs, such is not the case for the other employees.

Superintendent Of Public Works:

Contrary to the Union, the Village contends that Don Hartin is a supervisor and a managerial employee.

Hartin has directed the work of CETA employees, but he was not involved in the selection of said employees. Similarly, while Hartin does have input into the selection of persons whom he utilizes on an on-call basis, the Village has ultimate approval of the selection. Further, Hartin has not utilized any on-call workers since Childs has been employed. Hartin did not participate in the interview process which resulted in the employment of Childs. Hartin has not evaluated or disciplined Childs. As an experienced employee Hartin is mainly instructing, rather than supervising, Childs. In summary, Hartin is primarily responsible for work activities with little, if any, supervisory responsibilities for other employees.

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1/ City of Princeton, (15574), 6/77.

2/ Milton Municipal Water Utility a/K/a City of Milton (Water Dept.), (13400), 2/75; City of Sparta Water Utility, (12912), 8/74.

3/ City of Milton, (13400), 2/75.

Hartin's authority to make purchases up to five hundred dollars in value without Village Board approval and the fact that the Village Board relies on his recommendations for larger expenditures is not sufficient to establish an extensive ability to commit the employer's resources. The Village Board reviews all purchases and establishes the budget within which the purchases are made. Although Hartin is responsible for the daily upkeep of the Village properties and provision of the Village functions and services, he does so within the guidelines set by the Village Board. The record does not establish that Hartin has sufficient participation in the formulation, determination and implementation of management policy so as to be a managerial employee. Such a status is not automatically conferred on an employee merely because the employee is the only full-time employee of the employer.

In its post-hearing brief, the Village cited several prior Commission decisions in support of its asserted right to have at least one employee excluded from the bargaining unit as a manager-supervisor. Although several of those cases involved bargaining units with small numbers of employees, none of the decisions excluded an employee as a supervisor and/or manager, unless said employee possessed and exercised a sufficient degree or combination of supervisory or managerial duties and responsibilities.

Water and Light Superintendent:

The Village contends, contrary to the Union, that the occupant of this position, Kitelinger, is a supervisor and a managerial employee.

The facts set forth in the Findings of Fact demonstrate that Kitelinger fails to possess responsibilities or authority in sufficient combination or degree so as to constitute either a supervisor or a managerial employee. The Village's contentions in this regard are based mainly on the fact that Kitelinger is the only full-time employee of the Utility, which is not an adequate basis.

Ron Childs:

The Village contends, contrary to the Union, that Childs should be excluded from the bargaining unit because he will be a managerial employee upon the completion of his training program. The Commission did not find either Hartin or Kitelinger to be supervisory or managerial employees. Accordingly, the Village's contention concerning the future authority of Childs, when he assumes the duties of Hartin and Kitelinger, does not persuade the Commission to exclude him from the bargaining units. Further, inasmuch as Childs is employed on a regular basis in both bargaining units, he is eligible to vote in the elections directed herein in each bargaining unit. 4/

Dated at Madison, Wisconsin this 17th day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Herman Torosian, Chairman

Gary L. Covelli, Commissioner

Marshall L. Gratz, Commissioner

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4/ Spoooner Joint School District #1, (9832-B), 9/70.