

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XLVIII
No. 15621 ME-794
Decision No. 11411

Goldberg, Previant & Uelmen, Attorneys at Law, by Mr. John S. Williamson, Jr. and Mr. Emil Muelver, Director for the Intervenor.

Petition having been filed with the Wisconsin Employment Relations Commission by County Work Experience Project Workers, Local Union No. 1 requesting that an election to determine bargaining representative be conducted pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Milwaukee County; and District Council 48, AFSCME, AFL-CIO having been permitted to intervene on the basis of its claim to represent said employees; and a hearing having been held in the matter on June 5, 1972, at Milwaukee, Wisconsin, before Howard S. Bellman, Hearing Officer; and the Commission having considered the matter, and being fully advised in the premises, being satisfied that the group of employees involved are temporary employees;

That the petition in the above entitled matter be, and the same hereby is, dismissed.

Given under our hands and seal at the
City of Madison, Wisconsin, this 10th
day of November, 1972.

Zel S. Rice II, Commissioner

Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER OF DISMISSAL

The instant petition was filed on May 11, 1972. A hearing was held on June 5, 1972, and the transcript of such hearing was issued on September 27, 1972. The Petitioner requests a representation election among certain employees of the Milwaukee County Work Experience and Training Project.

The parties stipulated that the individuals occupying the position in question are "employees" within the meaning of the Municipal Employment Relations Act. However, they are not hired in accordance with the County's general and normal hiring procedure, nor are they within the "classified service" of the County, which would provide them certain Civil Service procedures and protections. 1/

Employment in the positions in question are filled by persons found by the Department of Public Welfare to be eligible for general assistance, who are referred for consideration to the administrators of the Project, who in turn apply criteria such as health, age and residency in determining whether to offer such persons an available position in the Project, or if no position is available to place them on a waiting list. If the person rejects such offer, he may be disqualified from receiving general assistance.

A majority of the persons employed in the Project are placed in various departments of the County, where they "assist" the regular employees and work under a regular supervisor or lead worker. Their work is similar to, and supportive of, that of the regular employees, although frequently less skilled. Unlike the regular employees, they are monitored by the administrators of the Project, as well as their job site supervisors, and each has a counselor who supervises them respecting certain aspects of work conduct which reflects attitudes toward work in general, such as attendance.

All such persons receive the same rate of pay, \$1.60 per hour, regardless of their assignment, and work until they quit, are discharged for misconduct, or are terminated on the basis of having received "maximum benefits" from the program. A majority quit, having obtained employment elsewhere, and a few have been discharged for misconduct; but the "maximum benefits" basis for separation reflects the essential nature of the Project and the employment relationship in question. That is, the Project is envisioned as a training program to educate unemployed persons so as to assist them in becoming regularly employed elsewhere. It is the Project's goal to accomplish this training within six months. However, due to general economic conditions and certain individual problems, persons have stayed within the programs for much longer periods, in a relatively few extreme cases, over two years.

During the hearing, the Intervenor claimed to be the bargaining representative of the employees in question. In fact, on June 1, 1972, prior to the hearing herein, the Intervenor filed with the Commission an extensive petition for unit clarification claiming, inter alia,

1/ Apparently other unclassified positions are presently within the units represented by the Intervenor, including seasonal positions.

that the positions covered by the instant petition were properly allocated to certain preexisting bargaining units which the Intervenor was already certified to represent. An order (Decision No. 11382) was issued on said unit clarification petition on October 23, 1972. However, in that proceeding no record was made respecting the positions in issue here as it was determined by the Commission to defer to the instant proceeding for such disposition.

The County concurs that the positions in question are properly within the bargaining units currently represented by the Intervenor.

The Intervenor and the County, contrary to the Petitioner, also contend that these positions are covered by a current collective bargaining agreement, as well as by previous contracts between the Intervenor and the County, and that on that basis the petition was untimely filed. They explain that by a general arrangement between them, new positions created by the County are from time to time submitted by the Intervenor in large numbers to the Commission for rulings such as that of October 23, 1972, referred to above, for clarification as to unit placement; and that during the years between such clarifications these positions are assumed to be covered by the parties' contracts. With regard to the present positions such contract coverage is by operation of a provision, which incorporates by reference all County's ordinances of a provision that incorporates those that create positions. Accordingly, according to the Intervenor and the County, the wages, hours and working conditions of these positions are not those stated in the labor contract, but are as set forth in certain ordinances and resolutions. 2/

In fact, shortly after the creation of these positions, a joint Intervenor and County committee determined their wages, hours and working conditions and these have continued virtually unchanged, despite the concurrent succession of labor contracts covering the units represented by the Intervenor. This committee, which has also continued, consists of ten members appointed by the County Executive, five of whom are recommended by the Intervenor. The five Intervenor members are also members of the Intervenor's regular bargaining team. From time to time this committee, in an advisory capacity passes upon decisions governing the terms of employment of the instant positions, and such regulations as have affected these terms have been subject to such approval before becoming effective. However, the record also discloses that the Intervenor has performed very few organizing or "servicing" functions normally associated with union representation, respecting those persons occupying the positions.

It is clear that, in addition to its role in determining the terms of employment of these positions, the advisory committee is concerned with the administration of the County's policy, set forth in the ordinance creating the Project, that the use of the Project employees should not operate so as to jeopardize the jobs of any Civil Service employees. [The Petitioner urges that this concern on the part of the Intervenor renders the Intervenor an inappropriate bargaining agent for the instant positions. It contends that inasmuch as most, or all

2/ Apparently, a similar arrangement pertains respecting the Intervenor's representation of certain craft employees whose wages, hours and working conditions are, at least to some extent, set forth in "prevailing rate" ordinances.

of the Intervenor's members are Civil Service employees, whose interests may be threatened by the growth of the Project, the employees within the Project should be permitted to select another bargaining representative.]

It is the Commission's conclusion that the aforesaid arrangement, including the aforementioned assumption of bargaining status pending unit clarification, incorporation by reference of ordinances in the labor contract, and the above-described advisory committee, does not constitute such voluntary recognition of a bargaining representative, or such an agreement, as should bar a representation election if one were proper here.

Finally, the Intervenor, and apparently the County, contrary to the Petitioner, contend that the positions in question do not constitute an appropriate unit because of their intermingling and integration with other employees in various departments, and because their functions and supervision within those departments are so closely related to the functions of the other employees.

The Petitioner, on the other hand, stresses the differences in wages, and other terms of employment between these "employees" and regular employees; as well as their peculiar situation, supervisory structure and their possible conflict with some of the Intervenor's constituents, and urges that they be found to constitute a bargaining unit based upon their particular community of interest.


The Commission concludes that the positions in issue are not to be included in any existing bargaining unit or in a separate unit since they do not possess sufficient interests in common with employees in any existing unit, primarily on the basis that they are temporarily employed in "make work" positions in order to qualify for financial assistance from the County over and above minimum wages received for services performed by the individuals occupying said positions.

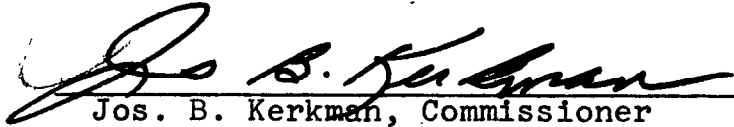
Dated at Madison, Wisconsin, this 10th day of November, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel B. Rice II, Commissioner


Jos. B. Kerkman, Commissioner