

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO  
Involving Certain Employees of  
SHEBOYGAN COUNTY

Case 8  
No. 53894 ME-831  
Decision No. 8256-J

Appearances:

Ms. Helen Isferding, District Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1207 Main Avenue, Sheboygan, Wisconsin 53083, appearing on behalf of Wisconsin Council 40.

Ms. Louella Conway, Personnel Director, Sheboygan County, 615 North 6th Street, Sheboygan, Wisconsin 53081, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER DISMISSING UNIT CLARIFICATION PETITION

Wisconsin Council 40, AFSCME, AFL-CIO filed a petition on February 26, 1996 with the Wisconsin Employment Relations Commission requesting that seven positions in four departments of the County be added to an existing bargaining unit represented by AFSCME. A hearing on the petition was conducted in Sheboygan, Wisconsin on October 17, 1996 before Examiner Christopher Honeyman. A transcript was prepared by November 1, 1996, and briefs from both parties were received by December 19, 1996. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, referred to herein as the Union, is a labor organization with an office located c/o Helen Isferding, Staff Representative, 1207 Main Avenue, Sheboygan, Wisconsin 53083.

2. Sheboygan County, referred to herein as the County, is a municipal employer with offices at 615 North 6th Street, Sheboygan, Wisconsin 53081.

3. On February 26, 1996, the Union filed a petition for unit clarification with the Commission, requesting that seven named positions in four departments be included within a bargaining unit already represented by the Union. At the hearing, the parties stipulated that the unit status of all of the positions had been resolved by agreement except for two Accountant positions,

one in the Finance Department, occupied by Mary Wegmann, and one in the Sheriff's Department, occupied by Mary Fetterer. The County opposes inclusion of these positions, contending that they are held by professional employees with managerial and confidential duties. The Union agrees that the Accountants are professional employees.

4. The Union and the County are parties to a collective bargaining agreement known as the Local 110/Supportive Services collective bargaining agreement, in effect from January 1, 1995 through December 31, 1996. That agreement contains the following recognition clause:

The Employer recognizes the Union as the exclusive bargaining agent for all regular full-time and part-time personnel employed by Sheboygan County in the Court House and in auxiliary departments and buildings (but specifically excluding therefrom all elected public officials, supervisors, professional employees of the Human Services Department, all deputized employees of the Sheriff's Department, all nurses, and all confidential employees, with regard to negotiations with the Employer on questions of wages, hours and conditions of employment.

The collective bargaining unit referred to above was established as a result of a Certification of Representative issued by the Commission in 1968 (Dec. No. 8256-D, 1/68) in which the bargaining unit was defined as:

All regular full-time and regular part-time personnel employed in the Courthouse by Sheboygan County, Wisconsin excluding elected public officials, and all employees in the Institutions and Highway and Sheriff's Departments, Guidance Center, professional employees, and supervisors, and excluding clerical employees employed in the Welfare Department.

5. The Wisconsin Employment Relations Commission has never conducted an election pursuant to Sec. 111.70(4)(d)2.a., Stats. by which any professional employees of Sheboygan County had the opportunity to exercise their statutory right to determine whether they wished to be included with nonprofessional employees of the County in the bargaining unit set forth in Finding of Fact 4.

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

#### CONCLUSIONS OF LAW

1. The occupant of the position of Accountant in the Finance Department, Mary Wegmann, is a professional employee within the meaning of Section 111.70(1)(l), Stats.

2. The occupant of the position of Accountant in the Sheriff's Department, Mary

Fetterer, is a professional employe within the meaning of Section 111.70(1)(l), Stats.

3. Absent a prior affirmative vote by a majority of eligible professional employes in a Sec. 111.70(4)(d)2.a., Stats. election, professional employes of Sheboygan County cannot thereafter be added to the bargaining unit set forth in Finding of Fact 4 through a unit clarification proceeding.

Based upon the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The unit clarification petition is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin,

---

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

(Continued)

this 21st day of March, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

---

1/ (Continued)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

Sheboygan County

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND ORDER DISMISSING UNIT CLARIFICATION PETITION

While the Union initially did not stipulate that the Accountant positions were professional, in its brief it did so. Upon review of the record, we agree.

Section 111.70(4)(d)2.a., Stats. provides in pertinent part that:

The commission shall not decide that any other group of municipal employes constitutes an appropriate bargaining unit if the group includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit.

Here, no such election has taken place and thus professional employes have never voted for inclusion with the nonprofessional employes in the unit. Under such circumstances, even if the parties have voluntarily included professional employes in the unit (which the Union argues has happened and the County disputes), we concluded we cannot include professional employes in the unit through a unit clarification proceeding. Such an action would circumvent the provisions of Sec. 111.70(4)(d)2.a., Stats. because we would in effect be concluding that the mixed nonprofessional/professional unit was appropriate even though the requisite vote had never been held. Thus, we have dismissed the petition.

If an election petition is filed seeking representation rights over the Accountants and other currently unrepresented professionals and there continues to be a dispute between the appropriate parties as to whether the Accountants are confidential or managerial employes, we will resolve that dispute at that time.

Dated at Madison, Wisconsin, this 21st day of March, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner