

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

LODGE 1289, INTERNATIONAL ASSOCIATION :
OF MACHINISTS AND AEROSPACE WORKERS, :
AFL-CIO :

Involving Certain Employees of :

BROWN COUNTY :

Case XXIII
No. 17352 ME-1001
Decision No. 12381

Appearances:

Mr. Robert K. Williams, Grand Lodge Representative, International Association of Machinists and Aerospace Workers, AFL-CIO, appearing on behalf of the Petitioner.

Mr. Robert Flatley, Corporation Counsel, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Lodge 1289, International Association of Machinists and Aerospace Workers, AFL-CIO having filed a petition and amended petitions requesting the Wisconsin Employment Relations Commission to conduct elections pursuant to Section 111.70(1)(g) and (4)(d)(1) of the Municipal Employment Relations Act among certain employees of Brown County, Wisconsin; and hearing on said petition having been held on December 11, 1973, at Green Bay, Wisconsin, Marvin L. Schurke, Hearing Officer, being present; and the Commission having considered the petition and evidence and being satisfied that questions exist concerning the units appropriate for the purposes of collective bargaining and concerning representation of certain employees of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days of the date hereof among the employees in the following bargaining units who were employed by the Municipal Employer on December 11, 1973, except such employees as may prior to the election quit their employment or be discharged for cause:

UNIT NO. 1

"All professional nurses employed at the Hickory Grove Sanitarium excluding supervisors, confidential employees, managerial employees and all other employees of the Municipal Employer",

UNIT NO. 2

"All professional nurses employed at the Brown County Mental Health Center excluding supervisors, confidential employees, managerial employees and all other employees of the Municipal Employer",

UNIT NO. 3

"All professional social workers, psychologists and related employees employed at the Brown County Mental Health Center excluding supervisors, confidential employees, managerial employees and all other employees of the Municipal Employer",

UNIT NO. 4


"All professional librarians employed by the Brown County Library excluding supervisors, confidential employees, managerial employees and all other employees of the Municipal Employer",

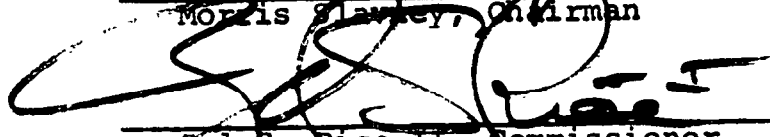
for the purpose of determining whether or not a majority of such employees in each unit desire to be represented by Local 1289, International Association of Machinists and Aerospace Workers, AFL-CIO for the purposes of collective bargaining with the above named Municipal Employer on wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin, this 8th
day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawey, Chairman


Zel S. Rice II, Commissioner


Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The petitioner filed its initial petition on August 10, 1973 seeking an election in a unit consisting of "all Superintendents, Supervisors, Department Heads, Technical and Professional Employees". That petition was superseded by a First Amended Petition, filed on August 17, 1973, wherein the claimed appropriate unit was designated as "all Technical Employees, including Social Workers, Librarians, Nurses and Surveyors, but excluding all other employees". On September 6, 1973 the petitioner filed two further petitions. The claimed appropriate unit was described in one of the latter petitions as "all Social Workers, but excluding all other employees". The other petition described a claimed appropriate unit of "all Technical Employees, including Librarians, nurses and surveyors, but excluding all other employees". Due to the large number of representation proceedings previously conducted by the Commission involving Brown County, the Commission made a request of the petitioner on September 10, 1973 for a more specific listing of the positions sought to be included in the claimed appropriate units. A response to that request was received by the Commission on October 8, 1973, as follows:

"Brown County Library - all librarians
Hickory Grove Sanitarium - all nurses
Brown County Electrician
Brown County Hospital - all nurses
Brown County Department of Maintenance
Brown County Mental Health Center - all social workers
Brown County Fairgrounds - all employees
Tract index - all employees
Emergency Government - all employees
Surveyors - All

and all other employees or classifications that fall within our latest petition."

Thereafter, a copy of the foregoing listing of specific employee groups was forwarded to the Municipal Employer with a request for a listing of the employees occupying those classifications and information concerning collective bargaining relationships affecting those employees. The Municipal Employer provided the information requested on October 25, 1973. Upon completion of an administrative determination of the sufficiency of the showing of interest provided by the petitioner with its petitions, the Commission set hearing in the matter.

At the outset of the hearing held on December 11, 1973, the Municipal Employer called attention to the fact that four separate representation proceedings have been conducted within the past year, wherein the Commission has certified Drivers, Warehouse and Dairy Employees Union Local No. 75, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as Teamsters Local No. 75) as the exclusive collective bargaining representative of various groups of employees of Brown County. In Brown County Case XIX, Teamsters Local No. 75 was certified on February 28, 1973 as the representative of all full-time and regular part-time employees of Brown County's Hickory Grove Sanitarium, excluding supervisory, clerical and professional employees, registered nurses, guards and watchmen. In Brown County Case XX, certified on July 31, 1973, Teamsters Local No. 75

was designated as the representative of all professional employees of the Brown County Department of Social Services, excluding supervisors, the Director, clerical employees and all other employees. In Brown County Case XXI, also certified on July 31, 1973, Teamsters Local No. 75 was designated as the representative of all non-professional employees of the Brown County Department of Social Services, excluding professional employees, the Director, supervisors and all other employees. Finally, in Brown County Case XXII, the Commission certified Teamsters Local No. 75 as the representative of all Brown County employees employed in the Courthouse, Safety Building, Courthouse Annex, Northern Building, Reforestation Camp and University Extension (Agricultural Agents Department) excluding department heads, supervisors, craft and professional employees, police officers, elected and appointed officials and confidential employees.

It is the general policy of the Commission not to hold more than one representation election among a particular group of employees in any one year period. When informed of the recent certifications of Teamsters Local No. 75, the petitioner herein made an oral amendment to its petitions to avoid any encroachment on the units wherein Teamsters Local No. 75 has been certified as the representative within the past year. A representative of the Teamsters appeared at the outset of the hearing and was offered opportunity to intervene in this proceeding. However, once the petitions were amended to avoid encroachment upon the units presently represented by Teamsters Local No. 75, that organization declined to intervene in this proceeding.

On the date of the hearing herein, the petitioner claimed that certain employees not specifically listed in the petitions, or in the petitioner's listing of October 8, 1973, should be included in the unit or units established in this proceeding. These included:

- Brown County Mental Health Center - all psychologists
and research analyst
- Brown County Mental Health Center - Occupational Therapist
- Brown County Mental Health Center - Pharmacist
- Brown County Health Nurse Department - all nurses
- Brown County Sanitarian
- Brown County Golf Course - Superintendent

The County objected to the inclusion of the foregoing positions in any bargaining unit pursuant to the petitions filed in this case, on the basis that it had not been given adequate notice of the intention to include those positions in a unit to permit preparation prior to hearing. During the course of the hearing the circumstances existing in the Brown County Health Nurse Department were disclosed, and the petitioner withdrew its claim as to that department. At the close of the hearing, the petitioner withdrew its claims concerning the occupational therapist and the pharmacist.

The petitioner initially took the position that certain employees who were excluded from other units as supervisors were not actually supervisors within the meaning of the Municipal Employment Relations Act (MERA), and that such positions should be included in a unit created in the instant case. The MERA places special restrictions on the establishment of mixed units of professional and non-professional employees. 1/ During the course of the hearing, it appeared that in some instances the positions in question could not be considered as professional positions and that, if the positions in dispute were not supervisory, then they should be included in the same unit with rank and file employees of the same department. Thereupon, the petitioner

1/ Section 111.70(4)(d)(2)(a), Wisconsin Statutes.

indicated that it sought to represent only professional employees in a unit or units composed entirely of professional employees, in the following groupings:

Registered nurses employed at Brown County Mental
Health Center and at Hickory Grove
Sanitarium
Social workers and Psychologists employed at the
Brown County Mental Health Center
Librarians employed at the Brown County Library
Sanitarian employed by Brown County
Surveyor employed by Brown County

The petitioner thereby withdrew its claims concerning the Maintenance Department, the electrician, the Fairgrounds, the Tract Index Department, the Emergency Government Department, and the Golf Course.

THE UNITS APPROPRIATE FOR COLLECTIVE BARGAINING:

The Commission is called upon in this proceeding to determine the unit or units appropriate for the purposes of collective bargaining in a situation involving professional employees engaged in diverse professions and, further, employed under a number of separate governing boards. The Municipal Employer takes the position that a single bargaining unit composed of all of the professions listed above would place it in a position in which it could not fulfill the bargaining obligations imposed by the Municipal Employment Relations Act. The Brown County Library and the Brown County Mental Health Center are each under the direction and control of separate governing boards, and the County contends that such boards are empowered by statute to act independently on matters affecting the wages, hours and conditions of employment of employees of those institutions. The County contends that units should be established along the same lines of jurisdiction as exist for the governing boards. The petitioner maintains that the County has sufficient budgetary and operational control over the various institutions involved here to warrant a finding that all of them are subordinate to the Brown County Board, and that separate bargaining units would not be necessary beyond the two units sought in the latest set of petitions.

Hickory Grove Sanitarium is under the control of a Board of Trustees created pursuant to Section 46.18, Wisconsin Statutes. No overlap exists between membership on the Board of Trustees and the membership of the County Board. The trustees are chosen by the County Board for three-year terms and are removable, for reasons of misconduct or neglect, by the County Board. The Board of Trustees appoints a Superintendent who, in turn, appoints and removes employees, subject to the County civil service law. However, the County concedes that it has considerable direct control over the Hickory Grove Sanitarium, as it controls both the budget of the institution, 2/ and fixes the salaries of the employees. 3/

The Brown County Mental Health Center presents a somewhat different situation. That institution is under the direction and control of a "governing and policy-making" board of directors, known as the "community mental health, mental retardation, alcoholism and drug abuse board", created pursuant to Section 51.42(4) of the State Mental Health Act. Such a board must consist of 9 to 15 members,

2/ See Section 46.18(11), Wisconsin Statutes.

3/ See Section 46.19(4), Wisconsin Statutes.

while not more than 5 of the members may also be members of the County Board. The members of the Board of Directors are appointed by the County Board and are removable, for cause, by the County Board. The County Board reviews and approves the overall plan, program and budgets proposed by the Board of Directors, 4/ but the Board of Directors is specifically authorized to provide for certain types of services 5/ and to hire and fix the salaries of personnel employed to administer the program. 6/ The Brown County Mental Health Center is located in a facility separate and apart from the Hickory Grove Sanitarium, and no interchange of employees is practiced between the two institutions.

Chapter 43, Wisconsin Statutes, provides for the establishment of public libraries. Every such public library system is governed by a board appointed pursuant to Section 43.19 or 43.21. The members of the library board are appointed for 3 year terms, and limited overlap is required by statute between the membership of the County Board and that of the library board. The County Board sets the amount of money provided annually to the library board from tax levies, 7/ but the library board is vested with exclusive control of the expenditure of all monies collected, donated or appropriated for the library fund, 8/ and has authority to hire employees and fix their compensation. 9/ Under the same chapter, provision is made for the certification of professional librarians by the Wisconsin Department of Public Instruction. The record indicates no interchange whatever between the professional librarians in the proposed unit and any other profession or classification in County government.

PROFESSIONAL NURSES

The Municipal Employment Relations Act authorizes the Commission to determine units appropriate for the purposes of collective bargaining. The statute encourages the avoidance of fragmentation, whenever possible, by maintaining as few units as practicable in keeping with the size of the municipal work force. While a county-wide unit of professional nurses would tend to avoid fragmentation, such a unit would involve an overlapping of employer functions in this situation. The distinctions of location, purpose and governance require the establishment of separate units of nurses at the Hickory Grove Sanitarium and at the Brown County Mental Health Center.

SOCIAL WORKERS

All of the social workers involved in this case are employed at the Brown County Mental Health Center. The only other social workers employed by the County or its subdivisions are employed in the Brown County Department of Social Services and are included in the bargaining unit involved in Brown County, Case XX, supra. One of the arguments initially advanced by the County was that the social workers should be included in a single unit. However, that argument flies in the face of the County's own argument concerning the existence of separate governing boards. The Commission has

4/ See Section 51.42(3)(b), Wisconsin Statutes.

5/ See Section 51.42(5)(a) through (g), Wisconsin Statutes.

6/ See Section 51.42(5)(h)(6), Wisconsin Statutes.

7/ See Section 43.57(2), Wisconsin Statutes.

8/ See Section 43.58(1), Wisconsin Statutes.

9/ See Section 43.58(4), Wisconsin Statutes.

found departmental units to be appropriate in a number of cases involving county welfare agencies. 10/ Social Workers employed at the Brown County Mental Health Center are under separate supervision and are engaged in activities separate and apart from the work of the Brown County Department of Health and Social Services. The creation of two separate units which include social workers will not constitute an undue fragmentation in this case.

PSYCHOLOGISTS

The record indicates that two psychologists are employed at the Brown County Mental Health Center, and that these individuals work closely with the social workers employed at that facility. The County initially opposed the inclusion of psychologists in any unit, on the basis of lack of notice, but later provided testimony concerning the psychologists in question. The County concedes that the psychologists do not act in a supervisory capacity. They perform some testing functions which are unique to their profession, but otherwise work with individual patients and groups of patients. In Milwaukee County (8530) 5/68, the Commission found psychologists to constitute a professional group separate and apart from social workers employed in the same welfare agency, and severed the psychologists from a departmental unit on the basis of the requirement of the statute then in effect that each craft or profession constitute a separate bargaining unit. The Municipal Employment Relations Act, enacted in November, 1971, does not require such strict separation of professions. In this instance, the Commission finds that separation of the psychologists from the social workers with whom they work would constitute an undue fragmentation.

RESEARCH ANALYST

A question also exists concerning the appropriate unit assignment for the position of Research Analyst in the Outpatient Division of the Brown County Mental Health Center. Leah Abrahams, the present occupant of that position, holds an advanced degree in social research (in the field of sociology), and is thoroughly familiar with the treatment process engaged in by the social workers and psychologists employed at the Brown County Mental Health Center, although she does not deal directly with clients herself. The research analyst performs research functions and develops statistics to assess the effectiveness of the programs and techniques used by the social workers and psychologists. This function requires the exercise of independent judgment and is not a clerical or routine function. The County concedes that the functions of the Research Analyst are performed in a non-supervisory capacity. The Commission finds the Research Analyst position to be a professional position and finds further, that the Research Analyst works in support of the same program engaged in by the Social Workers and Psychologists. The Research Analyst is therefore included in a single unit with the Social Workers and Psychologists.

PROFESSIONAL LIBRARIANS

The Commission has previously included professional librarians in a single unit with other professions, such as teachers and guidance counselors in a school situation, on the basis that such personnel possessed teaching certificates evidencing a background in education and worked with students or teachers in a non-supervisory capacity in

10/ See, e.g. St. Croix County (12338) 12/73; Pierce County (12316) 12/73; Portage County (11308, 11309) 9/72.

support of the educational program. 11/ In this case there is no evidence that librarians and other professional employees regularly work in any common program. The librarians are located in a number of library facilities located around the County, but not in the same institutions with other employees involved in this case. These factors, together with the separate governance of the library, indicate that a separate unit of librarians would be appropriate.

SANITARIAN

An issue arose during the hearing in this case concerning the sanitarian employed by Brown County and the appropriate unit, if any, for that position. The sanitarian enforces County sanitary ordinances, primarily through the issuance of septic tank permits. Several other employees, working on a part-time basis, perform soil tests which are required prior to the issuance of such permits, and the sanitarian works in the field only in exceptional cases. The record indicates that the present occupant of the position in question has attended some courses having a relationship to his present position, but has no degree or specialized training in the field. The County asserts that the functions of the Brown County sanitarian are somewhat narrower than those encountered by sanitarians employed by the City of Green Bay, where the Commission found the sanitarians to be professional employees. 12/ The differences existing here, particularly the facts that the instant position does not require a college degree and its only function relates to permits for septic tanks, are sufficient in our view to distinguish the cases, and the sanitarian position is found not to be a professional position. In that the petitioner seeks to represent only professional employees, no question of representation exists concerning the sanitarian position.

ISSUES CONCERNING ELIGIBILITY

SURVEYOR

The Brown County Surveyor is the department head in a department consisting of the Surveyor, an assistant surveyor and one clerical employee. The County contends that the Surveyor was excluded from the unit established in Brown County, Case XXII as a supervisor, and that the same disposition should be made in this case. The petitioner questions the validity of the stipulation by which the surveyor was excluded as a supervisor in Case XXII, and contends that the surveyor is actually under the supervision and control of the Brown County Highway Department, so that his independent supervisory authority is only very limited. The County acknowledged that the surveyor performs most of his work for the Highway Department, but asserts that the Surveyor is directly accountable to the County Executive. The County also calls attention to the fact that the surveyor is now an appointive position, but that the statutes authorize the creation of County Surveyor as an elective position. In that the Surveyor is the only direct intermediary between the County Executive and the other employees in the Surveyor Department, the Commission concludes that the stipulation reached in Case XXII was not repugnant to the purposes of the Act, and that the Surveyor is a supervisor.

NURSES-HICKORY GROVE

The parties stipulated to the exclusion of Margaret Denys, Director of Nursing, and Madge Scheffler, Day Shift Nursing Supervisor,

11/ See Janesville Board of Education (6678) 3/64; Appleton Joint School District No. 10 (7151) 5/65.

12/ City of Green Bay (11201) 8/72; See also City of Appleton (11784) 4/73; City of Racine (10620) 4/72.

at Hickory Grove Sanitarium, as supervisors. No positions were in dispute among the remaining professional nurses at that institution.

NURSES-BROWN COUNTY MENTAL HEALTH CENTER

The parties stipulated to the exclusion of the Director of Nursing and 6 night supervisors among the professional nurses at the Brown County Mental Health Center, on the basis that all of said positions were supervisory. Questions have arisen concerning the eligibility of the Director of Inservice and Staff Development and four Unit Head Nurse positions.

Barbara Bauer is employed as the Director of Inservice and Staff Development. Bauer does no nursing work and the record indicates that professional qualification as a nurse is not required for the position which she now occupies. Bauer functions as a coordinator of training programs for a total of approximately 275 employees of the institution, working a flexible schedule and having the assistance of one employee. Where the interests of an employee are more closely identified with those of management than those of rank and file employees, exclusion from a collective bargaining unit has been found appropriate. 13/ Here, on the record before us, the position in question appears to be an arm of management, functioning at all levels within the institution, and we conclude that exclusion is appropriate.

While the parties were able to stipulate to the exclusion of a total of 6 part time employees who occupy positions as night supervisors, they were unable to agree on the disposition of 4 full time positions described as "unit heads". Testimony in this proceeding indicates that the occupants of these positions are engaged in highly responsible nursing work and exercise considerable professional skill in the performance of their duties. They are consulted on matters such as promotion, discharge and program planning, and their recommendations are generally effective. Each of them is charged with "24 hour" responsibility in their respective units and heads a staff of professional nurses, licensed practical nurses, nurses aides and orderlies ranging in size from 14 to 23 employees. The County asserts that 75% of their time is devoted to supervision and management responsibilities, while only 25% of their time is devoted to actual nursing care. Lacking any significant opposing evidence, and despite the several levels of supervision existing in the organizational structure of the Mental Health Center, the Commission must conclude that the 4 positions here in question are supervisory and should be excluded from the unit.

SOCIAL WORKERS AND RELATED POSITIONS

The parties stipulated to the exclusion, as supervisory, of the position of "Psychiatric Social Worker & Administrator Chief Social Worker" held by Walter Weaver. Questions concerning certain of the employees working under Weaver have been disposed of, above, in the allocation of positions to bargaining units.

BROWN COUNTY LIBRARY

The parties stipulated to the exclusion of the Director and Business Manager of the library as supervisory and confidential employees. The County contends that 7 of the remaining 9 professional

13/ See, e.g. Minnesota and Ontario Paper Co., 92 NLRB 711 (1950) [Safety and training program instructor]

employees are supervisors and should be excluded from the unit. The petitioner takes the position that the 7 individuals in question merely exercise professional leadership, and are not supervisors within the meaning of the act.

Carol Dinsmore is employed as the Coordinator of Adult Services and, in that capacity, is in charge of the adult departments of the main library and participates in the selection of materials for branch libraries. Approximately 17 employees work under her jurisdiction, including 3 professional employees, and Dinsmore spends approximately two-thirds of her time engaged in supervising those employees. Her authority includes hiring, making of recommendations on discharge, discipline of employees, training and assignment of duties. On the record before us, we conclude that Dinsmore exercises supervisory authority above and beyond the practice of her profession, and should be excluded from the unit.

Catherine LaViolette holds the same "Librarian IV" classification as does Dinsmore, but is in charge of children's services. She spends approximately two-thirds of her time supervising 7 non-professional employees, exercising authority similar to that exercised by Dinsmore. This position is also excluded as supervisory.

The branch library and bookmobile operations of the Brown County Library are within the jurisdiction of Patricia Foley, who holds the Librarian IV classification and functions as the head of Extension Services. Her authority is similar to that granted to Dinsmore and LaViolette, and she exercises that authority over a total of approximately 30 employees, including some professional employees. Foley spends approximately two-thirds of her time in supervision of employees, and we conclude that she, too, should be excluded from the unit as a supervisor.

Helen Gerber is classified as "Librarian III" and is in charge of cataloging. Her functions are carried out primarily at the main library facility, where she is assisted by 5 employees. The County offered evidence to indicate that Gerber schedules and oversees the performance of work, that she hires employees and that she discharges employees with the concurrence of the Director. However, the record also indicates that Gerber spends a majority of her time engaged in the same cataloging work as is performed by the other employees in her area. Contrary to the assertion of the County that all of the alleged supervisors are primarily engaged in supervision, we find that Gerber is a lead worker and not a supervisor. Her position is included in the collective bargaining unit.

Mildred Lorberblatt is classified as a Librarian III and functions as the head of the reference section in the main library. In the past approximately 8 non-professional employees reported to Lorberblatt, but fewer employees will be so assigned in the future. Lorberblatt has no authority with respect to hiring and works under Dinsmore in the main library, so that she appears to have only minimal independent authority. We conclude that the position is not supervisory and is included in the bargaining unit.

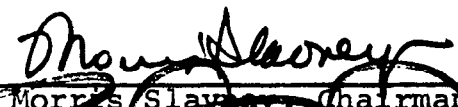
Blanche Janssen and Lorraine Sawyer are classified as Librarian III and Librarian II, respectively, and function as the heads of two of the branch libraries in the Brown County Library system. Each of them works with a staff of approximately 5 employees, including student help, and spends less than 50% of her time in supervision. Each also works in direct contact with the public at the branch

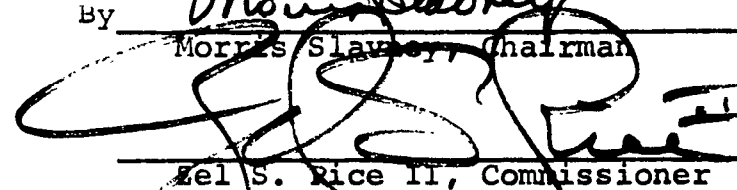
library, along with the other members of the branch staff. Both of the branch libraries fall under the jurisdiction of Patricia Foley, discussed above, and we conclude that the record does not warrant the exclusion of multiple levels of supervision in this situation. Both positions are therefore included in the bargaining unit.

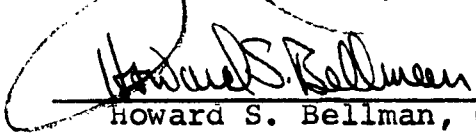
Dated at Madison, Wisconsin, this 8th day of January, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slawson, Chairman


Mel S. Rice II, Commissioner


Howard S. Bellman, Commissioner