

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DRIVERS, SALESMEN, WAREHOUSEMEN, MILK
PROCESSORS, CANNERY, DAIRY EMPLOYEES AND
HELPERS UNION LOCAL NO. 695

Case XIV
No. 17136 ME-974
Decision No. 12218

Involving Certain Employees of

COUNTY OF COLUMBIA

Appearances:

Mr. Glen Van Keuren, Assistant Secretary-Treasurer, appearing
on behalf of the Petitioner.

Mr. William Leitsch, Corporation Counsel, appearing on behalf
of the Municipal Employer.

Mr. Darold Lowe, Representative, appearing on behalf of the
Intervenor.

DIRECTION OF ELECTION

Petition having been filed with the Wisconsin Employment Relations Commission by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, requesting that an election to determine a bargaining representative be conducted pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Columbia County; and hearing on such petition having been conducted on October 4, 1973, at Portage, Wisconsin, by Kay Hutchison, Hearing Officer; and Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having been permitted to intervene on the basis of its claim to represent said employees; and the Commission having considered the evidence and being satisfied that a question of representation has arisen concerning certain employees of the above Municipal Employer;

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 from the date of this Directive among all regular full-time and regular part-time employees of Columbia County employed in the Administration Building, Highway Department Office and Jail, excluding elected, professional, confidential, supervisory, managerial, craft and all other employees, who were employed by the Municipal Employer on October 4, 1973, unless such employees quit their employment or are terminated for cause prior to the date of the election, for the purpose of determining whether a majority of such employees desire to be represented by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, or by Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, or by

neither of said organizations, for the purpose of collective bargaining with the Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 24th
day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

J. S. Rice II
Jel S. Rice II, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The instant proceeding was initiated by a petition filed on September 4, 1973, by Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, hereinafter referred to as the Petitioner, requesting an election among certain employees of Columbia County. On September 17, 1973, Wisconsin Council of County & Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as WCCME, filed a motion to intervene in the matter, which was subsequently granted on the basis of its claim to represent said employees.

The Municipal Employer, contrary to the Petitioner or WCCME, asserts that certain positions should be excluded from the collective bargaining on the basis of their appointed, confidential, professional or managerial status. Furthermore, the parties were unable to agree upon the inclusion or exclusion of the Assistant Zoning Administrator. It was agreed that the ballot of the Assistant Zoning Administrator would be challenged. The incumbent was on vacation at the time of the hearing and thereby precluded the making of a complete record upon which the Commission could make a determination with regard to the inclusion or exclusion of the Assistant Zoning Administrator.

APPOINTED DEPUTIES

The Municipal Employer alleges that eleven various Deputy positions in the offices of the County Clerk, County Treasurer, Clerk of Courts and Register of Deeds should be excluded from the collective bargaining unit in light of the statutory nature of their employment. Sections 59.16(1), 59.19(1), 59.38(1) and 59.50 1/ of the Wisconsin Statutes deal with the appointment of deputies. The sections provide that the elected official appoint the deputies, that the deputies may act in the elected official's absence or in the event of a vacancy in his office. Sections 59.16(1) and 59.19(1) go on to specify that the County Board sets the salaries for the positions of deputy clerk and deputy treasurer respectively. Furthermore, Section 59.15(a)(c) provides that the County Board has the power to set the salary of the deputies without regard to the tenure of the incumbent, to determine the number of deputies and to "establish regulations of employment" for them, as well as other county employees.

The Municipal Employer argues that the deputies' duties and conditions of employment are those of "officials" rather than employees. The deputies are empowered by the statute to assume the duties of the elected officials in their absence and therefore share the same status as the elected officials. Furthermore, the Municipal Employer notes the statutory requirement that deputies make and file an oath and be bonded as evidence of a lack of community of interest between the deputies and other county employees.

The Commission has previously determined the status of such deputy positions. 2/ In Ashland County, it held that:

"Although the elected official has power to appoint his deputy, the County Board has the power to veto such selection,

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- 1/ Statutes deal with County Clerk, County Treasurer, Clerk of Court and Register of Deeds deputies respectively.
2/ Ashland County (7214) 7/65; Langlade County (6716) 4/64; Oneida County (9134) 7/69; Chippewa County (8727) 10/68

if it chooses, by failing to appropriate salary for the appointee. Moreover, the County Board is the locus of the authority to determine the deputy's conditions of employment not prescribed by statute. These conditions may be the subject of conferences and negotiations between the Union and the County in the event the Union is selected as the bargaining representative. The fact that statutes affect the nature of a seniority provision which the County and Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employee under the statute. Therefore, except so far as tenure is concerned, the deputy is in the same situation as any other County employee. His conditions of employment are set by the County Board."

The Commission stated further in Ashland:

"The fact that a deputy fills in for his supervisor during the latter's absence, does not, . . . convert the deputy into a supervisor or executive."

Although the deputies may, on occasion, perform the statutory duties of the office they serve,

". . . such duties are essentially ministerial as opposed to the exercise of either the executive or supervisory duties of their supervisors. The official, himself, who appoints the deputy and might discharge him at will, bears full responsibility for the administration of the office." 3/

We further conclude in the instant proceeding that the deputies possess no supervisory authority or responsibility by reason of the minimal number of employees employed in their respective offices. Therefore, we are satisfied that the regular full-time and regular part-time deputies in the offices of County Clerk, County Treasurer, Clerk of Courts and Register of Deeds are appropriately included in the collective bargaining unit.

COUNTY COURT - REGISTER IN PROBATE
COUNTY COURT - DEPUTY REGISTER

The Municipal Employer avers that the positions of Register in Probate and Deputy Register in the County Court should be excluded from the collective bargaining unit as professional employees.

The job description submitted into evidence states the following: 4/

"Register in Probate

Characteristic Work of the Class

Nature: Under direction to perform responsible work in the administration of the probate department; and to perform related work as required.

Examples:

1. Maintains a record of Probate Court orders, bonds and wills, and minutes of Probate Court proceedings.

3/ Ashland County (7214) 7/65

4/ Exhibit 2, Columbia County - Class Specifications, January, 1969

2. Maintains and supervises a file and index system for wills, estates, adoptions, heirships, etc.
3. Examines papers, final accounts, inventories, and other probate papers.
4. Assigns number of file to attorneys of record on new estates filed for probate.
5. Certifies copies of legal documents concerning the office.
6. Receipts for wills and files in vault.
7. Confers with attorneys and laymen in regard to probate matters.
8. Receipts for fines collected.
9. Maintains records and prepares reports.

Qualifications

Essential Knowledges and Abilities:

1. Considerable knowledge of the statutory powers and limitations of the Probate Court.
2. Considerable knowledge of the purpose, functions, and scope of the Probate Court.
3. Considerable knowledge of the principles and practices of office management, record keeping, and bookkeeping.
4. Ability to take and transcribe dictation.
5. Ability to plan, assign and supervise the work of others.
6. Ability to establish and maintain effective public and working relationships.
7. Ability to understand and effectively carry out oral and written instructions.
8. Ability to maintain accurate and complete records and prepare clear and detailed reports.

Desirable Training and Experience:

1. Graduation from high school, including or supplemented by course work in shorthand, typing, and other commercial courses.
2. Five or more years of responsible office work experience."

The Deputy Register is presently employed on a part-time basis. The incumbent is receiving on-the-job training from the Register in Probate so that the Deputy will be able to assume the duties of the Register upon the incumbent Register's impending retirement.

The Municipal Employer asserts that the legislative enactment of probate reform will result in increased responsibilities and, thereby, professional status for the Register. Section 111.70(1)1 of the Wisconsin Statutes defines a professional employe as:

- "1. Any employe engaged in work.
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course

of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employe who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1."

Whereas the present duties of the Register in Probate and Deputy Register may be highly skilled and technical, there is presently no indication of professional status in terms of duties or educational preparation. However, the future duties of said positions can neither be foreseen nor be the basis of the inclusion or exclusion of said positions in the unit. In the event that the duties of the Register of Probate and/or Deputy Register are amended to include professional responsibilities, thereupon said positions will be appropriately excluded from the collective bargaining unit. We are satisfied that the Register of Probate and Deputy Register in County Court, as they presently function, are appropriately included in the collective bargaining unit.

HIGHWAY OFFICE - ADMINISTRATIVE ASSISTANT
COUNTY AGRICULTURAL AGENT OFFICE - ADMINISTRATIVE ASSISTANT

The job description entered into evidence for the positions of Administrative Assistant in the Highway Office and Administrative Assistant in the County Agriculture Agent's office states the following:

"Administrative Assistant-Extension

Characteristic Work of the Class

Nature: Under direction to serve as clerical supervisor and to do difficult and responsible office work involving a considerable degree of independent judgment in initiative; and to perform related work as required.

Examples:

1. Acts as clerical supervisor as well as personal secretary and office assistant to the various program heads.
2. Attends to the administration of the immediate office.
3. Relieves the department head and other professional staff of the detailed work involved in their routine duties.
4. Keeps a variety of complex records which include bookkeeping accounts.
5. Answers letters without dictation in accordance with instructions.
6. Gives information regarding departmental activities or policies in response to telephone inquiries or personal visitations.
7. Requisitions supplies.
8. Assists in the preparation of departmental regulations and procedures.
9. Maintains records and prepares reports.

Qualifications

Essential Knowledges and Abilities:

1. Considerable knowledge of modern office practices and procedures.
2. Considerable knowledge of departmental programs, operations and policy with respect to general functions performed.
3. Considerable knowledge of business English, spelling, and composition.
4. Ability to effectively supervise the work of subordinates.
5. Ability to perform a variety of complex clerical and bookkeeping tasks.
6. Ability to operate a variety of office machines.
7. Ability to establish and maintain effective public and working relationships.

Desirable Training and Experience:

1. Graduation from high school, including or supplemented by commercial subjects.
2. Four or more years of responsible office experience.."

The Municipal Employer argues that the Administrative Assistant in the Highway Office is a confidential employe and not appropriately included in the bargaining unit. The incumbent, Shirley Donahue, types bargaining proposals and notes for the head of the Highway Department, who participates in negotiations with a separate collective bargaining unit in the Columbia County Highway Department. The incumbent has been excluded from the Highway Department bargaining unit as a clerical employe.

We are satisfied that the position of Administrative Assistant in the Highway Office is a confidential employe and should be excluded from the collective bargaining unit discussed herein. The confidential status of a position is determined by the incumbent's relationship to the Employer rather than by the incumbent's relationship to the various collective bargaining units. Confidential employes are excluded from the definition of a municipal employe and thereby from coverage of the MERA in any collective bargaining unit. We are satisfied that Donahue has access to confidential matters relating to labor relations concerning the Municipal Employer and thereby is appropriately excluded from the collective bargaining unit involved herein or any other unit.

The Municipal Employer contends that the Administrative Assistant in the office of the County Agriculture Agent is a managerial employe appropriately excluded from the collective bargaining unit. The Municipal Employer reasons that the Administrative Assistant assumes a wide range of the managerial duties of the Agriculture Agent as the Agent is out of the office much of his working time. The Administrative Assistant's occasional filling in for the agent does not substantiate that the Administrative Assistant effectively participates in the formulation and implementation of management policy. Although the incumbent may assume the duties of the agent more frequently than the deputies, discussed heretofore, assume the duties of the supervisors, we are not satisfied that the Administrative Assistant in the office of the Agriculture Agent is a managerial employe. Thereby, said position is included in the collective bargaining unit.

The attached Appendix A indicates the positions, by departments, which are appropriately included in the collective bargaining unit consisting of all regular full-time and regular part-time employes of

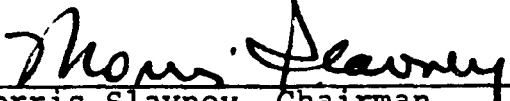
Columbia County employed in the Administration Building, Highway Department Office and Jail, excluding elected, professional, confidential, supervisory, managerial, craft and all other employees.

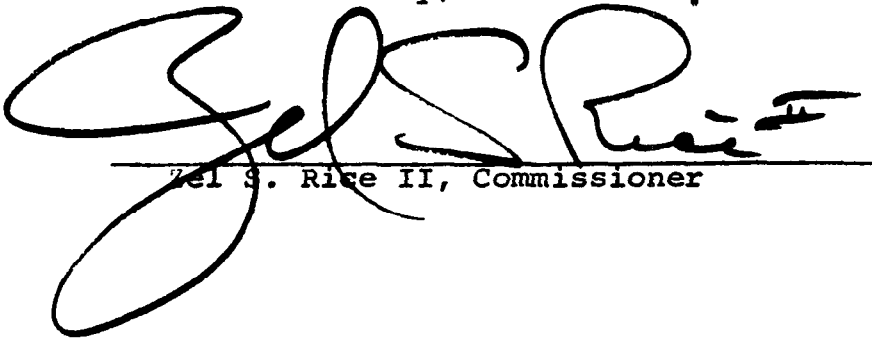
Appendix B specifies the positions and their respective departments which are appropriately excluded from the aforementioned collective bargaining unit.

Dated at Madison, Wisconsin this 24th day of October, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Zel S. Rice II, Commissioner

Appendix A

Columbia County positions appropriately included in collective bargaining unit:

County Clerk Office

Deputy II
Deputy I
Deputy I/Relief Switchboard Operator
Switchboard Operator/Receptionist

Mimeograph Department

Mimeo Operator

County Treasurer Office

Deputy

Courthouse and Jail Maintenance

Night Foreman
Janitor
Janitress

County Court I

Register in Probate
Deputy Register in Probate

Clerk of Courts

Deputy I
Part-time Deputy

Tax Listing Department

Draftsman
Account Clerk I

Register of Deeds Office

Deputy II
Deputy I

County Health Department

Clerk-Stenographer II
Public Health Aide
Home Health Aide
Account Clerk III

Veterans' Service Office

Administrative Secretary

Highway Office

Account Clerk I
Account Clerk II

County Agriculture Agent Office

Administrative Assistant
Clerk-Stenographer II
Clerk-Stenographer I

Planning and Zoning Department

Assistant Zoning Administrator*
Clerk-Stenographer I

Civil Defense Office

Clerk-Stenographer

Soil Conservation Department

Office Clerk
Soil Conservation Aide

Social Services Department

Administrative Assistant I
Homemaker
Clerk II
Stenographer II
Stenographer I
Case Aide I

*Will be challenged in election.

Appendix B

Columbia County positions excluded from collective bargaining unit*:

County Treasurer Office

Extra help position

District Attorney - Corporation Counsel Offices

Legal Secretary

County Health Department

Public Health Nurse II
Public Health Nurse I
Home Nursing Coordinator
Registered Nurse

Highway Office

Assistant Highway Commissioner
Administrative Assistant

Social Services Department

Supervisor I
Social Worker II
Social Worker I

*In addition, all elected officials and department heads are excluded, by stipulation of the parties.