

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS LOCAL UNION NO. 43
Involving Certain Employees of
WATERFORD SANITARY DISTRICT NO. 1

Case 3
No. 62323
ME(u/c)-1071

Decision No. 30214-E

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Andrea F. Hoeschen**, 1555 North Rivercenter Drive, Suite 202, P. O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union No. 43.

Weber & Cafferty, S.C., by **Attorney Robert K. Weber**, 704 Park Avenue, Racine, Wisconsin 53403, appearing on behalf of Waterford Sanitary District No. 1.

ORDER DENYING MOTION TO DISMISS

On September 19, 2001, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit with Accompanying Memorandum concluding that the Operations Superintendent of the Town of Waterford Sanitary District No. 1 was a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., who therefore should be excluded from the collective bargaining unit represented by Teamsters Union Local No. 43. Teamsters then filed a petition seeking judicial review of the Commission's decision which was subsequently dismissed upon stipulation of the parties on January 30, 2002.

On April 18, 2002, Teamsters Union Local No. 43 filed a petition to clarify bargaining unit with the Wisconsin Employment Relations Commission again seeking inclusion of the Operations Superintendent in the Teamsters' Sanitary District bargaining unit.

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On May 2, 2002, the Sanitary District filed a motion to dismiss the Teamsters' unit clarification petition arguing that the claim asserted was "res judicata" and "frivolous" and that there has been no change in circumstances affecting the supervisory status of the Operations Superintendent. On May 15, 2002, Teamsters filed a response to the motion to dismiss asserting that the motion should be denied because there had been changes in circumstances as to the Operations Superintendent's supervisory authority since the Commission's September 19, 2001 decision.

On June 13, 2002, a Commission majority (Commissioner Hahn dissenting) granted the motion to dismiss without prejudice based on its view that the April 18, 2002 petition should have been but was not supported by a sworn affidavit specifying the nature of the changed circumstances that warranted a hearing. Commissioner Hahn concluded that the assertions of change by counsel for Teamsters were sufficient to deny the motion to dismiss.

On April 16, 2003, Teamsters again filed a petition to clarify bargaining unit with the Wisconsin Employment Relations Commission seeking inclusion of the Operations Superintendent in the Teamsters' Sanitary District bargaining unit.

On May 2, 2003, the Sanitary District again filed a motion to dismiss the petition asserting there has been no change in circumstances since the original Commission decision was issued in September 2001.

On May 21, 2003, Teamsters filed a response to the motion asserting that there has been a change in circumstances because the District has eliminated the Operations Superintendent's role in hiring -- a prior role that was a significant factor in the Commission's September 2001 decision. Attached to the response were documents that purported to be copies of minutes of January 2002 meetings of the District during which potential employees were interviewed and hired.

As to the Sanitary District's contention that the petition should be dismissed because there has been no change in circumstances, we have held that we will revisit an employee's bargaining unit status where the employee's duties and responsibilities have changed in some material way. CITY OF MANITOWOC, DEC. NO. 7667-D (WERC, 6/97); CITY OF MILWAUKEE, DEC. NO. 6960-J (WERC, 5/89). Here, it is alleged that there has been a change in hiring responsibility -- clearly a change that is material to the analysis of supervisory status. Only through an evidentiary hearing can the existence of such a change be definitively tested. Thus, we do not find this District contention to be a persuasive basis for dismissing the petition.

However, as was true for its April 2002 petition, Teamsters did not provide a sworn affidavit in support of its contention that there has been a material change in circumstances. As to the current petition, the absence of the affidavit is directly at odds with the direction

given Teamsters by the Commission majority in its June 2002 decision. Thus, while we find Commissioner Hahn's dissent to be persuasive as to all future petitions, we think it important in the historical context of this petition and these parties to hold Teamsters to the requirement of an affidavit. Therefore, although we are not granting the motion to dismiss, we will not further process the petition unless and until such an affidavit is filed.

Having reviewed the record and consistent with the foregoing, the Commission makes and issues the following

ORDER

The motion to dismiss is denied, but the petition is held in abeyance pending receipt of an affidavit.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of July, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner