

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIX  
No. 14542 ME-637  
Decision No. 10305-A

Case XXX  
No. 14548 ME-639  
Decision No. 10304-A

## FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNITS

Winnebago County Department of Social Services Employees Union, Local 2228, AFSCME, AFL-CIO having, on February 7, 1979 filed two petitions with the Wisconsin Employment Relations Commission requesting the Commission to clarify two existing certified collective bargaining units consisting of certain social services employes of Winnebago County; and the parties having filed a written waiver of formal hearing, a stipulation of facts, and written briefs in the matters; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Units.

## FINDINGS OF FACT

1. That the Winnebago County Department of Social Services Employees Union, Local 2228, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization with offices at 1036 Mt. Vernon, Oshkosh, Wisconsin 54901.
2. That Winnebago County (Department of Social Services), herein referred to as the County, is a municipal employer with offices at Winnebago County Courthouse, Oshkosh, Wisconsin 54901.
3. That the Union is the certified exclusive bargaining representative of the two collective bargaining units consisting of:
  - a. All professional employees of the Winnebago County Department of Social Services, excluding non-professional, supervisory and all confidential secretaries and all other Winnebago County employees; and,
  - b. All non-professional employees of the Winnebago County Department of Social Services, excluding professional,

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supervisory, confidential and all other County employees.

4. That the professional collective bargaining unit currently includes the following positions: Social Workers I, II, III, IV and V; Administrative Assistants II and III; and Volunteer Services Coordinator; that the position of Social Worker I - Home Detention Coordinator, currently occupied by Jo Ann Juettner, is a professional position, which does not include confidential, supervisory or managerial duties; and that said position has been funded by the Comprehensive Employment Training Act, herein CETA, since June, 1978.

5. That the non-professional collective bargaining unit currently includes the following positions: Clerks I, II and III; Clerk Typists I and II; Clerk Receptionist; Social Services Aide; Case Aides I and II; and Homemaker; that two Case Aide I - Job Counselor positions have been funded by CETA since June, 1978; that a Clerk I position and a Clerk-Typist I position have been funded by CETA since February, 1975; and that none of the four CETA funded positions include supervisory, confidential, managerial or professional duties.

6. That the County hires and pays the individuals who occupy the professional and non-professional positions which are funded by CETA; and that said individuals work the same number of hours per week and perform substantially the same work as do bargaining unit employees in similar classifications.

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

#### CONCLUSION OF LAW

That the individuals occupying the CETA financed positions of Social Worker I - Home Detention Coordinator, Case Aide I - Job Counselor, Clerk I and Clerk - Typist I are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

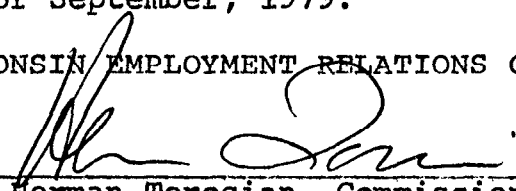
#### ORDER CLARIFYING BARGAINING UNITS

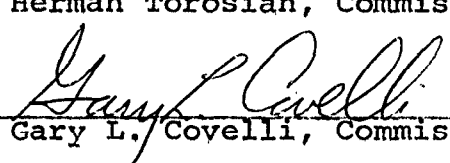
That the CETA financed position of Social Worker I - Home Detention Coordinator shall be included in the professional bargaining unit described above; and that CETA financed positions of Case Aide I - Job Counselor, Clerk I and Clerk - Typist I shall be included in the non-professional unit described above.

Given under our hands and seal at the  
City of Madison, Wisconsin this 5th  
day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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

The Union is the certified bargaining representative of separate units of certain professional and non-professional employees of the County's Department of Social Services. On February 7, 1979, the Union filed two petitions, requesting the Commission to include certain CETA funded positions in the respective units. The Union seeks the inclusion of a Social Worker I - Home Detention Coordinator in the professional unit, and of two Case Aide I - Job Counselors, a Clerk - Typist I and a Clerk I in the non-professional unit.

The parties filed a written waiver of a formal hearing on the petitions and agreed to file both a stipulation of facts and briefs. Said documents were received on April 9, 1979. Neither party exercised their stipulated right to file a reply brief by May 1, 1979.

The parties stipulated that the position of Social Worker I - Home Detention Coordinator is a professional position, while the positions of Case Aide I - Job Counselor, Clerk - Typist I, and Clerk I are non-professional positions. The parties further stipulated that none of said positions possess duties of a confidential, supervisory or managerial nature, but rather, the work performed by the employees in the CETA funded positions does not differ substantially from work performed by bargaining unit employees with similar classifications in the respective bargaining units. The professional unit already includes employees with the classification of Social Worker I, while the non-professional unit already includes employees with the classifications of Clerk I, Clerk - Typist I and Case Aide I. Additionally, the parties stipulated that the County hires and pays the individuals who occupy the positions in question, and that said individuals work the same number of hours each week as do the bargaining unit employees. The wage payments to the individuals holding the classifications at issue are reimbursed in full by CETA. The positions of Clerk I and of Clerk - Typist I have been funded by CETA since February, 1975. The positions of Social Worker I - Home Detention Coordinator and of Case Aide I - Job Counselor have been funded by CETA since June, 1978.

