

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of :

ROBERT G. ALTERGOTT and :
GERALD C. COPE :

Involving Certain Employes of :

GREEN BAY PUBLIC :
SCHOOL DISTRICT :

Case 91
No. 36298 ME-2538
Decision No. 23263-A

Appearances:

- Mr. Robert G. Altergott, 1404 Cormier Road, Green Bay, WI 54303, appearing on his own behalf.
Mr. Gerald C. Cope, Route 16, Oakhill Drive, Green Bay, WI 54303, appearing on his own behalf.
Mr. Thomas Kwiatkowski, Staff Attorney, Green Bay Area Public Schools, P. O. Box 1387, Green Bay, WI 54305, appearing on behalf of the Green Bay Public School District.
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, WI 54304, appearing on behalf of the Green Bay Board of Education Employees Union Local 3055, AFSCME, AFL-CIO.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Petitioners Robert G. Altergott and Gerald C. Cope, having on December 19, 1985, each filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election to permit the Petitioners to be represented by their respective trade union; and hearing in the matter having been conducted on February 25, 1986, at Green Bay, Wisconsin before Examiner Coleen A. Burns, a member of the Commission's staff; and a transcript of the proceeding having been received by March 10, 1986; and the parties having declined to file post-hearing briefs; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises hereby makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That Green Bay Board of Education Employees Union Local 3055, AFSCME, AFL-CIO, hereinafter the Intervenor, is a labor organization with offices located at 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304.

2. That the Board of Education, Green Bay Area Public School District, hereinafter Employer or District, is a municipal employer with offices located at 200 South Broadway, Green Bay, Wisconsin 54305.

3. That on December 19, 1985, Robert G. Altergott and Gerald C. Cope each filed with the Wisconsin Employment Relations Commission, hereinafter Commission, a petition for election involving municipal employes wherein each requested to be represented by his respective trade union; and that on February 5, 1986, the Commission issued an order consolidating the petitions for the purpose of hearing.

4. That hearing was held in Green Bay, Wisconsin on February 25, 1986; that at the commencement of hearing, each Petitioner abandoned his request to be represented by his respective trade union; and that each Petitioner continued to maintain that he was a craft employe and, therefore, inappropriately included in the collective bargaining unit represented by the Intervenor.

5. That in Joint School District No. 1, City of Green Bay, Dec. No. 8667 (WERC, 10/68), the Commission certified the Intervenor as the exclusive bargaining representative of a unit described in the certification as consisting of all maintenance employes of the Board of Education, Joint School District

No. 1, City of Green Bay, excluding professional teachers, supervisors, department heads, craft employees, elected or appointed officials, cooks, clerical and confidential employees; and that in that decision a position titled Maintenance Mechanic which involved maintenance of plumbing and heating systems was held non-craft and included in the maintenance unit on the grounds that:

. . . no evidence indicates that they served an apprenticeship or formal training program which would be the equivalent thereto and their work doesn't present the opportunity to exercise the gamut of skills of the plumber craft, since they are unable to alter or extend sanitary systems.

6. That in Green Bay Joint School District, Dec. No. 8661 (WERC, 8/68) the Commission certified the Intervenor as the exclusive bargaining representative of a unit consisting of all painters employed by the Board of Education, Joint School District No. 1, City of Green Bay, excluding all other employees of the municipal employer.

7. That at all times material hereto Petitioners Altergott and Cope have been treated by the parties as included in the collective bargaining unit represented by the Intervenor, which unit is described in Article I of the relevant collective bargaining agreement as "consisting of all employees of the Employer" employed as follows:

1. All maintenance employees of the Board of Education, Green Bay Area Public School District, excluding professional teachers, supervisors, craft employees, elected or appointed officials, cooks, clerical employees, confidential employees and carpenters.
2. All painters employed by the Board of Education, Green Bay Area Public School District, excluding all other employees of the municipal employer."

and that in addition to the positions currently occupied by Petitioners Altergott and Cope, the collective bargaining unit consists of non-craft employees occupying, inter-alia, the following positions: Custodian II, III and IV, Laundry Assistant, Truck Driver, Utility Worker, Storeroom Clerk, Laundry Operator, Engineer Assistant/Custodian, Auto Mechanic, Maintenance Mechanic, Assistant Electronic Technician, Refrigeration Mechanic, Painter, Head Truck/Auto Mechanic, Head Painter, and Electronic Technician.

8. That the Commission has not conducted an election among craft employees of the District for the purpose of determining whether a majority of the craft employees wish to be included in the collective bargaining unit described in Finding No. 7, supra.

9. That, at the time of hearing, Petitioner Altergott had been employed with the District for a period of two years, during which time he occupied the position of Master Plumber/Maintenance Mechanic; that the requirements of Altergott's position include, inter-alia, a satisfactory completion of an apprenticeship and a minimum of five years in the performance of work as a licensed journeyman plumber, and a valid, current State of Wisconsin Master Plumber's license; that Altergott received a Journeyman Plumber's license on June 13, 1973, a Master Plumber's license on July 21, 1976, and, in addition to his Master Plumber's License, currently holds a valid certified Inspector's license; that Altergott's primary work responsibility is the installation and maintenance of the District's sanitary system; that Altergott cuts, fits, and installs pipe material for use in the repair or replacement of supply lines, gas lines, sanitary sewer lines, and storm lines; that Altergott assists the Director of Building and Grounds in the layout and planning of plumbing facilities involving minor remodeling; and that, when necessary, Altergott purchases plumbing permits, for which purchase Altergott is required to have a Master Plumbers license.

10. That, at the time of hearing, Petitioner Cope had been employed with the District for a period of five and one-half years, during which period he has occupied the position of Maintenance Mechanic - Boiler and Steam Fitter; that the requirements of Cope's position include, inter-alia, completion of an apprenticeship or an equivalent training program, plus a minimum of five years experience; that prior to his employment with the District, Cope served a three

and one-half-to-four-year apprenticeship in the U.S. Navy and also worked at an area college where he operated high pressure boilers and performed refrigeration, air conditioning, heating and pneumatic control work; that Cope has attended various air conditioning and refrigeration schools, as have other members of the bargaining unit; that Cope's primary work responsibility is the installation, maintenance and repair of heating, ventilating, and cooling equipment contained in the District's buildings; that Cope installs, repairs and replaces component parts of low pressure boilers, hot water boilers, and pneumatic temperature controls, such as steam traps, regulator valves, pressure relief valves, pumps, impellers, check valves, control valves, thermostats, and air compressor units; that Cope cuts, fits, and installs pipe in air, water, gas, steam, and condensate return lines, utilizing techniques which involve, inter-alia, cutting, threading, and soldering; that Cope utilizes dies, saws, and acetylene and oxygen welding outfits, as well as basic handtools such as wrenches; that other maintenance employees assist in the maintenance and minor repair of the District's heating, ventilating and cooling system; and that, with exception of Petitioner Altergott, Cope is the only District employee to cut, fit and install pipe.

11. That Petitioner Altergott possesses the credentials and performs the work of a skilled journeyman plumber.

12. That Petitioner Cope possesses the credentials and performs the work of a skilled journeyman steamfitter.

CONCLUSIONS OF LAW

1. That Petitioners Altergott and Cope are craft employees within the meaning of Sec. 111.70(1)(d), Stats.

2. That questions of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exist among the plumber and among the steamfitter craft employees of the Green Bay Area School District, respectively.

3. That all regular full-time and regular part-time plumber craft employees of the Green Bay Area School District, excluding executive, managerial, confidential, supervisory, professional, and all other employees, constitutes an appropriate voting group.

4. That all regular full-time and regular part-time steamfitter craft employees of the Green Bay Area School District, excluding executive, managerial, confidential, supervisory, professional, and all other employees, constitutes an appropriate voting group.

5. That Petitioner Altergott is appropriately included in the voting group described in Conclusion of Law Three, supra.

6. That Petitioner Cope is appropriately included in the voting group described in Conclusion of Law Four, supra.

7. That if either or both of the voting groups described in Conclusions of Law 3 and 4 vote to be included in the collective bargaining unit described in Finding of Fact 7, supra, the resulting unit would constitute an appropriate collective bargaining unit under Sec. 111.70(4)(d)2a., Stats.

DIRECTION OF ELECTION

That an election by secret mail ballot be conducted under the direction of the Wisconsin Employment Relations Commission, within 45 days from the date of this direction, in the following voting groups for the following stated purposes:

Voting Group 1

All full-time and regular part-time plumber craft employees of the Green Bay Area School District, excluding executive, managerial, confidential, supervisory, professional and all other employees of the Green Bay Area School District, who were employed on August 22, 1986, except such employees as may prior to the election quit their employment or be discharged for cause; for the purpose of determining (1) whether a majority of such employees voting desire to be included in the collective bargaining unit described in Finding of Fact 7, supra, and, if not, (2) whether a majority of such employees voting desire to be represented by

Wisconsin Council 40, AFSCME, AFL-CIO, in a unit of their own craft for the purpose of collective bargaining with the Green Bay Area School District on questions of wages, hours, and conditions of employment or whether such employees desire not to be so represented by said labor organization.

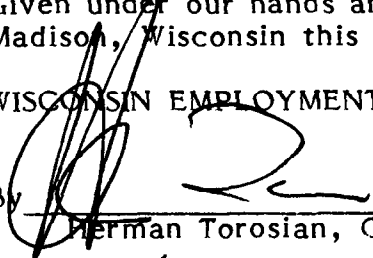
Voting Group 2

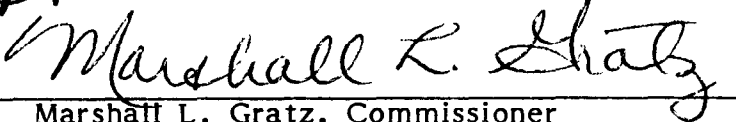
All full-time and regular part-time steamfitter craft employees of the Green Bay Area School District, excluding executive, managerial, confidential, supervisory, professional and all other employees of the Green Bay Area School District, who were employed on August 22, 1986, except such employees as may prior to the election quit their employment or be discharged for cause; for the purpose of determining (1) whether a majority of such employees voting desire to be included in the collective bargaining unit described in Finding of Fact 7, supra, and, if not, (2) whether a majority of such employees voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, in a unit of their own craft for the purpose of collective bargaining with the Green Bay Area School District on questions of wages, hours, and conditions of employment or whether such employees desire not to be so represented by said labor organization.

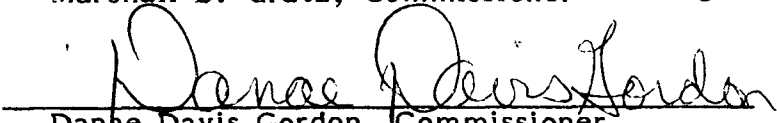
Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

GREEN BAY PUBLIC SCHOOL DISTRICT

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

INTRODUCTION

At all times material hereto, the Petitioners have been included in a collective bargaining unit represented by the Intervenor which unit is described in Article I of the relevant collective bargaining agreement as "consisting of all employees of the Employer" employed as follows:

1. All maintenance employees of the Board of Education, Green Bay Area Public School District, excluding professional teachers, supervisors, craft employees, elected or appointed officials, cooks, clerical employees, confidential employees and carpenters.
2. All painters employed by the Board of Education, Green Bay Area Public School District, excluding all other employees of the municipal employer.

On December 19, 1985, Petitioners Altergott and Cope filed separate petitions for election involving municipal employees wherein each asked to be represented by his respective trade union. At hearing, each Petitioner abandoned his request to be represented by his respective trade union. Each Petitioner, however, continues to maintain that he is a craft employee who is inappropriately included in the collective bargaining unit represented by the Intervenor.

OBJECTION TO CONDUCT OF HEARING

At commencement of hearing, the Examiner advised all parties that she intended to initiate the proceedings by calling and questioning witnesses. The parties were further advised that each would be afforded the opportunity to question all witnesses called by the Examiner, as well as to call additional witnesses which the parties might require. The Intervenor objected to the procedure adopted by the Examiner, asserting that it was the Petitioners' responsibility to develop the record.

As the Examiner correctly stated at hearing, the Examiner is not present to represent any one party, but rather to obtain a full and complete factual record upon which the Commission may discharge its statutory duties. In furtherance of that end, a Commission Examiner may call witnesses, ask questions, and explore issues not raised or only partially raised by the parties.

The record establishes that the parties herein were afforded the opportunity to question all witnesses called by the Examiner, as well as to call any additional witnesses. We therefore do not find the procedure adopted by the Examiner to have been inappropriate.

POSITIONS OF THE PARTIES

The Petitioners claim that they are craft employees who have been inappropriately included in the collective bargaining unit represented by the Intervenor. The Intervenor contests the Petitioners' assertion that they are craft employees. Further, the Intervenor, contrary to Petitioners, seeks the dismissal of the petitions on each of the following three procedural grounds. First, the Intervenor claims that the questions presented herein are not appropriately determined in a proceeding on an election petition, but rather, require the filing of a petition for unit clarification. Secondly, the Intervenor argues that if the election petitions are appropriate, they require a showing of interest by thirty percent of the members of the existing bargaining unit. The Intervenor denies that the requisite showing was made herein. Finally, the Intervenor maintains that the petitions, as filed, indicate that the Petitioners wish to be represented by another Union. The Intervenor argues that since no other labor organization has shown any interest in representing the Petitioners, the Commission is without authority to grant the relief sought in the petitions. The District does not take a position with respect to the issues presented herein.

DISCUSSION

The threshold issue to be determined herein is whether the petitions are properly before the Commission. Given the fact that, at commencement of hearing, Petitioners abandoned their request to be represented by their respective trade union, the failure of the trade unions to show an interest in this proceeding does not, as the Intervenor argues, bar further proceedings on the petitions filed herein.

When the Commission certified the maintenance worker unit, craft employees were expressly excluded from the unit represented by the Intervenor. 1/ Had a petition for unit clarification been filed herein by the Employer or a labor organization, the Commission would have determined whether Petitioners are craft employees and, answering in the affirmative, ordered the Petitioners excluded from the existing collective bargaining unit. Intervenor correctly points out that Petitioners are neither the Employer nor a labor organization and hence cannot pursue a unit clarification per se herein.

However, we do not agree with the Intervenor's further assertion that Petitioners lack standing to pursue their objectives through a petition for election. The City and Intervenor have treated the Petitioners' positions as included in the collective bargaining unit which, as certified, expressly excluded craft employees. They have continued to so treat these positions despite job requirements and duties which Petitioners allege render their positions craft at present. While voluntary inclusion of craft employees in the same unit with non-craft employees is not unlawful, it cannot bar an affected craft employee or any other interested party, from seeking an election among craft employees for the purpose of determining whether such employees wish to be included in a unit with non-craft employees or to be represented in a separate unit. For, as stated in Sec. 111.70(4)(d)2.a., Stats., the Commission "shall not decide that any unit is appropriate if the unit includes both craft and non-craft employees unless a majority of the craft employees vote for inclusion in the unit."

The Petitioners have raised a question concerning the appropriateness of a unit wherein craft employees have been combined with non-craft employees without having had a majority of craft employees vote for inclusion in the unit. Accordingly, there is a question of representation involving craft employees, which question is appropriately decided in a proceeding on a petition for election.

Neither the Petitioners nor any other party disputes the right of the Intervenor to seek to continue as the exclusive representative of the remaining employees in the existing unit. Moreover, whatever the results of the elections conducted herein, the Intervenor will continue as the exclusive representative of the remaining employees in the existing unit. Consequently, there is no requirement that the instant petitions be accompanied by a showing of interest among the employees in the existing unit.

Petitioner Altergott

Section 111.70(1)(d), Stats., defines a craft employee as "a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employees not in direct line of progression in the craft."

Petitioner Altergott has worked for the District for approximately two years. Altergott was hired into the position which he currently holds, i.e., Master Plumber/Maintenance Mechanic. Among the requirements of the position is satisfactory completion of an apprenticeship and a minimum of five years in the performance of work as a licensed journeyman plumber. Additionally, the occupant of the position is required to have a current, valid State of Wisconsin Master Plumber's license. The primary work responsibility of Altergott, who possesses a current, valid Master Plumber's license, is to install and maintain in good repair the District's sanitary facilities. Altergott cuts, fits, and installs pipe

1/ Joint School District No. 1, City of Green Bay, Dec. No. 8667 (WERC, 10/68). The parties have apparently combined the certified maintenance employees collective bargaining unit with that of the painters unit, which unit was certified on the same date as the maintenance employees unit. See, Joint School District No. 1, City of Green Bay, Dec. No. 8661 (WERC, 10/68).

materials for use in the repair or replacement of supply lines, gas lines, sanitary sewer lines, and storm lines. In addition, Altergott assists the Director of Building and Grounds in the layout and planning of plumbing facilities involving minor remodeling, and purchases plumbing permits, as necessary. Purchasers of such plumbing permits are required to hold a Master's license.

The foregoing job functions and requirements materially differ from those of the Maintenance Mechanic positions that were held to be non-craft in 1968. (See Finding of Fact 5, above).

With regard to the position as it presently exists we are satisfied that Altergott possesses the credentials and performs the work of a skilled journeyman plumber craftsman, and, consequently, that he is a craft employe within the meaning of Sec. 111.70(1)(d), Stats.

Petitioner Cope

Petitioner Cope has been employed with the District for approximately five and one-half years. During this time, he has occupied the position of Maintenance Mechanic - Boiler and Steamfitter. The position's entry requirements include, inter-alia, completion of an apprenticeship or an equivalent training program, plus a minimum of five years experience. Cope served a three and one-half to four year apprenticeship in the U.S. Navy and, prior to working for the District, worked at an area college where he operated high pressure boilers and performed refrigeration, air conditioning, heating and pneumatic control work. Additionally, Cope has attended various air conditioning and refrigeration schools, as have other maintenance employes of the District.

Cope's primary work responsibility is to install, maintain and repair the heating, ventilating and cooling equipment contained in the District's buildings. Cope installs, repairs and replaces component parts of low pressure boilers, hot water boilers, and pneumatic temperature controls such as steam traps, regulator valves, pressure relief valves, impellers, check valves, control valves, thermostats, pumps, and air compressor units. Cope cuts, fits, and installs pipe in air, water, gas, steam and condensate return lines, utilizing techniques which involve, inter-alia, cutting, threading and soldering. Equipment utilized by Cope in the performance of his duties includes dies, saws, and acetylene and oxygen welding outfits, as well as handtools such as wrenches. While it is true that bargaining unit employes also perform minor maintenance and repair of heating and cooling systems, Cope is the only employe, other than Petitioner Altergott, to cut, fit, and install pipe.

As discussed supra, a skilled journeyman craftsman is a craft employe within the meaning of Sec. 111.70(1)(d), Stats. The Commission has held that to be a journeyman craftsman within the meaning of Sec. 111.70(1)(d), Stats., an individual must have a substantial period of apprenticeship or comparable training. 2/ The Commission will also recognize an experience equivalent where it is clearly demonstrated to exist. 3/

As the record establishes, Cope has served a substantial apprenticeship. Moreover, Cope performs the traditional skills of a steamfitter journeyman craftsman in that he cuts, fits and installs pipe in air, water, gas, steam and condensate return lines. Consequently, we are satisfied that Cope is a craft employe within the meaning of Sec. 111.70(1)(d).

CONCLUSION

We are satisfied that each of the Petitioners is a craft employe entitled to vote as to whether craft employes should be included in the same bargaining unit (represented by the Intervenor) with non-craft employes. Each Petitioner, as the single member of his respective voting group, shall first have an opportunity to

2/ Winnebago County, Dec. No. 6043 (WERC, 7/62), Milwaukee County, Dec. No. 11685, (WERC, 3/73), Dane County, Dec. No. 16946 (WERC, 4/79).

3/ Ibid.

vote as to whether he favors inclusion of his craft in the existing bargaining unit of employees represented by the Intervenor. If the vote is yes, the Petitioner and his craft shall be included in the existing unit represented by the Intervenor. If the vote is no, each Petitioner, as the single member of his respective voting group, shall have an opportunity to vote for representation by the Intervenor in a collective bargaining unit consisting only of employees in his respective craft, or for no representation. If that vote favors such representation, the Intervenor will be certified as the exclusive bargaining representative of the Petitioner's respective craft bargaining unit. If the vote is for no representation, the Petitioner will no longer be represented by the Intervenor for purposes of wages, hours, and conditions of employment.

It is unclear whether the Intervenor seeks to represent Petitioners in separate craft bargaining units. If the Intervenor does not seek such representation, the Intervenor should so notify the Commission within ten days of the instant date. Upon receipt of such notice from Intervenor, the Commission will delete from the voting process the ballot regarding representation in separate craft units.

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of August, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner