

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
 :
DRIVERS, SALESMEN, WAREHOUSEMEN, MILK :
PROCESSORS, CANNERY, DAIRY EMPLOYEES : Case XIII
AND HELPERS UNION LOCAL 695 : No. 14800 ME-673
 : Decision No. 10492-A
Involving Certain Employes of :
 :
DANE COUNTY :
 :

Appearances:

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr., and Mr. James Marketti, Business Representative, for the Petitioner.
Mr. Glenn Henry, Corporation Counsel, Mr. Samuel Morris, Assistant Corporation Counsel, and Mr. Edward E. Garvoille, Personnel Director, for the Municipal Employer.
Lawton & Cates, Attorneys at Law, by Mr. John C. Carlson, for Dane County Joint Council of Unions, AFSCME, AFL-CIO, Intervenor.

DIRECTION OF ELECTION

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, having filed a petition with the Wisconsin Employment Relations Commission wherein it requested that the Commission conduct an election pursuant to Section 111.70, Wisconsin Statutes, among certain employes of Dane County, Wisconsin; and hearing on said petition having been held at Madison, Wisconsin, on September 13 and 14, October 6 and 13, 1971, Howard S. Bellman, Hearing Officer, being present; and during the course of said hearing Dane County Joint Council of Unions, AFSCME, AFL-CIO, having been permitted to intervene in the proceeding on the basis of its claim that it represented the employes involved in the matter; and the Commission having reviewed the evidence, arguments and briefs filed by the parties, and being fully advised in the premises, and being satisfied that a question has arisen concerning representation for certain employes of Dane County;

NOW, THEREFORE, it is

DIRECTED

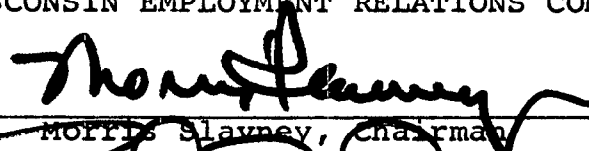
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of the date of this Directive among all regular full-time office and clerical employes and all regular part-time office and clerical employes who work 20 hours or more per week, who were employed by Dane County on March 22, 1972, and all "extra help" office and clerical employes who were employed for at least 90 work days, during the year 1971, excluding confidential employes, supervisors and elected officials, and all other employes of Dane County, except such employes as may prior to the elec-

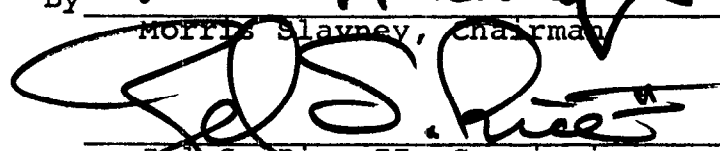
tion quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented for the purposes of collective bargaining by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local 695, or by Dane County Joint Council of Unions, AFSCME, AFL-CIO, or by neither of said organizations.

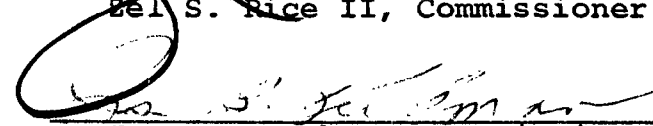
Given under our hands and seal at the City of Madison, Wisconsin, this 22nd day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawney, Chairman


Earl S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

STATE OF WISCONSIN

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Involving Certain Employes of : Decision No. 10492-A
DANE COUNTY :
- - - - -

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Background

Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union, Local 695, hereinafter referred to as Local 695, on May 26, 1971 filed various petitions with the Wisconsin Employment Relations Commission requesting that the Commission conduct elections among employes in the employ of Dane County, employed in various separate departments, alleging to constitute separate collective bargaining units, to determine the collective bargaining representative in such alleged separate appropriate bargaining units. The Commission established separate cases for each petition as follows:

<u>Case Identification</u>	<u>Unit Alleged to Be Appropriate</u>
Dane County XIII	All regular classified clerical employes employed by the county, excluding supervisory, confidential, professional, craft, seasonal, temporary, casual, and all other employes. <u>1/</u>
Dane County XIV	All regular classified employes employed in the County Agent Department, excluding <u>2/</u>
Dane County XV	All regular classified employes employed in the County Clerk Department, excluding <u>2/</u>
Dane County XVI	All regular classified employes employed in the Clerk of Courts Department, excluding <u>2/</u>

1/ Local 695 contended that "all regular clerical employes" included the following classifications: Account Clerk I and II; Accounting Machine Operator I and II; Clerk I, II, III and IV; Clerk Stenographer I, II and III; Clerk Typist I and II; Court Clerk II; Court Records Clerk; and Personnel Secretary.

2/ The employes excluded are identical to those which would be excluded in the petition in case XIII.

Dane County XVII	All regular classified employees employed in the District Attorney Department, excluding <u>2/</u>
Dane County XVIII	All regular classified employees employed in the Environmental Health Department, excluding <u>2/</u>
Dane County XIX	All regular classified employees employed in the Fairgrounds Department, excluding <u>2/</u>
Dane County XX	All regular classified employees employed in the Family Court Commissioner Department, excluding <u>2/</u>
Dane County XXI	All regular classified employees employed in the Legal Settlement Department, excluding <u>2/</u>
Dane County XXII	All regular classified employees employed in the Sheriff Department, excluding <u>2/</u>
Dane County XXIII	All regular classified employees employed in the Social Services Department, excluding <u>2/</u>
Dane County XXIV	All regular classified employees employed in the Stores and Service Department, excluding <u>2/</u>
Dane County XXV	All regular classified employees employed in the Surplus Commodities Department, excluding <u>2/</u>
Dane County XXVI	All regular classified employees employed in the County Treasurer Department, excluding <u>2/</u>

In each of the petitions Local 695 indicated that Dane County Joint Council of Union, AFSCME, affiliated with District Council 40, AFSCME, hereinafter referred to as AFSCME, claimed to represent employees in the alleged appropriate collective bargaining units. In accordance with the Commission's established policy, 3/ each petition was accompanied by authorization cards executed by employees employed in the various claimed appropriate units. Pursuant to the request of the Commission, the County furnished the Commission with the names of the employees so employed, and the Commission being satisfied, after its administrative determination, that the showings of interest were sufficient, the petitions were set for hearing.

It should be noted that following the filing of the petitions and in the letter sent to the County requesting a list of the employees to complete the administrative showing of interest, the Commission advised the parties that the petition requesting a unit of "all regular classified clerical employees employed throughout the County" could not constitute an appropriate unit under the then existing Sec. 111.70.

2/ (See footnote #2 on page 3.)

3/ City of Wauwatosa

Pursuant to Notice, hearing on the petitions was conducted on August 20, 1971, where AFSCME was permitted to intervene on the claim that it represented employees covered by the petitions and that it and the County were at the time parties to a collective bargaining agreement covering the wages, hours and working conditions of the employees involved. At the outset of the hearing on August 20, 1971, AFSCME moved that the petitions be dismissed, contending that they were prematurely filed, since they were filed on a date more than sixty days prior to the re-opening date set forth in the aforesaid collective bargaining agreement. The hearing was then adjourned to permit the parties to file briefs in regard to said motion and for the Commission to consider same. On September 2, 1971 the Commission formally denied the motion. 4/

The hearing was reconvened on September 13, and continued on September 14, October 6 and 13, 1971. On September 13, 1971, Local 695 filed an additional petition requesting an election among "all classified employees employed in the County Administration Department", 5/ excluding employees who were excluded in the previous petitions.

The evidence adduced at the hearing related to issues involving eligibility problems and regarding whether the departments involved were in fact separate departments to the extent that the otherwise eligible employees therein should have the right to determine for themselves whether they desired that said departments constitute separate collective bargaining units within the meaning of Sec. 111.70(4)(d). Substantial amendments to Sec. 111.70 became effective November 11, 1971 and said section was given the formal title of the "Municipal Employment Relations Act", hereinafter referred to as MERA. Prior to said amendments, craft and professional employees could only be included in units consisting of a single craft or profession. All otherwise eligible employees of a municipal employer constituted the appropriate unit, except where employees employed in a separate department, division or plant of the municipal employer desired to constitute themselves as a separate unit, the Commission was obligated to grant them a unit determination election. 6/

Sec. 111.70(1)(e) of MERA provides as follows:

"Collective bargaining unit means the unit determined by the commission to be appropriate for the purpose of collective bargaining".

Sec. 111.70(4)(d)2a of MERA provides as follows:

"The Commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or

4/ Dec. No. 10492

5/ Case XXVII

6/ Previous Sec. 111.70(4)(d), and Secs. 111.06(2) and 111.05, Wis. Stats.

several departments, groupings, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballots."

Following the effective date of the date of MERA, the Commission in writing requested the parties to attend a conference. Said request was based on the fact that the provisions of MERA substantially altered the statutory criteria for the establishment of appropriate collective bargaining units in municipal employment, and thus creating the possibility that the unit sought by Local 695 in Case XIII, consists of all regular classified clerical employees, could constitute an appropriate unit. At said conference, held on November 17, 1971, the parties agreed to file briefs with respect to the effect of the newly amended statute on the unit issues involved. Briefs and reply briefs were filed by Local 695 and AFSCME, while the County filed a position statement.

From the exhibits, which were made part of the record in the matter, and from the testimony, it appears to the Commission that the following "office and clerical" classifications and number of individuals occupying such classifications are employed by the County in the following departments:

<u>Department</u>	<u>Position Title</u>	<u>Number of Positions</u>
City-County Bldg. Telephone	Switchboard Operator	1
	Switchboard Supervisor	*
Civil Defense	Clerk Stenographer III	1
	Clerk Stenographer II	1
Clerk of Courts	Accounting Machine Operator II	3
	Clerk III	9
	Clerk Stenographer III	5
	Clerk Typist II	3
	Court Clerk II	19
	Court Records Clerk	3
Coroner	Legal Stenographer	1**
Corporation Counsel	Legal Stenographer	1

* Number of employees not revealed.

** Position shared with District Attorney.

<u>Department</u>	<u>Position Title</u>	<u>Number of Positions</u>
County Administrator	Clerk IV	1
	Clerk Typist II	1
	Clerk Typist I	1
	Personnel Secretary	1
County Agent	Clerk Stenographer III	1
	Clerk Stenographer II	1
	Clerk Typist II	3
County Clerk	Accounting Assistant	2
	Accounting Machine Operator II	1
	Accounting Machine Operator I	1
	Clerk IV	5
	Clerk III	4
	Clerk Typist II	2
	Personnel Secretary	1
County Library	Clerk Stenographer II	1
Court Services	Clerk Stenographer III	1
	Clerk Stenographer II	3
	Clerk Typist I	1
District Attorney	Legal Stenographer	3
	Clerk Typist	1
Environmental Health	Clerk Typist II	1
Fairgrounds	Account Clerk II	1
	Clerk Stenographer III	1
	Clerk Stenographer II	1
	Clerk Typist	1
Family Court Commissioner	Clerk Stenographer III	1
	Clerk Stenographer II	2
	Clerk Typist II	1
Handicapped Children Education Board	Administrative Assistant I	1
Highway	Accounting Assistant	3
	Clerk III	3
	Clerk Typist II	3

<u>Department</u>	<u>Position Title</u>	<u>Number of Positions</u>
Hospital and Home	Accounting Assistant	1
	Account Clerk II	1
	Administrative Assistant II	1
	Clerk III	2
	Clerk II	2
	Clerk Stenographer II	1
	Night Switchboard Charge	2
Legal Settlement	Account Clerk II	1
	Clerk Stenographer III	1
	Clerk Stenographer II	1
Park Commission	Clerk Typist II	1
Public Health Nurses	Clerk II	1
	Clerk Stenographer III	1
	Clerk Stenographer II	1
	Clerk Typist II	1
Purchasing	Administrative Assistant I	1
	Clerk Typist II	1
Register of Deeds	Administrative Assistant	1
	Clerk IV	2
	Clerk III	2
	Clerk Typist II	8
	Photocopyist	1
	Tract Index Supervisor	1
Sheriff	Account Clerk I	1
	Clerk Stenographer III	2
	Clerk Stenographer II	2
Social Services	Administrative Assistant II	1
	Account Clerk I	1
	Clerk IV	3
	Clerk III	8
	Clerk II	7
	Clerk Stenographer III	4
	Clerk Typist II	23
Stores & Services	Clerk IV	1
	Clerk III	1
	Duplicating Machine Operator	1
	Messenger and Mail Clerk	1
	Photocopyist & Duplicating Machine Operator	1
Surplus Commodities	Clerk III	1

<u>Department</u>	<u>Position Title</u>	<u>Number of Positions</u>
Surveyor	Clerk III	1
	Clerk Stenographer II	1
Traffic	Clerk Stenographer III	1
	Traffic Clerk I	1
Treasurer	Account Clerk II	1
	Accounting Machine Operator II	1
	Administrative Assistant I	1
	Clerk III	1
	Clerk II	2
Veterans Service	Administrative Assistant I	1
	Clerk Stenographer II	1

The collective bargaining agreement in effect between the County and AFSCME during 1971 covered, among others, employees in the following classifications:

Account Clerk I, II	Court Records Clerk
Account Assistant	Legal Stenographer
Accounting Machines Operator I, II	Messenger & Mail Clerk
Administrative Assistant I, II	Night Switchboard Charge
Clerk I, II, III, IV	Photocopyist
Clerk Stenographer I, II, III	Photocopyist & Duplicating
Clerk Typists II	Machine Operator
Court Clerk II	Tract Index Supervisor

The positions of Clerk IV (County Administrator) and Personnel Secretary were excluded from the unit covered in said agreement as being confidential or supervisory.

While the Commission has never conducted an election among the employees covered in the aforementioned collective bargaining agreement, for a number of years prior to 1967 the County and AFSCME maintained some type of informal relationship in that the former recognized AFSCME as the representative of at least some of its employees. In 1967 the County recognized AFSCME as the exclusive representative of all employees of the County, with the exception of law enforcement personnel, confidential, supervisory and managerial positions, and prior to 1971 the wages and conditions of employment negotiated by AFSCME and the County were reflected in ordinances or resolutions. Wages, hours and conditions of employment for the year 1971 were negotiated by AFSCME and the County and were reflected in the aforementioned collective bargaining agreement, which covered professional employees, along with other employees, excluding law enforcement personnel.

THE UNIT APPROPRIATE

Positions of the Parties

Local 695 contends that the amended MERA now authorizes the Commission to find a unit of employees appropriate on the basis of their occupational grouping, and that all the non-professional employees employed

by the County fall into a distinct and separate occupational group and therefore, constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2 of MERA. 7/

AFSCME argues that the legislative history of MERA requires a literal narrow application of the provisions relating to the establishment of appropriate units by the Commission, and in that regard contends that the new law required that fragmentation of units be avoided whenever possible in keeping with the size of the total municipal work force, and therefore, in addition to the fact that AFSCME has represented all employees of the County, with the exception of law enforcement personnel and craft employees, a unit consisting of office and clerical employees of the County should be found not to constitute an appropriate unit but rather that they remain in the unit represented in the past by AFSCME.

Discussion

Section 111.70(4)(d)2a urges the Commission, whenever possible, to avoid fragmentation in the establishment of bargaining units "by maintaining as few units as practicable in keeping with the size of the total municipal work force." Said subsection also provides that "the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a unit."

An examination of the County's organizational chart and its 1971 Budget and Salary Schedule indicates that the County operates its various services and functions in thirty-one departments. 8/ Its employees fall in four basic groupings, namely, "white collar," "blue collar," "nursing service," and "law enforcement." The "white collar" group consists of professional, technical, office and clerical employees who perform administrative services. The "blue collar" group consists of craft and non-craft employees, who perform operational services. The "nursing service" group consists of professional, technical and non-professional employees engaged in nursing care. The "law enforcement" group consists of officers and matrons. 9/

The recently enacted MERA recognizes that there is a need for a pattern of bargaining units which permits employees the right to be represented in workable units by organizations of their own choosing, which may be reasonably expected to be concerned with the unique interests and aspirations of the employees in said units. To establish a unit wherein the interests of a large group of employees are likely to be submerged would not, in our opinion, give adequate protection to the rights guaranteed to employees in the Act. However, units cannot be so fragmentized so as to be inadequate for viable collective bargaining. All employees of the County have an interest in a common civil service system, and, as a result, many of the conditions of employment are equally applied to the employees in the various groupings noted. However, they also have conflicting interests which vary as a result of their education, training and duties. These conflicts would increase by combining employees in the

7/ Local 695 abandoned its petitions requesting units of clerical employees in the various separate departments of the County.

8/ The Department of Social Services has four separate divisions.

9/ Attached hereto and marked Appendix "A" is a tabulation reflecting the type of employees, by grouping and sub-grouping, employed in the various departments of the County.

various groups into one single bargaining unit. Said conflicts may be reduced by establishing units of employees who are employed in related classifications and duties, not only on the basis of performing similar tasks, but also on the basis that those employees in said classifications usually have similar educational and/or training backgrounds and aspirations.

We, therefore, conclude that the office and clerical employees on a County-wide basis constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2a of MERA. The employees in said unit have a substantial community of interest, are subject to the same salary plan and schedules, and are subject to many of the same personnel practices. We do not consider that the establishment of said appropriate unit will result in such fragmentation so as to create any extensive administrative problems, other than the possibility that the County may have to bargain with an organization other than the organization which has bargained for such employees in the past, depending, of course, upon the results of the election.

The Eligibles

The appropriate unit established herein is more definitely described as follows:

"All regular full-time office and clerical employees, all regular part-time office and clerical employees who work 20 hours or more per week, who were employed by Dane County on March 22, 1972, and all "extra help" office and clerical employees who were employed for at least 90 work days during the year 1971, excluding confidential employees, supervisors and elected officials and all other employees of Dane County, except such employees as may prior to the election quit their employment or be discharged for cause."

The inclusion of the regular part-time employees working 20 hours or more per week, and of the extra help employees who worked at least 90 working days in 1971 was stipulated by the parties during the course of the hearing.

Individuals who occupy the classification noted in the various departments of the County, as reflected on pages 6 through 9 of this Memorandum, provided they fall within the inclusions noted above, shall be eligible to vote, except employees employed by the "County Administrator", and the Legal Stenographer in the employ of the "Corporation Counsel." We conclude that these employees perform sufficient confidential duties relating to collective bargaining so as to exclude them from the unit.

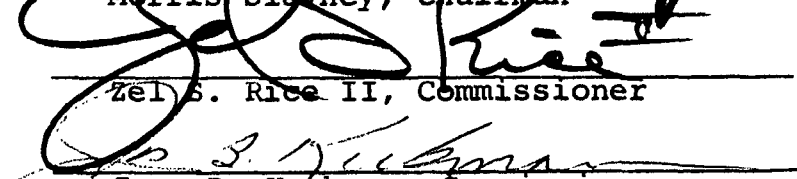
As a result of our determination herein, the Commission will dismiss the petitions filed in Case XIV through XXVII.

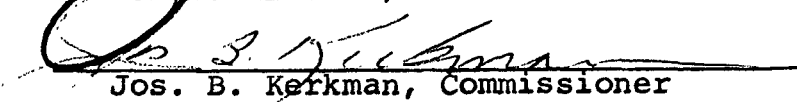
Dated at Madison, Wisconsin, this 22nd day of March, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slowney, Chairman


Zel S. Rice II, Commissioner


Jos. B. Kerkman, Commissioner

<u>Department</u>	<u>"WHITE COLLAR"</u>		<u>"BLUE COLLAR"</u>		<u>"NURSING SERVICE"</u>		<u>"LAW ENFORCEMENT"</u>
	<u>Professional & Technical</u>	<u>Clerical</u>	<u>Craft</u>	<u>Non-Craft</u>	<u>Professional</u>	<u>Non-Professional</u>	<u>Officers & Matrons</u>
City-County Bldg. Maintenance				*			
City-County Bldg. Telephone		*					
Civil Defense	*	*					
Clerk of Courts	*	*					
Coroner	*	*					
Corporation Counsel	*	*					
County Administrator	*	*					
County Agent	*	*					
County Clerk	*	*					
County Library	*	*		*			
District Attorney	*	*					
Fairgrounds	*	*	*	*			
Family Court Commissioner	*	*					
Handicapped Children Ed. Bd.		*		*			
Highway	*	*	*	*			
Hospital & Home	*	*	*		*	*	
Legal Settlement	*	*					
Park Commission		*		*			

<u>Department</u>	<u>"WHITE COLLAR"</u>		<u>"BLUE COLLAR"</u>	
	<u>Professional & Technical</u>	<u>Clerical</u>	<u>Craft</u>	<u>Non-Craft</u>
Parking Ramp				*
Public Health Nurses		*		
Purchasing	*	*		
Register of Deeds		*		
Sanitarian	*	*		
Dept. of Social Services				
Children & Youth Service	*	*		
Lakeview Bldgs. & Grounds			*	*
Social Services	*	*		
Surplus Commodities	*	*		
Stores & Service		*		
Surveyor	*	*		
Treasurer		*		
Veteran's Service	*	*		
Zoning	*			
Sheriff		*		
Traffic		*		