

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VI
No. 11622 ME-324
Decision No. 8152-F

Mr. Michael Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of the Union.

1. That Manitowoc County Courthouse Employees Local 986A, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at P.O. Box 370, Manitowoc, Wisconsin 54220-0370.

and that subsequently the Commission has clarified said unit on several occasions. 2/

4. That the Union initiated the instant proceeding by petitioning the Commission to clarify the above mentioned unit by determining whether certain existing positions should be included in the unit; and that, at the hearing, the parties stipulated to the following disposition of certain of the disputed positions:

<u>Position</u>	<u>Incumbent or former incumbent</u>	<u>Disposition</u>
1. Secretary to the Manitowoc County Community Board	Edith Gagner	Included
2. Records Clerk	Moua Vang	Withdrawn without prejudice
3. Records Clerk	Sandy Wiegand	Withdrawn with prejudice

5. That the Union, contrary to the County, asserts that the following positions, currently excluded, should be included in the unit:

<u>Position</u>	<u>Incumbent</u>	<u>Alleged Basis for Exclusion</u>
1. Clerk, Office of the Clerk of Courts	Edythe Sporleder	Not regular part-time
2. Clerk, Office of the Clerk of Courts	Bonnie Poellman	Not regular part-time
3. Clerk, Office of the Clerk of Courts	Scarlett Hofmann	Not regular part-time
4. Administrative Assistant, Manitowoc County Community Board	Edith Rusboldt	Supervisory and managerial
5. Restitution Clerk	Wendy Thome	Not a regular County employee

6. That Edythe Sporleder, Bonnie Poellman and Scarlett Hofmann are Clerks in the Office of the Clerk of Courts; that Sporleder primarily works on files; that Poellman performs such tasks as sending notices and filing; that Hofmann performs such tasks as typing and filing; that when they were hired, each of these employees were told that they would work no more than 600 hours a year; that Sporleder was told in her interview that her hours would vary between ten (10) and fifteen (15) hours a week; that during the past year Sporleder has worked five (5) hours a day on three (3) days a week for a total of fifteen (15) hours a week for part of the year, and five (5) hours a day on two (2) days a week for a total of ten (10) hours a week during the remainder of the year; that Sporleder's work days are prearranged and she was advised two (2) or three (3) weeks in advance of the change when her weekdays were changed from three (3) to two (2) days a week; and that Poellman and Hofmann have schedules similar to Sporleder's of at least ten (10) hours a week not to exceed 600 hours a year.

7. That Wendy Thome, the Restitution Clerk, works under the supervision of the Assistant District Attorney, facilitating the appearances of witnesses and the restitution of victims, and informing victims about the status of their cases; that Thome is paid by the County, which in turn is reimbursed from the Victim-Witness Assistance Grant funded by the State of Wisconsin; that the County first

2/ Decision Nos. 8152-A (3/78); 8152-C (6/79); 8152-E (7/81).

received said grant in May, 1981 and that the grant is assured through the calendar year 1983; that Thome does not receive any fringe benefits other than holiday pay; and that the County has the authority to hire, discipline and discharge Thome.

8. That Edith Rusboldt is the Administrative Assistant to the Manitowoc County Community Board; that she has held the position for six and a half years during which time her responsibilities have grown and changed; that her primary duties are office management, bookkeeping and fiscal reporting, as well as directing the work of one part-time and two full-time employees; that although she suggests better work procedures to these employees, she has never issued verbal reprimands and would not issue a written reprimand without approval of her superior, the Program Director, and believes she has no authority to discharge or suspend other employees; that she cannot adjust grievances; that she frequently authorizes compensatory time in order to provide evening coverage of the office, but in doing so, she must follow certain County guidelines; that she approves vacation requests of the other three employees, but follows her own policy of allowing no more than one employee on vacation at a time and in the event of a conflict she would follow seniority in selecting which vacation request to grant; that she submits evaluations of these three employees but does not make recommendations for promotion or raises; and that of the two full-time employees hired during Rusboldt's tenure, one was already employed by the County as a CETA employee and Rusboldt and the Program Director merely concurred in the decision to continue this employee, and, that the other employee was the only person interviewed for the position.

9. That Rusboldt prepares the Board's statistical reports and quarterly budget status reports for the Board; that she took bids on office furniture and equipment and made recommendations on the same to the Program Director who in turn made recommendations to the Board for such expenditures; that Rusboldt recently gathered information concerning the department's expanded work load which necessitated additional secretarial help and suggested alternative ways of handling the situation to the Program Director, who then made the decision that additional employees be hired and recommended such a way of handling the situation to the Board; that the Program Director's recommendation was primarily based on Rusboldt's recommendations and that Rusboldt has not been involved in making any other policy recommendations.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the occupants of the positions of Clerk, Office of the Clerk of Courts are regular part-time employees within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act (MERA), and therefore, appropriately are included in the collective bargaining unit described in Finding of Fact 3.

2. That Manitowoc County is the employer, within the meaning of Sec. 111.70(1)(a) of MERA, of the occupant of the position of Restitution Clerk; that said individual has a sufficient expectation of continued employment so as to be found a municipal employee within the meaning of Sec. 111.70(1)(a) of MERA; and that the occupant of the position of Restitution Clerk is appropriately included in the collective bargaining unit described in Finding of Fact 3.

3. That the occupant of the position of Administrative Assistant to the Manitowoc County Community Board is neither a supervisory employee nor a managerial employee, and therefore, said occupant is a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA, and appropriately is included in the collective bargaining unit described in Finding of Fact 3.

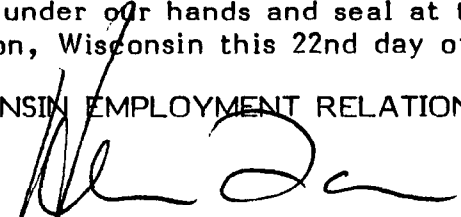
Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

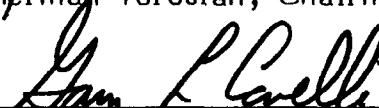
ORDER CLARIFYING BARGAINING UNIT 3/

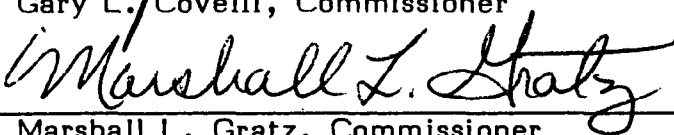
That the positions of Clerk, Office of the Clerk of Courts, Restitution Clerk, and Administrative Assistant to the Manitowoc County Community Board are included in the collective bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of June, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

- 3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

The Union initiated this proceeding on November 29, 1982, by filing a petition seeking the inclusion of several positions in the bargaining unit, which was first certified on September 28, 1967, and clarified on several subsequent occasions. The County contests the inclusion of three clerks in the Office of the Clerk of Courts on the grounds that they are casual employees and therefore, lack a community of interest with the employees in the unit. The County further objects to the inclusion of the Restitution Clerk on the grounds that it is not the employer of the occupant of said position. Finally it objects to the inclusion of the Administrative Assistant on the grounds that the position is supervisory and managerial.

CLERKS - OFFICE OF THE CLERK OF COURTS

The County's implied argument that these clerks in the Office of the Clerk of Courts described in Findings of Fact 6 are not regular part-time employees because they work no more than 600 hours a year is not persuasive. The number of hours worked does not determine whether an employee is a regular part-time or casual employee. 4/ Where, as here, the employees consistently have worked either ten (10) or fifteen (15) hours per week on a regular and recurrent basis, and have a reasonable expectation of continued employment for either ten (10) or fifteen (15) hours per week, and, work on a prearranged schedule rather than only when called to come to work, the employees are regular part-time employees, and therefore, appropriately are included in the bargaining unit. 5/

RESTITUTION CLERK

Although the County receives reimbursement from the State of Wisconsin for its costs in employing the Restitution Clerk, the Commission has long held that the source of funding does not determine the employer. 6/ Where, as here, the County directs and supervises the employee's work and has the authority to hire and fire the employee, it is determined to be the municipal employer. Although it is possible the Wisconsin Legislature may not continue to renew the Victim-Witness Assistant Grant, that funding is assured through 1983, giving the incumbent a sufficient expectation of continued employment to include this position in the bargaining unit.

ADMINISTRATIVE ASSISTANT TO THE MANITOWOC COUNTY COMMUNITY BOARD

Examination of the Administrative Assistant's alleged supervisory function reveals that she participates only minimally in hiring. Although she assigns tasks and makes annual evaluations, she does not have authority to discipline and has never recommended a promotion or raise. While it is true that she independently authorizes compensatory time and vacation for three other employees, she does so within clear guidelines and exercises little discretion in these functions. While she also directs work activities of other employees, on balance the Administrative Assistant lacks supervisory powers and authority in sufficient combination and degree so as to make her a supervisor.

Concerning alleged managerial status, the record reveals that the Administrative Assistant neither participates in the formulation, determination or implementation of policy nor has sufficient effective authority to commit the

4/ City of Onalaska, (20509) 4/83 and School District of Ashland, (18085) 10/80.

5/ City of Milton, (13442-A) 6/83.

6/ School District of Cornell, (17982) 8/80.

employer's resources so as to make her a managerial employee. 7/ In making recommendations as to office equipment and furniture, as well as reporting on secretarial needs, the Administrative Assistant is merely giving information to the Program Director who is ultimately responsible for making a recommendation to the Board. This function of information-gathering does not demonstrate an authority either to commit the employer's resources or to determine policy. The Administrative Assistant is an employee within the meaning of MERA and appropriately is included in the bargaining unit.

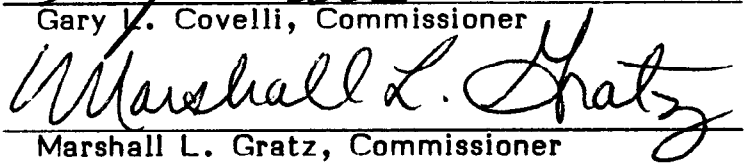
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WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


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7/ Madison Metropolitan School District, (14814-C) 8/78.