

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XIII
No. 16959 ME-961
Decision No. 12310

Mr. James W. Miller, Representative, WCCME, AFSCME, AFL-CIO
appearing on behalf of the Union.
Attorney Frederic C. Eberlein, appearing on behalf of the Municipal
Employer.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission on July 9, 1973 to conduct an election pursuant to Section 111.70, Wisconsin Statutes, among certain employees of Shawano County; and a hearing on such petition having been conducted at Shawano, Wisconsin, on August 1, 1973, Marshall L. Gratz, Hearing Officer, being present; and the Commission having considered the evidence and being satisfied that questions of representation have arisen concerning certain employees of the Municipal Employer;

DIRECTED

Voting Group No. 1

Voting Group No. 2

No. 12310

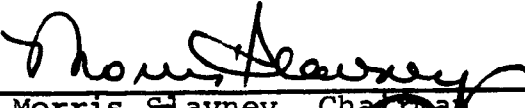
all other employees, who were employed on December 5, 1973, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining

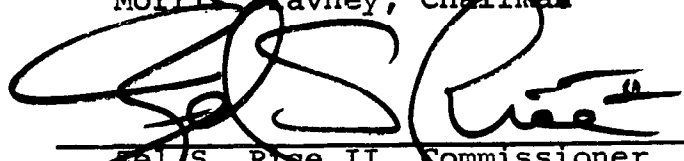
- 1) Whether a majority of such employees desire to be included in one single bargaining unit consisting of the employees set forth in Voting Group No. 1 above, and
- 2) Whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO.

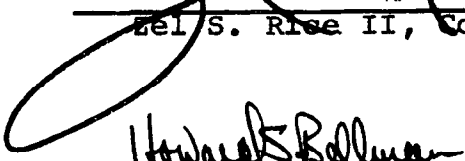
Given under our hands and seal at the City of Madison, Wisconsin this 5th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Mel S. Rise II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

In its petition, the Union contended that the appropriate unit should consist of "all employees of the Employer employed in the court house and related departments excluding supervisors, elected officials, department heads and all other employees under union agreements." During the course of the hearing the parties agreed to exclude law enforcement personnel and all employees of the Department of Social Services from said courthouse unit, and in addition, agreed that the professional employees employed in the County Nurse Department should be given an opportunity to determine whether they desire to be included in a single bargaining unit with the otherwise eligible non-professional employees employed in the courthouse. The representation ballots cast by the professional employees in the County Nurse Department will be challenged by the Commission's agent who conducts the balloting. The sequence of counting the ballots will be as follows:

- 1) The ballots cast by the professional employees in the County Nurse Department as to their desire to be included in the non-professional unit will be tallied first.
- 2) If a majority of the eligible professional employees in the County Nurse Department do not vote in favor of inclusion in the non-professional unit, the challenged representation ballots cast by the professional employees in the County Nurse Department will be opened and counted separately, as will the ballots cast by the non-professional employees.
- 3) If the professional employees involved vote in favor of being included in the non-professional unit, the Commission's agent shall open the challenged ballots and deposit the ballots in the ballot box with the ballots of the non-professional employees in such a manner to preserve the secrecy of the ballots, and thereupon count the combined ballots.

In the event that the professional employees involved vote for inclusion in the non-professional unit, the appropriate bargaining unit shall consist of all employees of Shawano County employed in the courthouse and related departments and County Nurse Department, excluding law enforcement personnel, Social Services Department personnel, supervisors, elected officials, department heads, professional and all other employees. Should the professional employees involved reject inclusion in the non-professional unit the appropriate unit shall consist of (1) all employees of Shawano County employed in the Courthouse and related departments, excluding professional employees employed in the County Nurse Department, law enforcement personnel, Social Services Department personnel, supervisors, elected officials, department heads, professional and all other employees, and (2) all professional employees of Shawano County employed in the County Nurse Department, excluding supervisors and all other employees.

The Municipal Employer, contrary to the Union, asserted that the following employees in the following positions ought to be excluded from the eligibles in said voting groups for the following reasons:

<u>DEPARTMENT</u>	<u>EMPLOYEE</u>	<u>POSITION</u>	<u>MUNICIPAL EMPLOYER'S GROUNDS FOR EXCLUDING</u>
<u>County Clerk</u>	Rosetta Stern	Deputy Co. Clerk & Bookkeeper	Managerial-Executive
	Mary Svendsen	Deputy Co. Clerk	Managerial-Executive
	Rosemary Bohm	Admin. Sec'y	Managerial-Executive
<u>County Treasurer</u>	Kay Schroeder	Deputy Treas.	Managerial-Executive
<u>Clerk of Court</u>	Mildred Schreiber	Deputy Cl. of Court	Managerial-Executive
	Doris Kumm	Deputy Cl. of Court	Managerial-Executive
	Cheryl Thomas	Deputy Cl. of Court	Managerial-Executive
	Marilyn Dahl	(Part-time) Deputy Cl. of Court	Managerial-Executive
<u>Register of Deeds</u>	Ruby Zehms	Deputy Reg. of D.	Managerial-Executive
	Elaine Montour	(Part-time) Deputy Reg. of D.	Managerial-Executive
<u>Abstract Office</u>	Lorraine Karolus	Admin. Sec'y	Managerial-Executive
<u>Zoning</u>	Marcella Palmer	Admin. Sec'y	Managerial-Executive
	Roger Mathison	Deputy Admin.	Managerial-Executive
<u>Highway Department</u>	Herthal Larsen	Account Clerk	Confidential
<u>County Nurse</u>	Constance Daniels, R.N.	(Part-time) Home Care Nurse	Casual
	Emma V. List, R.N.	(Part-time) Home Care Nurse	Casual
	Dorothy Moesch	Admin. Sec'y	Managerial-Executive
			Supervisory

DISCUSSION

Deputies to Elected Officials

As noted above, the Municipal Employer has asserted that the deputies to elected officials (County Clerk, Treasurer, Clerk of Court and Register of Deeds) hold managerial and executive positions deserving exclusion. In addition, the Municipal Employer has argued that the same result should obtain since such positions are appointive in nature and since the duties and responsibilities thereof are provided by statute. With respect to the general employee status of such deputy positions, the Commission, in Ashland County 1/ stated as follows:

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

1/ Decision No. 7214 (7/65)

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

In the instant matter, the evidence reveals that the Deputies in question perform various clerical functions related to the work in their Departments. During the course of such duties, some of them draw up budgets for their Departments for the approval of the elected officials whom they serve; others are consulted concerning the most efficient and desirable manner in which certain operations of the various departments should be carried on. Nevertheless, only Department heads are responsible to, and report to, the County Board or to its Committees, concerning the operations of their Departments, and none of the Deputies are involved to a significant extent in overall policy-making for their Departments. While the drawing-up of a budget draft involves a certain exercise of managerial discretion, much of such budget preparation appears to be routine, and in no case do Deputies make final decisions as to Departmental budgetary needs and allocations.

The Commission, therefore, finds that none of the Deputies in question perform such executive or managerial functions as would require their exclusion from the unit on such basis. Their positions are included in the unit, and they are therefore eligible to vote.

County Clerk Office - Administrative Secretary

Rosemary Bohm, the present Administrative Secretary performs the same duties and has much the same responsibilities as do the Deputy County Clerks. In the performance of a variety of clerical duties, however, Ms. Bohm has no policy-making role and cannot, for that reason, be considered to be managerial or executive.

While she prepares the payroll, that function amounts to check-writing, pursuant to personnel information supplied by the County Coordinator and by Hospital and Home officials. Ms. Bohm's position is not, therefore, of a confidential nature. 2/ She is eligible to vote. Her position is included in the bargaining unit and, therefore, Bohm is eligible to participate in the election.

Abstract Office - Administrative Secretary

Lorraine Karolus performs various clerical duties as the Administrative Secretary in the Abstract Office, and in the performance thereof she often effectively recommends the hours the part-time Clerk-Typist I assigned to that office will work and the amount of work to be delegated to said Clerk-Typist I. She is often consulted by the Administrator, Kenneth Martzke, as to the best approach to office problems and operations, but Martzke alone is responsible to and reports to the County Board concerning the Abstract Office.

The Commission finds that Lorraine Karolus does not perform managerial or executive functions requiring exclusion of her position from the bargaining unit, and she is found to be eligible to vote in the election.

2/ Personnel functions with respect to courthouse employees are performed by the County Coordinator, John Cherrier. The Municipal Employer indicates an intent to hire a secretary to assist him in such functions, though at the time of the hearing such secretarial position had not been created.

Zoning Department - Deputy Administrator

Roger Mathison, the present holder of the position was hired in January, 1973 pursuant to the Emergency Employment Act. He has performed duties for Kenneth Martzke, Administrator of the Abstract Office and of the Zoning Department. Mathison's duties in the Abstracting Office have involved the researching of land titles in County documents. In the Zoning Department, Mathison has assisted in the administration of the building code by conducting zoning inspections and by conferring with the public in evaluating construction plans with respect to code compliance. Mathison is performing and learning procedures which were developed prior to his hiring.

Based upon the foregoing, the Commission cannot conclude that Mathison presently performs managerial or executive functions requiring exclusion of his position from the unit. Therefore, his position is included in the unit and he is eligible to vote.

Zoning Department - Administrative Secretary

The present holder of this position, Marcella Palmer, performs a wide variety of clerical tasks including the maintenance of a variety of records related to the work of the Zoning Administrator and his Department. Since her "boss", Kenneth Martzke, also serves as Abstract Office Administrator, Ms. Palmer performs much of her work on her own and "runs the office" in his absence, answering public inquiries and the like. She and Martzke "decide together" what records to keep and Ms. Palmer draws up a Zoning Department budget for Martzke's approval and forwarding to the County Board Planning Committee which oversees the work of the Zoning Department.

Although Ms. Palmer holds a responsible position, she does not engage in decision-making concerning overall policies of the Zoning Department's operations such as would make her position significantly managerial or executive in nature. Her position is, therefore, included in the bargaining unit and she is eligible to vote.

County Nurse Department - Home Care Nurse (Part-Time)

Emma List and Constance Daniels are Registered Nurses and serve as Home Care Nurses. Their work involves visitation of the home-bound ill. Although the number of hours they work in any given week depends upon the number of patients then requiring their care, each averages approximately twenty hours of work per week. Rarely, if ever, is either Home Care Nurse idle throughout an entire calendar week. They are paid an hourly wage plus mileage allowances and auto insurance compensation for additional auto insurance costs incurred by them due to their employment. They are covered by Workman's Compensation and have taxes and social security withheld, but they receive no other fringe benefits.

In view of the substantial average number of hours per week worked by these employees and their community of professional status with the full-time public health nurses, the Commission concludes that the Home Care Nurses are not casual employees, and that they are appropriately included in the bargaining unit and eligible to vote.

County Nurse Department - Administrative Secretary

The present holder of the position, Dorothy Moesch, acts as private secretary and head office assistant to the Supervisor of the Department. She attends to the routine administration of the office, keeps a variety of complex records and assists in the preparation and administration of departmental regulations and procedures. In the performance of the above duties, Ms. Moesch directs the work of a part-time Clerk-Typist II, Ione Schultz. Yet, even though the duties of the Supervisor of the Department

frequently take her away from the office, said Supervisor hired Ms. Schultz and exercises the bulk of the supervisory functions with respect to her.

Ms. Moesch also "directs" the work of the Home Care Nurses in the sense that she arranges appointments for them. Such work direction function is routine in nature, however.

Based upon the foregoing, the Commission finds no basis for concluding that Ms. Moesch serves either a supervisory, managerial or executive function requiring exclusions from the unit. She is therefore eligible to vote.

Highway Department - Account Clerk

The present Account Clerk, Herthal Larsen, is secretary to the Highway Commissioner Elmer Anderson and to his Administrative Assistant, Alex Peterson, both of whom are excluded from the eligibles by stipulation. Anderson and Peterson have substantial responsibilities in the negotiation and administration of collective bargaining agreements with the AFSCME local representing the non-clerical Highway Department employees, although it was stipulated that neither would be integrally involved in labor relations with respect to the instant unit. As Commissioner, Anderson is at a written step in the grievance procedure. He and Peterson often correspond with the County's Labor Negotiator with respect to strategies and frank evaluations regarding particular grievances, an average of six to eight of which reach the Commission yearly. Ms. Larsen types all such correspondence. Peterson is called upon by the County bargaining team to prepare resource papers with respect to Union demands and possible County response thereto. Ms. Larsen often compiles data in assisting Peterson in the preparation of such resource papers and, in any event, types same. Ms. Larsen has, in the past, spent between five to ten percent of her time working on confidential labor relations materials.

In view of her contact with confidential labor relations materials of the Municipal Employer and since such materials relate to a local union affiliated with AFSCME, just as is the petitioning Local herein, the Commission concludes that Herthal Larsen, as Account Clerk, holds a confidential position, and is therefore, excluded from the unit and not eligible to vote.

Dated at Madison, Wisconsin this 5th day of December, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slawney
Morris Slawney, Chairman
Zel S. Rice II
Zel S. Rice II, Commissioner
Howard S. Bellman
Howard S. Bellman, Commissioner

RESULTING ELIGIBILITY LIST

NONPROFESSIONALS

Jeannette Ashley

Rosemary Bohm

Diane Boldig

Harold Brooks

Stanley Buck

Merry Busch

Merilyn Dahl

Judith Dillenburg

Doris Gappa

Harry Herms

Lorraine Karolus

Rose Kroening

Doris Kumm

Roger Mathison

Dorothy Moesch

Elaine Montour

Marcella Palmer

Kay Parson

Mildred Schreiber

Barbara Schroeder

Kay Schroeder

Ione Schultz

Rosetta Stern

Maynard Stiede

Mary Svendson

Cheryl Thomas

Mona Urban

May Voy

Priscilla Wagner

Norma Wegner

Ruby Zehms

Gale Zernicke

Harvey Zernicke

PROFESSIONALS

Constance Daniels

Janet Lewellyn

Emma List

Mattie Stoehr