

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LACROSSE COUNTY

No. 13405

of collective bargaining with the above-named Municipal Employer
on questions of wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 3rd
day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Norris Slavney*
Norris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The unit described in the petition is identical to the one in the case initiated by the Petitioner in July, 1972 in which the Commission directed and conducted an election, wherein the employees rejected the Petitioner as their bargaining representative. 1/ The unit involved herein describes a residual unit of non-professional, unrepresented clerical, maintenance and technical (draftsmen) employees primarily located in the LaCrosse County Courthouse.

During the course of the hearing, issues arose concerning the definition of the term "part-time employee" contained in the unit description. The Employer maintained, contrary to the Union, that part-time employees who worked less than 50 percent of a full work week should be excluded from the unit. This dispute over definition of part-time employees had specific application, as to the eligibility of the Community Health Nurse's Aide to participate in the election. In addition, the parties raised eligibility issues concerning the Account Clerk I in the Guidance Clinic; the Clerk-Stenographer III to the Unified Board (51.42 Board); and a Typist II employed in the Social Services Department under the Work Incentive Program (WIN).

Community Health Nurse's Aide-Marilyn Olson

The Community Health Nurse's Aide, Marilyn Olson works on a regular basis two days per week, for 15 hours per week. The Employer would exclude Olson from the unit solely on the basis that she works less than 50 percent of a full work week. Although part-time employees who work less than 50 percent of the time are excluded in several of this Employer's units, those exclusions were achieved through agreement of the parties. Here, the Union has not agreed to exclude part-time employees who work less than 50 percent of a full work week. The Commission has held that employees who work a regular schedule, albeit, on a part-time basis, have a definite interest in wages, hours and conditions of employment along with full-time employees. 2/ Olson's regular work schedule provides her with a community of interest with other full-time employees such that she is eligible to participate in the election.

Account Clerk I-Guidance Clinic-Betty Jean Clarkin

The Employer is not asserting that all Account Clerks I are supervisory and/or confidential personnel; rather, it is claiming that Betty Jean Clarkin, the Account Clerk I in the Guidance Clinic, is a supervisory and/or confidential employee. 3/ Clarkin receives the same pay rate as other Account Clerks I; she interviews job applicants, evaluates the job performance of clerical employees in the Clinic and makes recommendations whether to retain employees upon their completion of probation. She maintains and checks employee

1/ LaCrosse County (11232) 8/72 and 10/72.

2/ Manitowoc County (10899) 3/72.

3/ After the close of the hearing, the Employer forwarded affidavits of Clarkin and Kube concerning their job responsibilities. The Union did not object to the Commission's receipt of said affidavits, however, such self-serving evidence which was not presented at the hearing was not considered by the Commission.

time and attendance records, as well. On the other hand, the Union maintains that Clarkin's predecessor participated in the 1972 representation election, and that Clarkin too should be included in the unit.

The Commission is satisfied that Clarkin is engaged in the hiring process and that she makes recommendations affecting the employment status of County employees. Therefore, the Commission concludes that Clarkin is a supervisor within the meaning of Section 111.70(1)(c) of MERA and, therefore, she is excluded from the unit.

Clerk-Stenographer III to the Unified Board-Beverly Kube

The Unified Board is organized under Chapter 51.42 of Wisconsin Statutes, and it is charged with the responsibility of administering the County's Mental Health, Alcoholism and Drug abuse programs at the Lakeview facility. The Clerk-Stenographer III employed by the Unified Board is a newly created position. The Employer maintains, contrary to the Union, that Kube is a confidential employee because she records the minutes of Unified Board meetings and, thus she is privy to matter pertaining to employment relations. At present, the Board of Trustees of the Public Medical Institutions, a board separate and distinct from the Unified Board, engages in labor negotiations and processes employee grievances at the County's institutions including Lakeview.

The Commission, in LaCrosse County (12931) 8/74, determined that the employees located at Lakeview who were subject to the jurisdiction of the Unified Board, did not constitute an appropriate bargaining unit, but were properly included in the existing collective bargaining unit which is under the jurisdiction of the Board of Trustees. Furthermore, at the time of the hearing in the matter herein, it was not clear what role the Unified Board would play in future negotiations or in the processing of grievances of employees at Lakeview. However, it is apparent that up to the time of the hearing, Kube was not privy to any matters pertaining to labor relations. Therefore, the Commission concludes that Kube is not a confidential employee and she is eligible to participate in the election.

WIN Employee-Judith Huwald

Judith Huwald is employed as a Typist II in the Social Services Department. Since Huwald's employment is sponsored by the federally and state funded Work Incentive Program which is administered through the LaCrosse County Social Services Department, the Employer is reimbursed by the WIN Program during the first six months of Huwald's employment. Although Huwald receives the same wage rate as other Typist II's, as a WIN employee, she is not entitled nor does she receive the same fringe benefits as other County Employees. At the time of the hearing, Huwald, who had commenced her employment in September, 1974, had not completed her first six months of employment. After termination of WIN funds upon expiration of her first six months of employment, Huwald may be released or she may continue her employment as a regular employee of the Employer. Thus, Huwald's employment status most resembles that of a probationary employee. The Commission has held that probationary employees are eligible to participate in the election where they have a reasonable expectancy to remain in their employment. 4/ Furthermore, the Commission has determined that the source of funding for an employee's position

4/ City of Monroe (11580) 2/73.

will not affect that employee's eligibility to participate in an election; 5/ and the Commission concludes that the federal and state funding of the WIN program is not determinative of Huwald's right to participate in the election. The Commission concludes that Huwald is eligible to participate in the election.

Dated at Madison, Wisconsin this 3rd day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
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