

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition and Amended Petition of  
**THE MILWAUKEE SUPERVISORS ORGANIZATION**

Involving Certain Employes of  
**THE CITY OF MILWAUKEE**

Case 441  
No. 55438  
ME-3615

**Decision No. 29354**

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Appearances:

Fuchs, Snow, O'Connell & DeStefanis, S.C., by **Attorney Judith O. O'Connell**, 1011 North Mayfair Road, Suite 100, Milwaukee, Wisconsin 53202-3431, on behalf of the Milwaukee Supervisors Organization.

**Mr. Thomas L. Beamish**, Assistant City Attorney, 200 East Wells Street, Room 800, Milwaukee, Wisconsin 53202, on behalf of the City of Milwaukee.

**ORDER GRANTING MOTION TO DISMISS**

On August 14, 1997, the Milwaukee Supervisors Organization filed a petition requesting the Wisconsin Employment Relations Commission to conduct a representation election among certain employes of the City of Milwaukee pursuant to Section 111.70, Stats. The petition identified the 34 employes who the Supervisors Organization seeks to represent for the purposes of collective bargaining in a new bargaining unit described as "all City of Milwaukee Sanitation Supervisors in pay range 4, and all City of Milwaukee Equipment Operations Supervisor 1 in pay range 4". On August 26, 1997, the Supervisors Organization filed an amended petition which expanded the scope of the proposed new unit to include employes identified as "all City of Milwaukee Urban Forestry Supervisors in pay range 4."

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On September 2, 1997, the City filed a Motion to Dismiss the petition. On October 24, 1997, the Supervisors Organization filed a reply to the City's Motion to Dismiss. On November 10, 1997, the City filed a response to the Supervisors Organization's reply. On November 21, 1997, the City filed a supplemental affidavit and on January 2, 1998, Supervisors Organization responded thereto.

By letter dated January 7, 1998, pursuant to Sec. 227.45(3), Stats., the Commission advised the parties of its intent to take official notice of Commission Decisions 18996-A and 24602. No party objected to the Commission's proposed intent and we hereby take notice of those decisions.

In the same January 7, 1998, letter, we sought a response from the Supervisors Organization to the City's argument that the unit sought is inappropriate because there are existing non-supervisory units in the Department of Public Works. The Supervisors Organization filed a written response on January 29, 1998.

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

**ORDER**

The Petition for Election is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 8th day of April, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

Paul A. Hahn /s/  
Paul A. Hahn, Commissioner

**CITY OF MILWAUKEE (SANITATION)**

**MEMORANDUM ACCOMPANYING  
ORDER GRANTING MOTION TO DISMISS**

In its Motion to Dismiss and subsequently filed written argument, the City asserts that the election petition should be dismissed because: (1) the employees in question are supervisors within the meaning of Sec. 111.70(1)(o), Stats. and thus have no statutory right to be represented by a labor organization for the purposes of collective bargaining; and (2) to the extent any of the employees are not supervisors, the unit sought by the Supervisors Organization is not appropriate because there are already existing Department of Public Works collective bargaining units.

The Supervisors Organization responds by contending that: (1) the employees in question are not supervisors; and (2) establishment of a new bargaining unit should not be rejected on fragmentation grounds because the employees:

. . . in our group have very different responsibilities than that of the employees in Public Employees Union No. 61 and Milwaukee District Council 48. Our employees oversee those workers and coordinate their work. Therefore, the interests of our members are significantly different than the employees of those unions and the potential for conflict is significant. It would be unworkable for our members to be part of the existing unions.

As reflected above, both parties correctly understand that to the extent any of the employees in question are supervisors within the meaning of Sec. 111.70(1)(o), Stats., 1/ and thus are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats. 2/, they do not have statutory right to be represented by a labor organization for the purposes of collective bargaining because that right is given only to municipal employees. 3/ However, because we are addressing this Motion on a pre-hearing basis, we must assume for the purposes of this Motion that the facts as pled by the Supervisors Organization are true. 4/ The Supervisors Organization contends that the facts generated at a hearing would establish that none of the employees are supervisors. Thus, for the purposes of this pre-hearing Motion to Dismiss, we assume that the employees are "municipal employees" entitled to representation for the purposes of collective bargaining. Therefore, disposition of the Motion turns on the question of whether the unit sought is an appropriate unit given the already existing Department of Public Works units.

As reflected in the parties' positions in this litigation and the Commission decisions of which we have taken official notice (DEC. NOS. 18996-A and 24602), there are already two existing blue collar Department of Public Works bargaining units represented by Milwaukee District Council 48, AFSCME and Public Employees' Union No. 61, Laborer's International

Union, respectively. The City raises the question of whether an additional unit can appropriately be created given the presence of the existing units. The Supervisors Organization acknowledges the existence of the directive found in Sec. 111.70 (4)(d)2.a., Stats. 5/ regarding fragmentation of the workforce but argues that fragmentation concerns are overridden by conflicts of interest between the employees it seeks to represent and the unit employees whose work they direct.

The conflict of interest to which the Supervisors Organization refers seems nothing more than the inherently conflicting interests of supervisors (as defined in Sec. 111.70(1)(o), Stats.) and municipal employes (as defined in Sec. 111.70(1)(i)). This conflict, of course, is the basis for the statutory exclusion of supervisors from municipal employe status and thus from municipal employe bargaining units.

For the purposes of this motion, however, we are presuming that none of the employees in question are supervisors as defined in Sec. 111.70(1)(o), Stats. At the same time, we are cognizant of the contention of the Supervisors Organization that the employees in the group "oversee and coordinate" the employees in the other blue collar units.

This seems to us to be neither a unique arrangement nor a persuasive basis for a separate unit. The employees in question are presumed to be "working foremen" or "lead workers" for the purposes of this motion. Historically, we have not found any significant potential for conflict between them and the employees whose work they direct. Thus, we have found no barrier to including both in the same bargaining unit. 6/ Indeed, inclusion appears compelled by the statutory mandate to avoid fragmentation.

Thus, we reject the conflict argument of the Supervisors Organization in this case. Given the strong statutory mandate regarding fragmentation found in Sec. 111.70(4)(d)2.a., Stats., we conclude that the unit sought by the Supervisors Organization is not an appropriate unit. Therefore, we have granted the City's Motion to Dismiss.

Dated at Madison, Wisconsin this 8th day of April, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

Paul A. Hahn /s/  
Paul A. Hahn, Commissioner

**ENDNOTES**

1/ Section 111.70(1)(o)1, Stats., provides:

(o) "Supervisor" means:

1. As to other than municipal and county fire fighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

2/ Section 111.70(1)(i), Stats. excludes supervisors from the definition of municipal employes as follows:

(i) "Municipal employe" means any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe.

3/ Section 111.70(2) provides:

**(2) RIGHTS OF MUNICIPAL EMPLOYEES.** Municipal employes shall have the right of self-organization, and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection.

4/ To dismiss a matter without an evidentiary hearing, we must be persuaded that there are no interpretations of the facts as pled which would entitle the moving party to the matter it seeks (in this case, an election). See, generally, RACINE UNIFIED SCHOOL DISTRICT, DEC. NO. 15915-B (Hoonstra, with final authority, 12/77).

5/ Section 111.70(4)(d)2.a., Stats. provides in pertinent part:

2.a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.

6/ WOOD COUNTY, DEC. NO. 26227-B (WERC, 5/92); JUNEAU COUNTY, DEC. NO. 18728-A (WERC, 1/86); CORNELL SCHOOL DISTRICT, DEC. NO. 17982 (WERC, 8/80); LOYAL SCHOOL DISTRICT, DEC. NO. 18149 (WERC, 10/80).

