#### 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

Case XXVIII No. 18520 ME-1131 Decision No. 13405

Involving Certain Employes of

LACROSSE COUNTY

Appearances:

Mr. Walter J. Klopp, Business Representative, WCCME, AFSCME, AFL-CIO, appearing on behalf of the Petitioner.

Mr. Ray A. Sundet, Corporation Counsel and Mr. Kenneth Guthrie,
Director of Personnel, appearing on behalf of the Municipal
Employer.

### DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to the Municipal Employment Relations Act among certain employes of LaCrosse County; and a hearing on said petition having been conducted on December 20, 1974, Sherwood Malamud, llearing Officer, being present; and the Commission having considered the evidence, and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer;

NOW, THEREFORE, it is

#### DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of this Directive in the collective bargaining unit consisting of all regular full-time and all regular part-time employes employed by LaCrosse County, but excluding elective officials, department heads, professional employes, supervisors, confidential employes, law enforcement personnel, employes employed at the Hillview Home, Oak Forest Sanitorium and Nursing Home, LaCrosse County Hospital (Lakeview), and all field, shop, and maintenance personnel of the Highway and Parks Departments, who were employed by the Municipal Employer on December 20, 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 purpose

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

Morris Slavney, Chairman

Howard S. Bellman, Commissioner

Mu Orosian, Commissioner

LACROSSE COUNTY, XXVIII, Decision No. 13405

**I** 

### 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 employes 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) employes primarily located in the LaCrosse County Courthouse.

During the course of the hearing, issues arose concerning the definition of the term "part-time employe" contained in the unit description. The Employer maintained, contrary to the Union, that part-time employes who worked less than 50 percent of a full work week should be excluded from the unit. This dispute over definition of part-time employes 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 Nurses 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 employes 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 employes who work less than 50 percent of a full work week. The Commission has held that employes 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 employes. 2/ Olson's regular work schedule provides her with a community of interest with other full-time employes 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 employe. 3/ Clarkin receives the same pay rate as other Account Clerks I; she interviews job applicants, evaluates the job performance of clerical employes in the Clinic and makes recommendations whether to retain employes upon their completion of probation. She maintains and checks employe

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

<sup>2/</sup> Manitowoc County (10899) 3/72.

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 employes. Therefore, the Commission concludes that Clarkin is a supervisor within the meaning of Section 111.70(1)(0) 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 employe 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 employe grievances at the County's institutions including Lakeview.

The Commission, in <u>LaCrosse County</u> (12931) 8/74, determined that the employes located at <u>Lakeview</u> 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 employes 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 employe and she is eligible to participate in the election.

# WIN Employe-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 Although Huwald receives the same wage rate as other Typist II's, as a WIN employe, she is not entitled nor does she receive the same fringe benefits as other County Employes. 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 employe of the Employer. Thus, Huwald's employment status most resembles that of a probationary employe. The Commission has held that probationary employes 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 employe's position

<sup>4/ &</sup>lt;u>City of Monroe</u> (11580) 2/73.

will not affect that employe'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 Mourtlavier, Mairman

Noward S7 Bellman, Commissioner

Herman Torosian, Commissioner

<sup>5/</sup> Adams-Friendship Area Schools (11811) 5/73.