

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

:

STEVE KRYZANOWSKI, OLGA HOFFMAN, :

MICHAEL GORMAN, CATHERINE KUNZE : Case 155

AND MARK MELOTIK 1/ : No. 44675 ME-3060

: Decision No. 26988

Involving Certain Employes of :

:

CITY OF KENOSHA :

:

Appearances:

Davis & Kuelthau, S.C., Attorneys at Law, Suite 1400, 111 East Kilbourn Avenue, Milwaukee, Wisconsin 53202-3101, by Mr. Roger E. Walsh and Ms. Jane M. Knasinski, appearing on behalf of the City of Kenosha.
Mr. Steve Kryzanowski, Ms. Olga Hoffman, Mr. Michael Gorman, Ms. Catherine Kunze and Mr. Mark Melotik, c/o City of Kenosha Health Department, 625 52nd Street, Kenosha, Wisconsin 53140, appearing on their own behalf.
Mr. James Thomey, President, Kenosha City Inspectors Association, 625 52nd Street, Kenosha, Wisconsin 53140, appearing on behalf of the Kenosha City Inspectors Association.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DIRECTION OF ELECTIONS

On October 15, 1990, the five professional Sanitarians employed by the City of Kenosha Health Department and Building Department, Mr. Steve Kryzanowski, Ms. Olga Hoffman, Mr. Michael Gorman, Ms. Catherine Kunze and Mr. Mark Melotik (hereinafter the Petitioners) filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission conduct an election to determine whether said Petitioners should be represented by the Kenosha City Inspectors Association (hereinafter the Association) in a collective bargaining unit consisting of professional Sanitarians and craft employe Inspectors employed by the City of Kenosha. The City of Kenosha (hereinafter the City) objected to the proposed bargaining unit, and a hearing was held on the petition on December 18, 1990 in Kenosha, Wisconsin before Daniel J. Nielsen, a hearing examiner designated by the Commission. Present at the hearing were the City, the Petitioners and a representative of the Association. The Association did not seek to intervene in the case, although it presented a petition signed by all five members of the Inspectors' bargaining unit indicating their desire to represent the Sanitarians. A transcript was made of the proceedings, which was received by the examiner on January 9, 1991. The Petitioners and the City submitted written arguments which were exchanged through the examiner. The record was closed on February 16, 1991.

The record was reopened on April 12, 1991 to allow the Petitioners to clarify whether in the alternative they sought to represent all currently unrepresented professional employes of the City of Kenosha and, if so, to allow the Petitioners to submit evidence of their status as a labor organization.

1/ The Notice of Hearing indicated that the Petitioner in this matter was the Kenosha City Inspectors Association. The caption has been corrected to reflect the actual five individuals who are Petitioners in this matter who seek to be accreted to a craft employe bargaining unit represented by the Kenosha City Inspectors Association.

The Petitioners submitted a letter on May 6, 1991 disclaiming any status of a labor organization and indicating that Petitioners did not in any event seek to represent all unrepresented employes of the City of Kenosha. The record was then closed.

Having considered the record, and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The City of Kenosha (hereinafter the City) is a municipal employer having its offices at 625 52nd Street, Kenosha, Wisconsin 53140.

2. The Kenosha City Inspectors Association (hereinafter the Association) is a labor organization representing five craft employes in the classification of Inspector in the City of Kenosha's Housing Department. These Inspectors are primarily engaged in the enforcement of City and State building, electrical and plumbing codes. The Association maintains its principal offices c/o James Thomey, President, Kenosha City Inspectors Association, 625 52nd Street, Kenosha, Wisconsin 53140.

3. The City employs five Public Health Sanitarians. At the hearing on December 18, 1990, it was stipulated that all five of the Sanitarians are professional employes. Two are employed in the Housing Department and are primarily engaged in the inspection of residential units, enforcing the minimum City housing code as well as State codes relating to sanitary conditions. These two Sanitarians are supervised by the same individual who supervises the Inspectors. Three of the Sanitarians are assigned to the Health Department and are primarily engaged in the inspection of restaurants, grocery stores, and other food service establishments, and inspections attendant to the transfer of tavern licenses. When carrying out their responsibilities, Sanitarians have common work sites with Inspectors.

4. Aside from the five Sanitarians, there are numerous other City professional employes in various job classifications who are currently unrepresented for the purposes of collective bargaining. All of the unrepresented professional employes have common fringe benefits established under the City's unrepresented employes compensation plan.

5. The Sanitarians indicated at the time of the hearing on December 18, 1990 that, should the Commission determine that a mixed unit of professional Sanitarians and craft employe Inspectors is inappropriate, they desired an election among all unrepresented employes of the City. The Sanitarians altered their position in response to a further inquiry by the examiner through a letter on April 12, 1991. By the following letter dated May 3, 1991 and received by the examiner on May 6, 1991, the Sanitarians disclaimed any interest in representing the other unrepresented professional employes of the City:

We five (5) petitioners state that it is our position that we are different in character from other unrepresented professionals employed by the City of Kenosha. For that reason we requested the Hearing for our unique unit. For purposes of this Hearing we are not holding ourselves out as a labor organization for bargaining for the current unrepresented professional employes. We, therefore, ask that you proceed on the basis of the existing record.

In taking this position, we do not wish to close the door on future determination as a labor organization should our present request for representation be denied and should other unrepresented professional employees desire representation.

6. All five craft Inspectors represented by the Association signed a petition which was presented at the hearing on December 18, 1990 requesting that the five Sanitaricians be included in their bargaining unit.

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

CONCLUSIONS OF LAW

1. Creation of a craft Inspector/professional Sanitarian bargaining unit is not inconsistent with the statutory obligation to avoid undue fragmentation of bargaining units.

2. A collective bargaining unit consisting of all regular full-time and regular part-time craft Inspectors and professional Sanitaricians of the City of Kenosha, excluding supervisory, managerial and confidential employes is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. A question of representation within the meaning of Sec. 111.70(4)(d)3, Stats., presently exists among the employes in the bargaining unit set forth in Conclusion of Law 2.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Direction to determine whether majorities of both the craft Inspectors and the professional Sanitaricians, who are employed on August 22, 1991 except such employes as may prior to the election quit their employment or be discharged for cause, desire to be included in the collective bargaining unit set forth in Conclusion of Law 2; and, if so, whether a majority of the professional Sanitaricians desire to be represented by the Kenosha City Inspectors Association for the purposes of collective bargaining with the City of Kenosha on wages, hours and conditions of employment or not to be so represented.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

CITY OF KENOSHA

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

ARGUMENTS OF THE PARTIES

The Petitioners argue that their work is virtually identical to that performed by the craft employes in the Inspectors Association, and is completely dissimilar to that work performed by other professional employes of the City. The skills actually required for the Sanitarian and Inspector jobs are the same, two of the Sanitarians already work in the same City department as the Inspectors, and the job functions are indistinguishable between the two classifications. Thus, the Sanitarians have a unique and strong community of interests with the Inspectors which should overcome the presumption against fragmentation.

The City takes the position that the five Sanitarians are indisputably professional employes, and that the only appropriate unit for the Sanitarians would be one which includes all professional employes of the City. Unrepresented employes are all governed by the same civil service ordinance and City policies setting wages, hours and working conditions. Despite some dissimilarities in job function, there is a sufficiently strong community of interests among all professional employes to render an overall professional unit the only appropriate bargaining unit. Allowing the separation of the Sanitarians from the other professional employes would result in undue fragmentation of bargaining units in contravention of the statutory mandate.

DISCUSSION

The sole issue before the Commission is whether a unit which includes five professional Sanitarians with the five craft employes in the classification of Inspector is appropriate or whether the only appropriate unit for the Sanitarians is a unit of all professional employes. Having considered the record evidence, we conclude that an Inspector/Sanitarian bargaining unit would not be contrary to our mandate under Sec. 111.70(4)(d)2.a., Stats., to "whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force" and is otherwise appropriate.

The Commission considers the following factors in determining whether employes constitute an appropriate collective bargaining unit:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes.
2. The duties and skills of employes in the unit sought as compared with duties and skills of other employes.
3. The similarity of wages, hours and working conditions of the employes in the unit sought as compared to wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought have separate or common supervision with all other

employes.

5. Whether the employes in the unit sought have a common work place with the employes in said desired unit or whether they share the work place with other employes.

6. Whether the unit sought will result in undue fragmentation of bargaining units.

7. Bargaining history. 2/

The Sanitarians and Inspectors share a strong community of interest derived from their common purpose of enhancing community safety through code enforcement. Further, there is a strong similarity in the duties, skills, hours, and work setting of the Sanitarians and Inspectors as well as partial commonality of supervision. All of the foregoing support the appropriateness of an Inspector/Sanitarian unit.

However, as argued by the City, the Sanitarians share common fringe benefits with and have wages comparable to other currently unrepresented professional employes of the City. Although this factor is not supportive of the unit being sought, by itself we do not regard it as determinative.

As to the question of fragmentation of bargaining units on which the City has placed substantial emphasis, an Inspector/Sanitarian unit would not yield an increase in the number of units of City employes. Thus, on the face of the dispute before us, no fragmentation is produced by an Inspector/Sanitarian unit.

As to bargaining history, the Sanitarians have not been represented for the purposes of collective bargaining since they were excluded from an existing non-professional unit due to their professional status. See City of Kenosha, Dec. No. 16200 (WERC, 3/78). This factor is not particularly supportive of either unit.

Given the foregoing, we conclude on balance that the community of interest, duties, skills, hours, work sites, and partial common supervision shared by the Inspectors and Sanitarians warrant the conclusion that an Inspector/Sanitarian unit 3/ is appropriate.

To the extent the City is also arguing that this result signals a willingness, over the City's objection, to establish separate units within the

2/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580 (1984); City of Cudahy, Dec. No. 21887-B (WERC, 1/90).

3/ Given the positions of the parties, if either a majority of the Inspectors or the Sanitarians do not vote for the combined unit as required by Sec. 111.70(4)(d), Stats., the representation ballots of the Sanitarians will not be counted and the Association will continue to represent only the Inspectors.

remaining unrepresented professionals consisting for example of Civil Engineers, Public Health Nurses 4/ Assistant City Attorneys 5/ or Chemists, we would indicate that our decision herein should not be viewed as expressing any opinion on the appropriateness of such units. Nor does our decision reflect any opinion on whether there may be other appropriate units beyond the two posed herein in which the Sanitarians could be included should they reject representation by the Association.

Dated at Madison, Wisconsin this 22nd day of August, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

4/ The statutory mandate to avoid undue fragmentation did not exist when in City of Kenosha, Dec. No. 7412 (WERC, 1/66) we directed an election pursuant to a stipulation in a unit of registered nurses employed by the Health Department.

5/ While in City of Kenosha, Dec. No. 12522 (WERC, 3/74) we directed an election among the Assistant City Attorneys, no claim of undue fragmentation was therein advanced.