STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WESTERN RACINE COUNTY SEWERAGE DISTRICT

Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b),
Wis. Stats., Involving a Dispute Between Said Petitioner and

TEAMSTERS LOCAL UNION NO. 43

Case 5
No. 65110
DR(M)-662

Decision No. 31639

Appearances:

Timothy C. Hall, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 1555 North RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of Teamsters Local Union No. 43.

William R. Halsey, Long & Halsey Associates, Inc., Attorney at Law, 8330 Corporate Drive, Racine, Wisconsin 53406, appearing on behalf of Western Racine County Sewerage District.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

On August 30, 2005, the Western Racine County Sewerage District filed a petition with the Wisconsin Employment Relations Commission seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats. as to the District's duty to bargain with Teamsters Local Union No. 43 over a successor agreement. On September 6, 2005, Local 43 filed a statement in response to the petition.

Hearing was held on November 15, 2005 in Rochester, Wisconsin by Commission Examiner Peter G. Davis. The parties thereafter filed written argument which was received December 27, 2005. Supplemental evidence was received by February 24, 2006.

The District, contrary to Local 43, asserts that it has no duty to bargain a successor to the parties' 2003-2005 contract because the Local 43 bargaining unit only covers full-time employees and it no longer has any full-time employees.

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

FINDINGS OF FACT

1. The Western Racine County Sewerage District, herein the District, is a municipal employer providing sewage treatment services.

2. Teamsters Local Union No. 43, herein Local 43, is a labor organization that was voluntarily recognized by the District as the collective bargaining representative of the full-time employees of the District. At the time of voluntary recognition, there were two full-time employees and no part-time employees. The two full-time employees performed maintenance and lab work related to the operation of the District's sewage treatment plant.

3. Following voluntary recognition, the parties began bargaining over their first contract. During bargaining, Local 43 proposed that the District also recognize Local 43 as the collective bargaining representative of any part-time employees that might be hired. The District did not agree to that proposal and advised Local 43 that it had no intention of hiring any part-time employees.

In January, 2004, while bargaining of the first contract continued, one of the two full-time employees quit. At the time he left he was being paid $14 per hour. The District then determined that aside from certain lab work performed by the full-time employee, operating efficiencies allowed the sewage treatment plant to operate without having his other work performed. In February 2004, the District hired a part-time employee who did 8-9 hours of lab work a week spread over two days.

In September, 2004, the parties reached agreement on their first contract which covered the period of January 1, 2003 through December 31, 2005. The recognition clause in the contract states that Local 43 is recognized as the representative of all regular full-time employees of the District. The contract defines a regular full-time employee as a "person hired to fill a regular position who works eight (8) or ten (10) hours per day, forty (40) hours per week . . . ." At the time the agreement was reached, the District employed one regular full-time employee and the part-time lab employee.

4. In March 2005, the remaining full-time employee quit. At the time he left he was being paid $13.25 per hour. The District again determined that operating efficiencies allowed it to operate the sewage treatment plant without having all of the full-time employee's work tasks performed. Shortly thereafter, the District hired one part-time maintenance employee who works 20-22 hours per week and another part-time on call maintenance employee who is typically asked to work on three out of every four Fridays for 5 hours a day.

5. By letter dated August 17, 2005, Local 43 advised the District that it wished to bargain a successor agreement. By letter dated August 23, 2005, the District advised Local 43 that it wished to terminate the 2003-2005 agreement.

6. The District is expanding the capacity of the sewage treatment plant and as a consequence it is conceivable that that there will be more hours of work needed to operate the plant than are currently performed by the part-time employees. There are no current plans to hire any full-time employees.

7. The three part-time employees currently employed by the District are paid between $17 and $18 per hour and receive no fringe benefits. The parties 2003-2005 contract provided wage rates for full-time employees of between $9 and $13.50 per hour (Maintenance Laborer) and $13 and $16 per hour (Operator) with fringe benefits consisting of a retirement contribution of ten percent of employee annual earnings, paid vacation, paid holidays, sick leave, funeral leave, and health insurance payments by the District of $195.70 per week.

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

CONCLUSION OF LAW AND DECLARATORY RULING

The District and Union have no present duty to bargain within the meaning of Secs. 111.70(1)(a) and (3)(a) 4, Stats. over a successor to the 2003-2005 contract.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

WESTERN RACINE COUNTY SEWERAGE DISTRICT

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

The District asserts that it does not have an obligation to bargain a successor to the 2003-2005 contract because it does not employ any full-time employees and the scope of the Union represented bargaining unit is limited to full-time employees.

The Union acknowledges that there are currently no employees in the full-time District employee bargaining unit that it represents. However, the Union contends that the District nonetheless has a duty to bargain a successor agreement because: (1) the duty to bargain is owed to the Union not the employees; (2) the District may hire full-time employees in the future; and (3) the scope of the unit would extend to part-time employees if the District had not misled the Union at the bargaining table. We do not find any of these arguments persuasive.

While the Union is certainly correct that the duty of bargain runs to the Union and not to the employees, it does not logically follow that there remains a duty to bargain if there are no employees who would be covered by the contract. As reflected in the definition of "collective bargaining" contained in Sec. 111.70(1)(a), Stats., [1] the existence of "employees in a collective bargaining unit" is a necessary component of the duty to bargain. There are no District employees in the bargaining unit represented by the Union.

As to the potential for full-time employees to be hired in the future, the evidence presented makes it clear that such a hiring is quite speculative. Therefore, such a potential does not provide a persuasive basis for concluding that there presently is a duty to bargain a successor agreement.

As to the inclusion of part-time employees in the bargaining unit, we find no substantial evidence that the District misled the Union at the bargaining table as its intentions. There is no evidence that at the time the "no plans to hire part-time employees" remark was made, there was any intention on the District's part to do. As reflected in the Findings, it was the subsequent voluntary departure of the full-time employees that led to the hiring of the part-time employees. Further, as there was a substantial gap in time between the hiring of the first part-time employee and the parties' ultimate agreement on a contract, it is clear the District was not

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[1] Section 111.70(1)(a), Stats. provides in part:

> (a) "Collective bargaining" means the performance of the mutual obligation of the municipal employer, through its officers and agents, and the representative of its municipal employees in a bargaining unit, to meet. . .

hiding and indeed could not have hidden the existence of part-time employees from the Union. Lastly, it is speculative as to whether any Union proposal to expand the scope of the unit to include part-time employees would have been included in the contract. [2]

Given all of the foregoing, we conclude that the District does not have a present duty to bargain a successor agreement with the Union.

Dated at Madison, Wisconsin, this 9th day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/
Judith Neumann, Chair

Susan J. M. Bauman /s/
Susan J. M. Bauman, Commissioner

Commissioner Paul Gordon did not participate.

[2] The Union correctly cites MILWAUKEE COUNTY, DEC. NO. 24027-B (WERC 6/87) for the proposition that a pending unit clarification petition does not suspend the duty to bargain where there are remaining unit members who are not in dispute. However, here, there are no unit members.

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