

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 655,
AFSCME, AFL-CIO

For clarification of Bargaining
Unit of Certain Employees of

JEFFERSON COUNTY

Case XVI
No. 17808 ME-1049
Decision No. 13038

Appearances:

Mr. Darold O. Lowe, District Representative, appearing on behalf
of the Petitioner.

Peck, Brigden, Petajan, Lindner, Honzik & Peck, S.C., Attorneys
at Law, by Mr. Roger E. Walsh, appearing on behalf of the
Municipal Employer.

ORDER CLARIFYING BARGAINING UNIT

Wisconsin Council of County and Municipal Employees, Local 655, AFSCME, AFL-CIO, having, on April 1, 1974, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested the Commission to issue a clarification of a voluntarily recognized collective bargaining unit; and, pursuant to notice, a hearing having been held in the matter at Jefferson, Wisconsin, on May 2, 1974, Sherwood Malamud, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and files the following

ORDER

That the position of Account Clerk II shall be and the same hereby is, included in the collective bargaining unit consisting of all Highway Department employees in the employ of Jefferson County, except the Commissioner, the Superintendent, the Office Manager, the Accountant Assistant, other Main Office confidential personnel, and the Radio Technician.

Given under our hands and seal at the
City of Madison, Wisconsin, this 25th
day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Zel S. Rice II
Zel S. Rice II, Commissioner

Howard S. Bellman
Howard S. Bellman, Commissioner

No. 13038

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

Wisconsin Council of County and Municipal Employees, Local 655, AFSCME, AFL-CIO, hereinafter referred to as the Union, is the voluntarily recognized collective bargaining representative of certain employees employed by Jefferson County, hereinafter referred to as the County, in a unit, voluntarily established by the parties described in Article of the collective bargaining agreement between the parties as:

"All Highway Department employees except the Commissioner, the Superintendent, the office manager, the accountant assistant, other main office confidential personnel, and the radio technician."

Mr. Lowe, District Representative of the Union, initiated the proceeding herein by letter, which was received on April 1, 1974, wherein he requested the Commission to determine whether the position of Account Clerk II should be included in the unit described above. During the course of the hearing, the Union narrowed the issue to whether one of the three Account Clerk II positions should be included in the unit. The Union maintains that the County improperly transferred bargaining unit duties to one Account Clerk II, which position is not in the bargaining unit.

The County opposed the Union's attempt to narrow the issue to the one Account Clerk II position, and moved to dismiss the Union's petition, contending that the issue as to whether the County improperly transferred bargaining unit duties to individual (s) outside the bargaining unit is one which must be resolved through the grievance procedure of the collective bargaining agreement and not through a clarification of the bargaining unit. The Hearing Officer deferred ruling on said motion and proceeded with the hearing.

The Commission denies the County's motion to dismiss, and has limited the issue herein as to whether the position of Account Clerk II should be included in the unit. The Commission will not here determine the propriety of the County's decision to assign certain duties to an employee outside the bargaining unit.

The bargaining unit position of Shop Account Clerk has been vacant for approximately two years. During that period the duties for the Shop Account Clerk were performed by one of the Account Clerk II's, Irene Wells. The Union has never asserted any right of representation on behalf of the employee, classified as Account Clerk II, despite the fact that said position was in existence prior to, and at the time, Wells was hired.

The Union argues that its failure to claim bargaining unit status on behalf of the Account Clerk II's and its omission of the Account Clerk II from the salary schedule in the agreement, stems from the County's assertion of confidential status for the employee in that position. Recently, the County maintained that the Account Clerk II, Wells, is in a confidential position in its response to a grievance

The Union presented evidence of the similarity between the duties formerly performed by the Shop Account Clerk and those presently performed by the Account Clerk II.

The County presented evidence which indicates the clerical nature of the Account Clerk II position and the similarity between the clerical functions performed by these Highway Department clericals and clerical employees employed throughout the County. The County argues that the only appropriate unit for the Account Clerk II is a County-wide unit of clerical employees (a unit which is not in existence at this time). However, should the Commission decide to accrete the Account Clerk II position to the bargaining unit, the County argues, the Commission should do so only if the employees classified as Account Clerk II are provided an opportunity to participate in an accretion election.

The County's argument that the only appropriate unit is a County-wide unit of clerical employees cannot be sustained. The unit to be clarified herein, is a voluntarily recognized unit. A voluntarily recognized unit of all otherwise eligible employees of one department of a municipal employer is a unit which is not repugnant to the provisions of the Municipal Employment Relations Act relating to the establishment of appropriate collective bargaining units. 1/

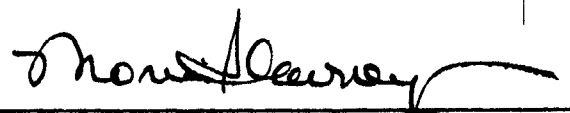
The unit described in the collective bargaining agreement is an all inclusive unit of employees of the Highway Department. The exclusion contained in the agreed-to-description which may apply to the position in question is the phrase, "other Main Office confidential Personnel." The parties have negotiated a number of agreements in the course of their bargaining relationship, wherein the Account Clerk II has been excluded from the unit, and from the agreement, because of the County's assertion and the Union's acceptance, of the confidential status of the employees in that position. However, in light of the County's change in position and the Account Clerk II's lack of access to matters relating to labor relations, the Commission concludes that the Account Clerk II is not a confidential position, and therefore the Commission concludes that the position of Account Clerk II is properly included in the unit described as:


"All Highway Department employees except the Commissioner, the Superintendent, the office manager, the accountant assistant, other main office confidential personnel, and the radio technician."

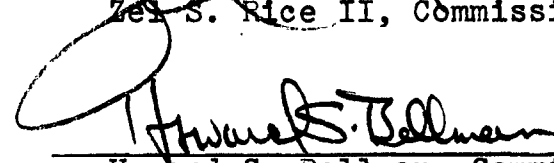
Dated at Madison, Wisconsin, this 25th day of September, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


J. S. Rice II, Commissioner


Howard S. Bellman, Commissioner