

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LOCAL 704, LABOR ASSOCIATION OF WISCONSIN, INC.

Involving Certain Employees of

TOWN OF CALEDONIA

Case 84
No. 60696
ME(u/c)-1037

Decision No. 30538

Appearances:

Mr. Patrick J. Coraggio and **Mr. Benjamin M. Barth**, Labor Consultants, Labor Association of Wisconsin, Inc., 2835 North Mayfair Road, Suite 24, Wauwatosa, Wisconsin 53222, appearing on behalf of Local 704.

Long & Halsey Associates, Inc., by **Attorney William R. Halsey**, 8330 Corporate Drive, Racine, Wisconsin 53406, appearing on behalf of the Town of Caledonia.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER
CLARIFYING BARGAINING UNIT

On January 2, 2002, Local 704, Labor Association of Wisconsin, Inc. filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit of Town of Caledonia Highway Department employees by including the newly created position of Park Maintenance Worker. The parties thereafter engaged in unsuccessful efforts to voluntarily resolve the dispute.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on September 17, 2002, in Caledonia, Wisconsin. At hearing, the Town opposed the petition and asserted that the position is appropriately included in a bargaining unit represented by Caledonia General Employees Union, Local 864, AFSCME, AFL-CIO. Local 864 did not appear at the hearing, did not file a brief, and takes no position as to the issues in this case.

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The Town and the Local 704 filed briefs on November 4, 2002, and November 6, 2002, respectively, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

FINDINGS OF FACT

1. The Town of Caledonia, herein the Town, is a municipal employer with offices at 6922 Nicholson Road, Caledonia, Wisconsin 53108.

2. Local 704, Labor Association of Wisconsin, Inc., herein Local 704, is a labor organization with offices at N116 W16033 Main Street, Germantown, Wisconsin 53022.

3. At all times pertinent hereto, Local 704 has been the voluntarily recognized exclusive bargaining representative for a unit described in the parties' 2000-2002 collective bargaining agreement as

. . . all regular part-time and regular full-time employees of the Highway Department.

4. Caledonia General Employees Union, Local 864, AFSCME, AFL-CIO, herein Local 864, is a labor organization with offices at P.O. Box 624, Racine, Wisconsin 53401.

5. At all times pertinent hereto, Local 864 has been the voluntarily recognized exclusive bargaining representative for a unit described in the parties' 2000-2002 collective bargaining agreement as:

. . . all of the public employees in the Town of Caledonia, defined as all regular full-time part-time employees who are not represented by a labor union, or covered by a collective agreement with the Police Department, Dispatchers Union, Fire Department, Professional Union and Highway Department, excluding supervisory, executive, managerial and confidential employees.

The Local 864 unit is comprised of Administrative Assistants, who are clerical employees, one Health Department Aide and one Custodian.

6. The Town has a Parks and Recreation Department which maintains and operates a number of public parks. The Department is supervised by a Parks and Recreation Director and is under the authority of a Parks Commission. Prior to 2001, the Parks and Recreation Department had no employees other than the Director and some seasonal workers. Regular maintenance and upkeep in the parks was assigned to employees in the Highway Department who were in the Local 704 unit. In 2000, the Town determined to hire a regular Park Maintenance Worker and to phase out Highway Department responsibility for park maintenance beyond that requiring heavy equipment maintained and operated by the Highway Department. In late 2000 or early 2001, the Town developed a job description for the Park Maintenance Worker position, which states, in pertinent part:

. . .

BASIC FUNCTION:

To perform repairs, maintenance, and inspections on park equipment. To operate various types of equipment safely and to maintain the usability and visual appeal of the parks. To communicate and create a positive image for the town parks.

DUTIES AND RESPONSIBILITIES: [sic]

Operate truck and equipment of various size to haul materials, supplies, equipment, and similar items, loads and unloads it.

Function as a lead worker by overseeing and scheduling work of seasonal employees.

Perform routine maintenance of park and recreation equipment and vehicles such as refueling, changing tires, changing oils and filters, checking batteries, lights, and engine fluids, greasing equipment, sharpening mower blades, and other related equipment care procedures.

Clean equipment, vehicle, and other department property as directed.

Preparation and maintenance of ball diamonds, fields, and grounds for various activities.

Restroom maintenance, including general cleaning and stocking supplies.

Pick up garbage, trash, litter, etc. from all park areas.

Assemble or assist in assembling playground equipment, fences, and other department items.

Assist other department personnel as well as other governmental or contracted personnel, as directed.

Perform turf maintenance work including mowing, watering, fertilizing, pesticide application, grading, seeding, sodding, trimming, etc.

Open, close, and inspect park facilities.

Set up park shelters and other areas for the community to use.

Plant, prune, weed, and remove trees, shrubs, flowers, and bulbs as needed.

Make daily written and oral reports. Patrol facilities and reports matters of security, safety or related concerns. Inform and direct the public in use of the facilities.

Provide public relations and information communication.

Secure facilities as directed.

Conduct regularly scheduled inspections of parks.

Request necessary supplies and equipment to allow for consistent work scheduling in accordance with established policies.

Assist Director in weekly and long range planning.

SUPERVISION RECEIVED:

Receives daily supervision from the Parks and Recreation Director.

QUALIFICATIONS:

High School diploma or any equivalent combination and experience which provides the required knowledge, skill and ability to perform the duties of the position.

At least 1 year of experience involving the operation of machinery, tools, and equipment used in ground maintenance.

Past park maintenance experience desirable.

Knowledge of occupational hazards and safety precautions.

Knowledge of park maintenance practices and procedures, including equipment and maintenance.

Knowledge of washing, lubricating, cleaning and other general maintenance work on park equipment.

Skill and ability to keep routine records.

Considerable ability to follow oral directions and to work independently, with a minimum of supervision.

Work cooperatively with Town employees and the general public.

A valid Wisconsin State Drivers License required. A Wisconsin Commercial Drivers License (CDL) desirable and may be required in the future.

Requires prompts and regular attendance on the job.

. . .

7. In April, 2001, Kendra Macey was hired as Park Maintenance Worker, a non-represented position, on a $\frac{3}{4}$ time basis. She works year round, but her hours vary from full-time during the Spring, Summer and Fall, when the parks are operating, to part-time during the Winter, when the parks are dormant. She is supervised by the Park and Recreation Director and is under the authority of the Park Commission. Her job functions are as stated in the job description for her position. She performs all the park maintenance work previously done by Highway Department employees except that requiring the use of heavy equipment, such as road grading and repair, work on drainage ditches and culverts, tree trimming and erecting and taking down netting at the ball diamond. These tasks are still performed by Highway Department personnel on an as needed basis. In addition, she occasionally acts as a backup for the Town Custodian.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

Based on the recognition clause contained in the 2000-2002 agreement between the Town and Local 704 and the recognition clause contained in the 2000-2002 agreement between the Town and Local 864, the position of Park Maintenance Worker is not appropriately included in the Local 704 bargaining unit set forth in Finding of Fact 3 but is appropriately included in the Local 864 bargaining unit set forth in Finding of Fact 5.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The position of Park Maintenance Worker is included in the Local 864 AFSCME bargaining unit set forth in Finding of Fact 5.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

TOWN OF CALEDONIA

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION
OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

POSITIONS OF THE PARTIES

The Town

The Town asserts that the position of Park Maintenance Worker is not appropriately included in the Local 704 Highway Department unit under the criteria established by the Commission, but that the Local 864 General Employee unit is a more appropriate alternative. In that regard, it argues that to the extent the Park Maintenance Worker shares a community of interest with other Town employees, her community of interest is greater with the members of the Local 864 General Employees bargaining unit than with those in the Local 704 Highway Department bargaining unit.

There is no commonality of supervision with the Highway Department. The Park Maintenance Worker is supervised by the Park and Recreation Director, whereas the Highway Department employees are supervised by the Highway Superintendent. The Highway Superintendent has no authority over the Parks Commission, the Park and Recreation Director, or the Park Maintenance Worker, so to put her in the Local 704 unit would disrupt the chain of command and is the principal factor mitigating against such a decision.

The Park Maintenance Worker has different wages, hours and working conditions than the Highway Department employees. She is a $\frac{3}{4}$ time employee, whereas all the Highway Department workers are full-time employees. Her benefits are prorated and she makes substantially less per hour than Highway Operators with equivalent seniority. As an unrepresented employee, she also does not have access to the grievance procedure contained in the Highway Department collective bargaining agreement. Further, although "maintenance" is listed as a job function of both the Highway Operators and the Park Maintenance Worker, they do not refer to the same tasks, because, by definition, one is charged with maintaining the Town's highways whereas the other is responsible for its parks.

She interacts with Highway Department employees only occasionally, but spends as much as 10% of her time filling in for the Custodian. She works at the East Side Community Center, which also houses the Highway Department sign shop, but not the garage, where most of the Highway Department employees are located. The sign shop uses a different part of the building, so its presence is merely coincidental and creates no commonality of workplace between the workers. Also, unlike the Highway Department employees, she acts as a lead worker with respect to part-time seasonal laborers employed by the Parks and Recreation Department. Finally, unlike the Highway Operators, the Park Maintenance Worker is not currently required to have a Commercial Driver's License (CDL).

There is no bargaining history suggesting that Local 704 has ever sought inclusion of Parks Department employees in its bargaining unit. Further, the current posting language suggests that the Park Maintenance Worker would not necessarily have posting rights into the Highway Department or, if she did, they would be subordinate to those of part-time Highway Department workers. Finally, inasmuch as the question is which, if either, of two bargaining units is appropriate for this position, there are no concerns raised over undue fragmentation. Of greater concern is the fact that her interests stand to be subordinated to 13 Highway Department workers, which should be avoided. For the reasons set forth, the petition should be denied.

Local 704

The WERC has identified factors to be considered in determining an appropriate bargaining unit, but has held that each case is unique and must be considered independently, so not all criteria need to be given the same weight in each case. In this case, mitigating factors support placing the Park Maintenance Worker in the Local 704 unit instead of the Local 864 unit.

It is notable that Local 704 is the only union to have requested that the position integrated into a bargaining unit. Local 864 did not appear at the hearing and has taken no position on the appropriate bargaining unit for this employee, suggesting no interest in having the position accreted to its unit. This is consistent with the fact that the Park Department employees have no interaction or common interests with the Local 864 unit employees. Of the Local 864 bargaining unit members, all but one are Administrative Assistants or Health Aides, who have no contact with the Park Maintenance Worker at all.

The Town does not dispute that the employee is entitled to representation, but it is unclear why it wants the position in the Local 864 unit, rather than the Local 704 unit, especially since the Town Administrator did not consult either Local 864 or the employee regarding their wishes in the matter. The logical conclusion is that there is no sound reason to place the position in Local 864.

The duties and skills of the Park Maintenance Worker are similar to those of Highway Department employees, as evidenced by the similarity between their job descriptions. By comparison, the job description of the Custodian in the Local 864 unit is completely different. The only task performed by the Park Maintenance Worker that arguably corresponds to the Custodian's duties is mowing the grass around the Town Hall, which she just recently assumed and which only requires one hour per week to complete. Parks Maintenance Worker Kendra Macey's testimony reveals that her actual interaction with the Custodian is minimal. On the other hand, Highway Department employees have worked in the Town parks for years and continue to do so. Prior to the creation of the Park Maintenance Worker position, all the park work was done by Highway Department employees. Although much of that work has been phased out, heavy equipment work in the parks is still done by Highway Department employees, who interact with Macey on a regular basis.

The Park Maintenance Worker shares a community of interest with the Highway Department employees based upon similar hours and conditions of employment, regular interaction and sharing a common workplace. None of these conditions exist with respect to the employee's contacts with members of the Local 864 unit. Macey's jobsite is the East Side Community Center, also the location of the Highway Department sign shop, whereas all the Local 864 members work elsewhere and rarely, if ever, interact with her. All of the foregoing factors lead to the conclusion that the Park Maintenance Worker position is properly accreted to the Local 704 unit and the petition should be granted.

DISCUSSION

In this case, we are asked to determine in which of two existing bargaining units the newly created position of Park Maintenance Worker appropriately belongs. In making this determination, we first consider the contractual language used to describe the scope of the existing bargaining units to see if the language resolves the dispute. If the contractual language is determinative, then we need not consider the evidence presented as to community of interest (as measured by consideration of shared purpose of employment, common supervision, common work place, common duties, skills, wages, hours and working conditions), fragmentation and bargaining history. 1/

1/ CRAWFORD COUNTY, DEC. NO. 17109-D (WERC, 8/01); CITY OF FITCHBURG, DEC. NO. 24079-C (WERC, 10/97); MANITOWOC COUNTY, DEC. NO. 26743-B (WERC, 2/97); CITY OF REEDSBURG, DEC. NO. 16511-C (WERC, 10/94); MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 14514-I (WERC, 9/94); PIERCE COUNTY, DEC. NO. 27487 (WERC, 12/92); BROWN COUNTY, DEC. NO. 15559-A (WERC, 1/91); WALWORTH COUNTY, DEC. NO. 18271-A, (WERC, 12/90).

The contractual recognition clause for the Local 704 unit states:

. . . all regular part-time and regular full-time employees of the Highway Department.

The contractual recognition clause for the Local 864 unit provides:

. . . all of the public employees in the Town of Caledonia, defined as all regular full-time part-time employees who are not represented by a labor union, or covered by a collective agreement with the Police Department, Dispatchers Union, Fire Department, Professional Union and Highway Department, excluding supervisory, executive, managerial and confidential employees.

The wording of the respective recognition clauses reflects that the scope of the two units is defined by organizational structure – not by the nature of the work being performed. Thus, although the work being performed by the Park Maintenance Worker was previously performed by Highway Department employees, this fact (and others that might support a determination that the Parks Maintenance Worker has a greater community of interest with the Local 704 Highway Department employees than with Local 864 unit employees) is not relevant. What is relevant is that the Parks Maintenance Worker is “not presently represented by a labor union, or covered by collective bargaining agreement with the Police Department, Dispatchers Union, Fire Department, Professional Union and Highway Department” and is not an employee of the Highway Department. Therefore, we conclude that the Parks Maintenance Worker is appropriately included in the Local 864 bargaining unit.

Dated at Madison, Wisconsin, this 3rd day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner