

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
DANE COUNTY ATTORNEYS ASSOCIATION  
Involving Certain Employees of  
DANE COUNTY, WISCONSIN  
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: Case XXXII  
: No. 16049 ME-841  
: Decision No. 11482  
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In the Matter of the Stipulation of  
DANE COUNTY and WISCONSIN COUNCIL OF  
COUNTY & MUNICIPAL EMPLOYEES, AFSCME,  
AFL-CIO  
Involving Professional Employees  
in the Employ of  
DANE COUNTY  
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: Case XXXIV  
: No. 16154 ME-851  
: Decision No. 11428-A  
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DIRECTION OF ELECTIONS

Dane County Attorneys Association having petitioned the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among attorneys in the employ of Dane County, Wisconsin; and hearing on such petition having been conducted at Madison, Wisconsin, on October 12, 1972, Chairman Morris Slavney being present; and during the course of the hearing Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, having been permitted to intervene in the matter on its claim that it presently represents employees covered by the petition; and prior to any further action by the Commission and on October 31, 1972, Dane County and Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, having filed a stipulation requesting the Commission to conduct an election among all regular full-time and all regular part-time professional employees in the employ of Dane County, excluding supervisory and confidential employees, to determine whether said professional employees desire to be represented for the purposes of collective bargaining by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO; and the Commission, having held a hearing on said stipulation on November 30, 1972, in order to permit any interested party, or employees, to be apprised of said stipulation and to present their positions with regard thereto; and during the course of the hearing the Commission having announced that it would, prior to acting on the stipulation for election, entertain any petition filed by any organization or employees claiming to represent any of the professional employees involved; and the time limits set by the Commission for the filing of said petitions having expired and no such petitions having been filed, except the petition previously filed by Dane County Attorneys Association; and the Commission being fully advised in the premises, and being satisfied that questions have arisen concerning the appropriate collective bargaining units and representation for employees in the employ of Dane County;

No. 11482 and  
11428-A

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this Directive, in the following voting groups:

Voting Group No. 1

All regular full-time and regular part-time professional employes, conditionally excluding attorneys, and specifically excluding supervisory, confidential and all other employes of Dane County, who were employed on December 20, 1972, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time attorneys in the employ of Dane County, excluding supervisory, confidential and all other employes of Dane County, who were employed on December 20, 1972, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

- 1) Whether a majority of such employes desire to establish the attorneys in the employ of Dane County as a bargaining unit separate and apart from all other professional employes in the employ of Dane County; and
- 2) Whether a majority of such employes desire to be represented by Dane County Attorneys Association, or by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, or by neither of said organizations, for the purposes of collective bargaining with the above named Municipal Employer on questions of wages, hours and conditions of employment.

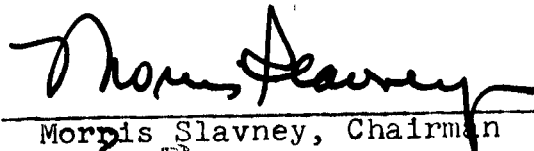
Should the vote of the employes in Voting Group No. 2 result in the establishment of a separate bargaining unit, then the representation ballots cast by the employes therein will be tallied separately from those ballots cast by the employes in Voting Group No. 1

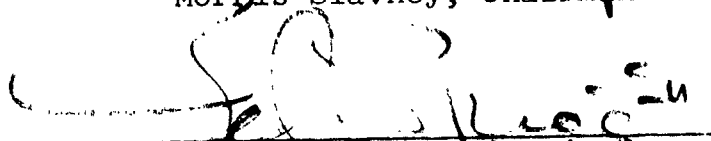
Should a majority of the employees in Voting Group No. 2 reject a separate unit, then the representation ballots cast by the employees therein will be co-mingled with the representation ballots cast by the employees in Voting Group No. 1.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 20th  
day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

The proceeding in Case XXXII was initiated by a petition filed on September 25, 1972, by Dane County Attorneys Association, hereinafter referred to as the Association, requesting the Commission to conduct an election among the attorneys in the employ of Dane County, specifically those attorneys occupying the positions of Assistant District Attorney, Assistant Family Court Commissioner and Juvenile Court Legal Officer, to determine whether said employees desire to be represented by the Association for the purposes of collective bargaining, pursuant to the Municipal Employment Relations Act.

During the course of the hearing on October 12, 1972, Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, intervened in the proceeding on its claim that it presently represents the attorneys in a bargaining unit generally consisting of all the employees in the employ of Dane County, professional and non-professional alike, and in that regard the evidence disclosed that AFSCME and Dane County were parties to a collective bargaining agreement, effective from December 26, 1971, through December 23, 1972, covering the wages, hours and working conditions of generally all the employees of the County, including the attorneys.

AFSCME contended that the Association's petition was untimely filed since the petition was filed after August 1, 1972, the date on which AFSCME reopened the collective bargaining agreement for negotiations on a succeeding agreement, and that AFSCME and the County were presently engaged in negotiations on said new agreement.

The record discloses that Dane County has recognized AFSCME as the collective bargaining representative for a County-wide unit of employees for the past number of years, and in that relationship has entered into collective bargaining agreements covering the wages, hours and working conditions of employees all in one unit. Said recognition and said unit existed prior to the recently amended Municipal Employment Relations Act, more specifically while Section 111.70, prior to its amendment in November 1971, which prohibited the inclusion of professional employees in units with non-professional employees. AFSCME and the County apparently ignored this prohibition, as did the various professional employees in the employ of the County. As a result the County recognized AFSCME as the collective bargaining representative for white collar, blue collar and professional employees alike, all in one collective bargaining unit and their wages, hours and conditions of employment were embodied in one collective bargaining agreement.

On October 30, 1972, following the hearing herein, the County and AFSCME entered into a stipulation, and filed same with the Commission, wherein the County and AFSCME agreed to exclude all professional employees in the employ of the County from the terms of the "current labor agreement" in existence between the parties. As a result of this stipulation, it is apparent to the Commission that AFSCME no longer contends that the collective bargaining agreement in existence between it and the County is a bar to a present election, and, therefore, it further appears to the Commission that AFSCME's position that the petition filed in the instant matter was untimely filed is also withdrawn. The Commission, therefore, concludes that the petition herein was timely filed.

Following the receipt of the above noted stipulation the Commission determined to set hearing thereon in order to provide interested parties or employees an opportunity to be apprised of said stipulation and to present their positions with regard thereto. Present during the course of the hearing in addition to the representatives of the parties were employees engaged in various professions. All present were given the opportunity to participate in the hearing, during the course of which the parties and employees involved were apprised of their rights under the Municipal Employment Relations Act, specifically with reference to appropriate bargaining units and the selection of representatives for the purposes of collective bargaining. Those present were informed that any organization claiming to represent any specific profession would be given time to file petitions for elections should they desire to do so. No other organization, except Dane County Attorneys Association, or any individual claiming to represent any other professional employees have filed any petitions requesting elections among the remaining professional employees.

The Association seeks a unit consisting of all attorneys in the employ of Dane County excluding those who are confidential, supervisory, managerial and elected. AFSCME and the County would include the attorneys in an overall professional unit. On October 31, 1972, the County and AFSCME filed a stipulation with the Commission requesting the Commission to conduct an election among all regular full-time and regular part-time professional employees, excluding supervisory and confidential employees and all other employees of the County, to determine whether the employees in said alleged appropriate unit desired to be represented for the purposes of collective bargaining by AFSCME.

Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act 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 several departments, divisions, 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 ballot."

Attached to the stipulation filed on October 31, 1972, was a list of professionals in the employ of the County, which positions were stipulated to as being professionals.

"Accountant I	Legal Assistant
Assistant County Agent	Naturalist
Assistant District Attorney I,	Psychiatric Nursing
II, III	Specialist
Assistant Family Court	Public Health Nurse II
Commissioner	Registered Nurse II
Basic Services Supervisor	Rehabilitation and Employment
Bookmobile Librarian	Counsellor
Case Investigator I	Sanitarian II
Caseworker II	Sanitarian II Trainee
Child Care Specialist	Social Worker I or II
Counsellor II, III	Trainee
Guardianship Administrator	Social Worker II, III, IV
Highway Engineer I, II	Special Conservation Agent
Home Agent	Youth Agent"
Home Care Coordinator	
Home Manager	

We are satisfied that attorneys, as professional employees, have a distinct community of interest separate and apart from other professionals employed by the County. Since the Association claims to represent attorneys in the employ of the County for the purposes of collective bargaining, and since the County and AFSCME claim that a unit of all professional employees is the appropriate unit, the Commission has determined to grant the attorneys an opportunity to determine for themselves whether they desire to constitute a unit separate and apart from the other professional employees in the employ of the County, and also to permit the attorneys to determine what, if any, representation they desire for the purposes of collective bargaining.

Therefore, we have directed elections in two separate voting groups. One of said voting groups will consist of the attorneys who will be given an opportunity to determine whether the attorneys desire to constitute a unit separate and apart from the other professional employees of the County and whether they desire to be represented by Dane County Attorneys Association or by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO.

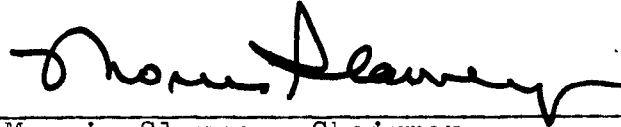
Since no other organization or employees have claimed to represent any of the remaining professional employees, either in one unit or in a separate unit consisting of employees in a separate profession, the Commission concludes that all professional employees of the County, excluding supervisors and confidential employees, and conditionally excluding the attorneys, constitute an appropriate unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act. Should the attorneys reject a separate unit, the representation ballots cast by the attorneys will be co-mingled with those cast by the remaining professional employees. Should the required number of attorneys vote in favor of establishing a separate unit for attorneys, then the representation ballots cast by the attorneys will be tallied separate and apart from the ballots cast by the rest of the professional employees.

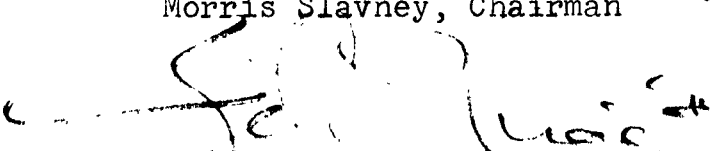
At such time as the Commission prepares notices with regard to the elections, it will also prepare, as part of the notices, a list of the classifications to be included in both voting groups, and we shall require the Municipal Employer to post said notices in each of the departments and locations where the professional employees are employed.

Dated at Madison, Wisconsin, this 20th day of December, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Zel S. Rice II, Commissioner