

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of

ASHLAND COUNTY BOARD OF SUPERVISORS

Involving Employes of

ASHLAND COUNTY, Employed in the
Courthouse

Case I
No. 10057 ME-167
Decision No. 7214

APPEARANCES:

Mr. Robert J. Oberbeck, Executive Director, Wisconsin Council #40, and Mr. Richard C. Erickson, Representative, for the Union.

Mr. William E. Chase, District Attorney, for the Municipal Employer.

DIRECTION OF ELECTION

Ashland County Board of Supervisors having requested the Wisconsin Employment Relations Board to conduct an election among certain employes of the above named Municipal Employer, pursuant to Section 111.70 of the Wisconsin Statutes; and hearing in the matter having been held in Ashland, Wisconsin on January 4, 1965, James L. Greenwald, Examiner, being present; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer named above;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all employes of Ashland County employed in the Courthouse; including the deputy clerk, deputy treasurer, deputy clerk of circuit court, and deputy register of deeds, but excluding Highway, Sheriff, and Welfare Department employes, department heads, and elected and appointed officials, who were employed by the Municipal Employer on July 9, 1965, except such employes as may prior to the election quit their employment

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or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Ashland City and County Employees Local Union No. 216, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of July, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By *Morris Slavney*
Morris Slavney, Chairman

Arvid Anderson
Arvid Anderson, Commissioner

John S. Rice II
John S. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

At the hearing, an issue arose concerning the eligibility of the deputies to the County Clerk, Treasurer, Clerk of Court, and Register of Deeds, to vote in the election. The Union contends that deputies are "employees," who should be eligible to vote, while the County contends that they are officials and therefore should not be eligible to vote. The parties have each filed a Memorandum in support of their respective positions.

The Union argues that Section 111.70, Wisconsin Statutes, created new rights for employees in public service, and that existing statutory provisions regarding deputies of county officers must be interpreted in harmony with the new law. It argues that common law distinctions between municipal officials and municipal employees arising in other legal contexts should not govern the interpretation of the term "employees" as used in such Section. In more specific terms, it argues that statutory provisions bearing on deputies' tenure of employment do not prevent all remaining conditions of employment from being subject to negotiations between the Union and the County, should the Union be selected as bargaining representative, and do not deprive the deputies of their employee status.

The County argues that deputies' duties and conditions of employment are those of "officials," rather than employees, in that deputies are empowered by statute to perform the duties of the elected officials in their absence, and, therefore, are in the same category as the elected officials. It further points out that deputies, as required by statute, must make and file an oath, and

are bonded, and that since their terms are co-extensive with the elected official, who appoints them, they could not acquire seniority, which Unions commonly seek in behalf of employes they represent.

The deputies in the absence of the county officers perform the same duties as the officer under whom they serve. In each case the duties of their department set forth by statute, and are carried on by the elected official, a deputy, and usually one other clerical employe. In the office of the County Treasurer, the Treasurer and the deputy are the only full-time personnel in the office. Additional employes are hired only during periods of heavy tax collection. The Treasurer presently receives a salary of \$415 per month, while his deputy receives \$288 per month, the latter having held such position for the last twelve years, and the other deputy positions in the other departments here involved, have been held by present and recent incumbents for periods of comparable duration.

Section 111.70(1)(b) provides as follows:

"'Municipal employes' means any employe of a municipal employer except city and village patrolmen, sheriffs' deputies, and county traffic officers."

Four separate sections relate to the appointment of the deputies at issue. They are Sections 59.16(1), 59.19(1), 59.38(1) and 59.50. They provide that the elected official appoint the deputies, that the deputies may act in the elected official's absence, or in the event of a vacancy in his office, and in the first two sections cited, relating to deputy clerks and deputy treasurers, that the county board sets the salaries for these positions. In the latter regard, Section 59.15(a)(c) provides that the County Board has the power to set the salary of the deputy without regard to the tenure of the incumbent, determine the number of deputies and "establish regulations of employment" for them, as well as other county employes.

Although the elected official has power to appoint his deputy, the County Board has the power to veto such selection, if it chooses, by failing to appropriate a salary for the appointee. Moreover, the County Board is the locus of the authority to determine the deputies' conditions of employment not prescribed by statute. These conditions might be the subject of conferences

and negotiations between the Union and the County, in the event the Union is selected as the bargaining representative. The fact that statutes affect the nature of a seniority provision which the County and the Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employe under the statute. Therefore, except so far as tenure is concerned, the deputy is in the same situation as any other County employe. His conditions of employment are set by the County Board.

The deputies' bonds and oath are not determinative of their status. Even the common law distinctions between municipal employes and municipal officials acknowledge that a person merely by being bonded does not thereby attain the status of an official. Similarly, oath-taking does not necessarily have any significance regarding a determination as to whether the Legislature intended such person be granted the right to collective bargaining, if he so chose.

In the City of Wausau,^{1/} the Board said:

"A municipal employer performs its functions and services through elected and appointed officials and by employes hired by the municipal employer through its administrative and managerial officials and employes. Broadly, any individual receiving compensation for services performed by him on behalf of the municipal employer, with the exception of those services performed under contract, can be said to be an employe of the municipal employer. Such application could encompass the mayor, city manager, alderman and department heads. A municipal employer as such is a corporate being. Governmental units, including municipal employers, are managed by persons who, among their duties, may represent the municipal employer in its relationship to employes thereof who are performing services and who have no connection with any managerial function. As in private industry, the managerial function of the municipal employer is not normally performed by any single individual. The usual chain of command originates with the mayor or city manager, and is channeled to various committees, boards, department heads, and through various supervisory personnel in the various departments. Managerial and supervisory functions are performed in the interest of the municipality as an employer. The representative of the municipal employer has the responsibility and authority connected with the municipal employer's operation and presumably perform their duties in what is the best interest of the municipality as the employer.

Their inclusion in a collective bargaining unit consisting of employes whom they supervise is inconsistent with their obligation to the performance of their supervisory function on behalf of the municipal employer."^{1/}

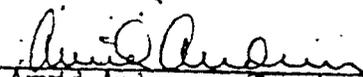
The most serious contention in support of the County's position is the fact that, on occasion, deputies perform the statutory duties of the office they serve. Although this is true, such duties are essentially ministerial as opposed to the exercise of either the executive or supervisory duties of their supervisors. The official himself, who appoints the deputy and might discharge him at will, bears full responsibility for the administration of the office, which is reviewed by the public every two years. The greater salary paid the elected officer reflects this authority and responsibility. The deputies have no supervisory authority or responsibilities, in the instant case, by reason of the minimal number of employes also employed in their respective offices: The fact that a deputy fills in for his supervisor during the latter's absence, does not, under the situation existing in this matter, convert the deputy into a supervisor or executive. We conclude, therefore, as we did in a previous matter^{2/} that no reason exists to exclude deputies from the coverage of Section 111.70. They are eligible to vote in the election.

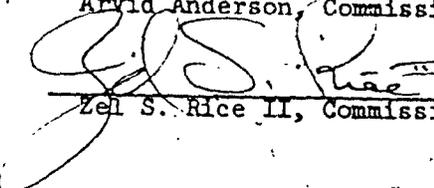
Dated at Madison, Wisconsin, this 9th day of July, 1965.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By


Morris Slavney, Chairman


Arvid Anderson, Commissioner


Zel S. Rice II, Commissioner

^{1/} Dec. No. 6276, 3/65.

^{2/} Langlade County, Dec. No. 6716, 4/64.