The sole issue in this proceeding is whether positions funded by CETA should be included in bargaining units which contain positions performing similar duties, but are not funded by CETA.

Position of the Union:

The Union cites a number of previous decisions by the Commission wherein it was held that the source of funding for a given position, or positions, is not sufficient grounds for the exclusion of said position(s) from a bargaining unit. The duties of the disputed positions are not substantially different from the duties performed by bargaining unit employees in similar classifications. According to the Union the positions are not temporary, or casual, since they have existed either for ten months, or for over four years, and therefore, should be included in the appropriate bargaining units.

Position of the County:

Contrary to the Union, the County believes the positions in question should be excluded from the bargaining units because individuals are hired to fill said positions on a temporary basis. The purpose of the CETA program is to provide on-the-job training to certain underqualified individuals so that they can obtain regular unsubsidized employment. Often those

individuals are not qualified for regular employment without such training, and therefore, are not judged by the same qualifications when employed as are applicants for positions which are not CETA funded. Further, the CETA program is not intended to keep people permanently in CETA positions, but rather, to train them for other permanent employment. The County contends that CETA regulations do not require CETA employees to be included in bargaining units. Moreover, the CETA positions have existed for several years without objection by the Union. The question of inclusion in the bargaining units should have been made known prior to the County's entry into CETA contracts.

#### Discussion:

The Commission has consistently held that the source of funding for a given position is not sufficient grounds for the exclusion of said position from a bargaining unit. 1/ In the instant matter, the employees in the CETA funded positions are performing essentially the same work under the same conditions as are bargaining unit employees. For these reasons the Commission would ordinarily include the disputed positions in the existing bargaining units without further comment. However, we are aware that substantial changes have recently been made in the CETA laws and regulations which may have an impact on the continuation of our policy with regard to the inclusion of CETA funded positions in collective bargaining units of employees performing similar work. 2/

Although many changes were adopted by the new CETA amendments and regulations, 3/ those changes which concern us here are the new rules placing limitations on the wages and benefits that may be paid employees filling CETA funded positions and those limiting the maximum duration of the employment of persons in CETA funded positions to 18 months. 4/ With regard to the former (wages and benefits), such limitations merely represent parameters in the collective bargaining concerning the wages, hours, and conditions of employment applicable to employees working in CETA funded positions, 5/ and does not prevent the parties, through collective bargaining, from negotiating within such parameters the wages and fringe benefits of employees working in CETA funded positions. With regard to the latter (length of job tenure), the new limits could support a finding that such employees are temporary employees, particularly where the limit has nearly been reached and there is no indication that the employee will be transferred to a regular position. While such a finding would be relevant for purposes of determining the eligibility of the incumbent of such a position to vote in an election proceeding, we do not deem it to be controlling for purposes of determining whether such positions are appropriately included in the collective bargaining units. Temporary employees are employees within the meaning of the Municipal Employment Relations Act and, where they perform work which is functionally related (or as in this case nearly identical) to the work of other employees in the bargaining unit they may appropriately be included in such bargaining unit. 6/

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1/ Trempealeau County (Social Services Department.) (16402) 6/78

2/ See for example Government Employees Relations Report. (BNA: Washington) 807:12, April 23, 1979 discussing the Florida PERC's reevaluation of its policy in this regard, based on the recent amendments in the Comprehensive Employment and Training Act at 29 USC 801 et seq.

3/ See generally 20 CFR Parts 675, 676, 677, 678 and 679 published in 44 Fed. Reg. No. 65, April 3, 1979.

4/ See e.g., 20 C.F.R., 676.26-1, 676.26-3, 676.27, 676.28-1, 676.30 and 678.3e.

5/ Cf. Dane County Housing Authority (17130 7/12/79

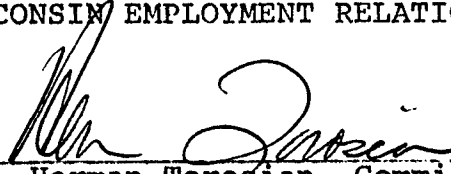
6/ City of Appleton Parking and Transit Commission (16090-A), 9/19/78.

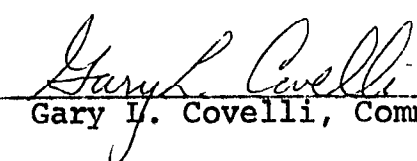
Accordingly, the employees occupying the CETA funded positions are entitled to be included in the respective bargaining units. However, since at least some of the positions have existed for several years, it is clear that the parties did not intend to cover said positions in their current collective bargaining agreement. Therefore, the aforesaid determination is not intended to extend the coverage of the current collective bargaining agreement 7/ to the CETA financed positions. Their inclusion in the units will have its impact on the bargaining for the successor collective bargaining agreement, unless the County and the Union agree to extend to apply all, or some, of the provisions of the existing agreement to the hereby included CETA positions at an earlier date.

Dated at Madison, Wisconsin this 5th day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner