

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

:

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO :

:

Involving Certain Employes of : Case 1

: No. 44048 ME-3005

: Decision No. 26664

MUSCODA SOLID WASTE COMMISSION :

:

Appearances:

Mr. Lawrence Rodenstein, Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719 on behalf of the Petitioner.
Kramer and McNamee Law Offices, by Mr. Nick Kramer, 1038 Lincoln Avenue, Fennimore, Wisconsin 53809, on behalf of the Solid Waste Commission.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Council 40, AFSCME, AFL-CIO, having on May 21, 1990, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among all regular full-time and regular part-time employes of the Solid Waste Commission but excluding supervisory, managerial, confidential, craft and professional employes to determine whether said employes wish to be represented for purposes of collective bargaining by Wisconsin Council 40, AFSCME, AFL-CIO; and hearing in the matter having been conducted on August 13, 1990 in Muscoda, Wisconsin before Mary Jo Schiavoni, a member of the Commission's staff; and a stenographic transcript having been made of that hearing which was delivered on September 6, 1990; and the parties having waived the filing of briefs; 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 Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its offices located at 5 Odana Court, Madison, Wisconsin.

2. That the Muscoda Solid Waste Commission, hereinafter the Employer, is created pursuant to Sec. 66.30, Stats.; that it is composed of representatives of three counties, Grant, Richland and Iowa, and the Village of Muscoda who supply the funds and make the management decisions involved in the operation of a garbage and waste disposal facility; that the Commission is comprised of a 15 member board, six members being appointed by Grant County, three by Iowa County, three by Richland County and three by the Village of Muscoda; and that since its inception in October of 1989, the Commission has operated and continues to operate an incinerator for solid waste disposal and a recycling separation program.

3. That this proceeding concerns a petition for election filed by the Union seeking an election among all regular full-time and regular part-time employes employed by the Muscoda Solid Waste Commission, excluding supervisory, managerial, confidential, craft and professional employes; that the Employer argues that all employes are temporary employes and ineligible to vote based upon the precarious financial and operational condition of the Employer, but that the petitioned-for unit is appropriate should the Wisconsin Employment Relations Commission reject this argument.

4. That the parties have stipulated that General Manager Gerard Curti, and Supervisors Allen Schneider and Mike Drone are excluded from the bargaining unit as supervisors; that Joe Drone is an engineer who is excluded as a professional employe; and that Rhonda Walz is a secretary who is excluded as a confidential employe.

5. That the Employer currently employs approximately 24 employes as recyclers and seven employes as incinerator operators either full-time or part-time; that when they were hired, none of the employes were informed that their positions were temporary nor have they been informed of this as of the date of hearing; and that the Employer will continue to employ said employes in their current capacities until it makes substantial changes in its operation or ceases to operate.

6. That in December of 1988, the Village of Muscoda was operating an incinerator out of the facility currently being run by the Employer; that the facility was designed to dispose of solid waste, municipal, commercial and some

industrial wastes; that waste is brought in a raw form to the facility where recyclable materials are pumped out; that the remainder is placed into one of two combusters and burned, with the steam energy which results being sold to industries within the limits of the Village of Muscoda or to the Village utility; and that the Village of Muscoda owns the recycling center and equipment; and that in October of 1989, the Village, having secured financing and commenced operating the facility, turned it over to the Employer.

7. That the Employer's operation from October of 1989 to date has been in a shake-down phase; that the facility is functioning at 50 percent capacity and only able to operate five days a week rather than the seven which were intended; that there are a number of structural and mechanical problems along with design deficiencies in the facility; that the Employer has not received its operating permit from the Department of Natural Resources; that consultants are currently ascertaining whether the facility is repairable and, if so, the cost of repair; that the Employer's ability to acquire an air quality permit needed to continue operating from the Department of Natural Resources is uncertain; that a new law emphasizing curbside recycling places the Employer's recycling operation in jeopardy; and that the operation is currently running at a deficit.

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

CONCLUSIONS OF LAW

1. That the Muscoda Solid Waste Commission is a municipal employer within the meaning of Sec. 111.70(1)(j) of the Municipal Employment Relations Act.

2. That all regular full-time and regular part-time employes employed by the Muscoda Solid Waste Commission excluding supervisory, managerial, confidential, craft and professional employes constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

3. That a question of representation within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act has arisen among the municipal employes in the collective bargaining unit set forth in Conclusion of Law 2 above.

4. That the employes described in Finding of Fact 5 are not temporary employes, but are regular full-time and regular part-time employes eligible to vote in the election.

5. That it is appropriate to proceed with the election in the instant circumstances notwithstanding uncertainty as to the continuing operation on the part of the municipal employer.

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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in a collective bargaining unit consisting of all regular full-time and regular part-time employes of the Muscoda Solid Waste Commission but excluding supervisory, managerial, confidential, craft, and professional employes, who were employed by Muscoda Solid Waste Commission on October 30, 1990, except such employes who may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by the Wisconsin Council 40, AFSCME, AFL-CIO for the purpose of collective bargaining with Muscoda Solid Waste Commission over wages, hours and conditions of employment or whether such employes desire not to be so represented by said labor organization.

Given under our hands and seal at the City of
Madison, Wisconsin this 30th day of October,
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

MUSCODA SOLID WASTE COMMISSION

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

Position of the Parties

The Employer claims that all of the employees in the unit sought by the Union are temporary employees employed on a day-to-day basis without a reasonable expectation of continuous employment beyond a few days, and therefore are ineligible to vote or to be included in the unit. The Employer further argues that it is inappropriate to conduct an election under the circumstances outlined in Finding of Fact 7. However, should the employees be found not to be temporary and conducting an election be found appropriate under the circumstances, the Employer stipulates that the unit described in Finding of Fact 3 is appropriate.

The Union asserts that the degree of uncertainty existing in this case is not sufficient to warrant denying the employees in the stipulated bargaining unit an immediate opportunity to obtain representation if that is their majority will. It stresses that there is no evidence that these employees do not have a continuing expectation of employment. It also points out that there is no evidence that financial and other support from the three participating counties and the Village will in fact be discontinued.

DISCUSSION:

In the transcript of the hearing, the Employer stipulates that it is a municipal employer. However, because the Examiner has expressed some uncertainty as to the accuracy of the transcript, we find it appropriate to discuss and decide this issue. As Finding of Fact 1 indicates, the Employer consists of four political subdivisions of the State cooperating in a joint venture pursuant to the provisions of Sec. 66.30, Stats. We believe such operation falls squarely within the definition of "municipal employer" set forth in Sec. 111.70(1)(j), Stats.:

any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state which engages the services of an employe. . . (emphasis added).

We have previously found that a water commission established by three separate municipalities was a municipal employer. 1/ Similarly, we have concluded that a hospital and nursing home operated by a city and a county was also a municipal employer within the meaning of Sec. 111.70(1)(j), Stats. 2/ We can discern no significant distinction between the facts of those cases, and the facts herein. Thus we again conclude that a joint venture operated by political subdivisions of the State is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats.

The Employer contends that none of its employees are eligible for inclusion in the bargaining unit because all of its employees are "temporary employees." A temporary employe has been defined by the Commission as an employe who lacks an expectation of continued employment, and such employees have been excluded from voting eligibility because, as a result of their tentative employment status, they do not have the requisite community of interest with other regular full-time and regular part-time employees. 3/ When defining a "temporary employe," we have held that mere uncertainty as to whether funding will continue is insufficient to support a conclusion that employees lack a reasonable expectation of continued employment. 4/

1/ City of Glendale, et al, Dec. No. 7158 (WERC, 5/65).

2/ Memorial Hospital and Nursing Home, Dec. No. 10094 (WERC, 1/71).

3/ Manitowoc County, Dec. No. 15250-B (WERC, 9/77).

4/ Pittsville School District, Dec. No. 21806 (WERC, 6/84).

Under the above standard, it is evident that the Employer's employes are not temporary. They were not informed either at the time of hiring or at any time thereafter that their employment status was limited in duration. More importantly, as noted above, mere uncertainty as to funds or, in this case, the continuing nature of the Employer's operation is insufficient to establish that they are all temporary employes. 5/

The Employer further argues that until it is known what changes will be made in its operation or even whether it will continue to operate, it is inappropriate to conduct an election. It contends that these employes ought not be put to a choice of union representation or no union representation in view of the significant uncertainties about their job security and the Employer's continuing operation.

The Commission has already addressed this issue. In Outagamie County (Riverview Health Center) it stated:

In cases of this kind, we must balance the possibility that future operational changes will make the stipulated unit inappropriate or render the current employe complement unrepresentative of future complements of nonsupervisory Riverview employes, against the interests of the current complement of employes in immediate exercise of their statutory right to choose whether to bargain collectively with the Employer through a majority representative. 6/

Just as in Outagamie County, here the Employer has shown, at best, that it may be making significant changes in the nature of its operation at some time in the future. If and/or when these changes come about, certain of the current employes may be deprived of a reasonable expectation of continued employment or the stipulated unit may be rendered inappropriate at that time. However, at this time, no date certain exists as to when any material changes will be made.

Where the uncertainty presented here is really no greater or lesser than that faced routinely by private employes and there is a substantial statutory interest in providing the current employes with a prompt opportunity to vote on representation, the speculative possibility that significant change will occur in the future is insufficient to warrant postponing or delaying an election. The prospect of significant change which may create job security and other employe concerns is not a reason to deprive employes of their statutory rights to decide as to whether or not they wish to be represented for purposes of collective bargaining.

Accordingly an election is directed in the stipulated unit set forth in Conclusion of Law 2.

Dated at Madison, Wisconsin this 30th day of October, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

5/ Although we decline to find the employes specified in Finding of Fact 5 to be temporary, even if we accepted this argument, we would hold them eligible to vote albeit in a unit of temporary employes. The Employer is contending that all of its employes are temporary. Inasmuch as they all share the same employment status and share a community of interest with each other as municipal employes, they would be eligible to be included in their own temporary employe bargaining unit and would be entitled to exercise voting rights in that unit.

6/ Outagamie County (Riverview Health Center) Dec. No. 22269 (WERC, 1/85).