

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO  
Involving Certain Employes of  
KEWAUNEE COUNTY

Case II  
No. 18385 ME-1111  
Decision No. 13185

Appearances:

- Mr. Michael J. Wilson, District Representative, appearing on behalf of the Petitioner.
- Mr. Donald L. Quistorff, County Board Chairman, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employes of Kewaunee County; and a hearing on such petition having been conducted on November 5, 1974, at Kewaunee, Wisconsin, Douglas V. Knudson, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties and being satisfied that questions of appropriate units and representation have arisen involving certain employes of the Municipal Employer;

NOW, THEREFORE, it is

DIRECTED

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive, in the following voting groups:

Voting Group No. 1

All employes of Kewaunee County employed in the Courthouse and associated departments, including secretarial-clerical employes in the Highway Department, and conditionally excluding professional employes employed in the Department of Social Services, and fully excluding elected officials, supervisory, managerial, confidential and law enforcement employes and Highway Department, other than secretarial-clerical employes, who were employed by Kewaunee County on November 29, 1974, 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 and 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 professional employes of Kewaunee County employed in the Department of Social Services, excluding supervisors and all other employes, who were employed on November 29, 1974, except such employes as may prior to the election quit their employment or be discharged for cause, for the purposes of determining:

- 1) Whether a majority of such employes desire to be included in one single bargaining unit consisting of the employes set forth in Voting Group No. 1 above, and
- 2) Whether a majority of such employes 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 29th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

*Howard S. Bellman*  
Howard S. Bellman, Commissioner

No. 13185

MEMORANDUM ACCOMPANYING  
DIRECTION OF ELECTIONS

In its petition, the Union contended that the appropriate unit should consist of "all employes of the Kewaunee County Courthouse and associated Departments, including secretarial-clerical employes of the Highway Department, but excluding elected officials, supervisory, managerial and confidential employes." During the course of the hearing the parties agreed to exclude law enforcement personnel and all non-secretarial-clerical employes of the Highway Department from said courthouse unit, and in addition, agreed that the professional employes employed in the Department of Social Services should be given an opportunity to determine whether they desire to be included in a single bargaining unit with the otherwise eligible non-professional employes employed in the courthouse. The representation ballots cast by the professional employes in the Department of Social Services 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 employes in the Department of Social Services as to their desire to be included in the non-professional unit will be tallied first.
- 2) If a majority of the eligible professional employes in the Department of Social Services do not vote in favor of inclusion in the non-professional unit, the challenged representation ballots cast by the professional employes in the Department of Social Services will be opened and counted separately, from the ballots cast by the non-professional employes.
- 3) If the professional employes 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 employes in such a manner to preserve the secrecy of the ballots, and thereupon count the combined ballots.

In the event that the professional employes involved vote for inclusion in the non-professional unit, the appropriate bargaining unit shall consist of all employes of Kewaunee County employed in the Courthouse and associated departments and the Department of Social Services including secretarial-clerical employes in the Highway Department, excluding elected officials, supervisory, managerial, confidential and law enforcement employes and Highway Department, other than secretarial-clerical, employes. Should the professional employes involved reject inclusion in the non-professional unit, the appropriate units shall consist of (1) all employes of Kewaunee County employed in the Courthouse and associated departments, including secretarial-clerical employes in the Highway Department, excluding professional employes in the Department of Social Services, elected officials, supervisory, managerial, confidential and law enforcement employes and Highway Department, other than secretarial-clerical, employes and (2) all professional employes of Kewaunee County employed in the Department of Social Services, excluding supervisors and all other employes.

The Municipal Employer, contrary to the Union, asserted that employes in the following positions ought to be excluded from the

eligibles in the non-professional unit for the following reasons: (1) the Deputy County Clerk, Deputy County Treasurer, Deputy Register of Deeds, Deputy Clerk of Court and Register in Probate because the powers of their appointment and removal lie with elected officials and judges rather than the County; and, (2) the Technical Secretary and District Technician because said employes are supervised by federal government employes and the Municipal Employer is reimbursed by the federal government for the wages and fringe benefit costs of said employes.

Deputies to Elected Officials:

With respect to the general employe 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 Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employe under the statute. Therefore, except so far as tenure is concerned, the deputy is in the same situation as any other County employe. 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."

The Commission considered, and included in the bargaining unit, the same deputy positions in Shawano County. 2/

In Oneida County 3/, the Commission stated as follows:

"While the Register in Probate was not among the appointive positions specifically mentioned in the foregoing (Citation from Ashland County as set forth above), the Commission finds no basis on which the Register in Probate should then have been, or should be now, treated differently from other appointive positions in County government."

The Commission stated the following in St. Croix County 4/

"Chapter 253 of the Statutes does not purport to give the County Judge authority with respect to all aspects of the employment relationship, and Section 253.31(3) specifically vests control over salaries in the County Board. Tenure of employment is only one of the items within the broad scope of subjects of collective bargaining in municipal employment. The removal of one subject

- 1/ Decision No. 7214 (7/65)
- 2/ Decision No. 12310 (12/73)
- 3/ Decision No. 12247 (11/73)
- 4/ Decision No. 12423-A (4/74)

No. 13185

from the scope of bargaining does not foreclose bargaining on the remaining subjects . . ."

The Commission finds no basis in the instant proceeding to alter its previous determinations and, therefore, the positions of Deputy County Clerk, Deputy County Treasurer, Deputy Register of Deeds, Deputy Clerk of Court, and Register in Probate are included in the non-professional unit.

Technical Secretary and District Technician:

Both of these positions are in the office of the Soil Conservation District, which is administered by a Soil Conservationist who is an employe of the federal Department of Agriculture. The Soil Conservationist assigns duties to said two employes and supervises their performance. The Municipal Employer, who hires the employes, issues their payroll checks and covers them with its fringe benefit programs, exercises no day-to-day supervision of the employes. However, Chapter 92 of the Wisconsin Statutes clearly vests the control, as well as the establishment and/or discontinuance, of the Soil Conservation District in the Municipal Employer. The Commission has previously held that mere funding of employe salaries or wages by another unit of government is not a sufficient basis for the exclusion of said employes from a collective bargaining unit. 5/ In the event the federal reimbursement of the salaries of said employes would cease and the Municipal Employer decided to discontinue the Soil Conservation District, its responsibility to provide the employes with continued employment would be dependent upon the terms of the collective bargaining agreement, if any, then in effect between it and the Union. Further, to avoid establishing separate fringe benefit programs, e.g., insurance, pension, etc., for two employes, the Municipal Employer included said two employes in the same benefit programs covering the other employes included in the non-professional unit herein. Clearly, the Municipal Employer has retained control of the benefit programs received by the two said employes. The Commission concludes that the Technical Secretary and District Technician share a community of interest in their conditions of employment with the other members of the non-professional unit established herein and hereby are included in said non-professional unit.

Lists of Eligible Voters:

During the course of the hearing, the Municipal Employer agreed that, following the receipt of the Direction of Elections, it would prepare and submit to the Commission and to the Union lists of the employes in each of the units. The Commission hereby directs the Municipal Employer to submit such lists within ten days hereof.

Dated at Madison, Wisconsin, this 29th day of November, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

5/ Superior Vocational School (7479) 2/66; Milwaukee Board of Vocational and Adult Education (6343-A) 11/69; Milwaukee Board of School Directors (9000 and 9001) 4/69; and City of Chetek (10757-A) 4/72.