

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 Employees of

VERNON COUNTY

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: Case XXIII
: No. 19144 ME-1194
: Decision No. 13805

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: Case XXIV
: No. 19135 ME-1198
: Decision No. 13806
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Appearances:

Mr. George Lewis, Representative, appearing on behalf of the
Petitioner.

Steele, Smyth, Klos & Flynn, Attorneys at Law, by Mr. Jerome C. Klos,
appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO
hereinafter referred to as the Petitioner, having, on May 13, 1975, filed
a petition with the Wisconsin Employment Relations Commission, hereinafter
referred to as the Commission, to conduct an election, pursuant to
Section 111.71(g) of the Municipal Employment Relations Act, among certain
non-professional Courthouse and Social Services Department employees of
Vernon County, hereinafter referred to as the Municipal Employer; and, on
May 23, 1975, prior to any action being taken by the Commission on the
aforesaid petition, Petitioner having filed an additional petition request-
ing an election among professional employees in the Municipal Employer's
Social Services Department; and hearing on aforesaid petitions having
been conducted at Viroqua, Wisconsin, on May 29, 1975, Thomas L. Yaeger,
hearing Officer being present; and the Commission having considered the
evidence and being satisfied that questions have arisen concerning
appropriate collective bargaining units and representation involving
certain Courthouse and Social Service Department employees 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 sixty (60) days
from the date of this directive, in the following voting groups:

VOTING GROUP NO. 1

All regular full-time and regular part-time Courthouse and Social
Services Department employees of Vernon County, conditionally excluding
professional employees, and fully excluding elected officials, super-
visors, confidential, managerial or executive employees, and all other
employees, who were employed on July 16, 1975, except such employees as may
prior to the election quit their employment or be discharged for cause,
for the purpose of determining whether a majority of such employees 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.

No. 13805
No. 13806

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VOTING GROUP NO. 2

All regular full-time and regular part-time professional employees in the Social Services Department of Vernon County, excluding supervisors, confidential, managerial or executive employees, and all other employees, who were employed on July 16, 1975, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

1. Whether a majority of such professional employees desire to be included in a single bargaining unit consisting of the employees set forth in Voting Group No. 1 above, and

2. Whether a majority of such professional employees 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 16th
day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING DECISION OF ELECTION

In its petition initiating the instant proceedings, the petitioner alleged the appropriate units consist of: (1) all regular full-time and regular part-time Courthouse and Social Services Department employees excluding elected officials, supervisors, professional employees and all other employees; and, (2) all regular full-time and regular part-time professional employees of the Social Services Department, excluding supervisors, clerical employees and all other employees.

During the course of the hearing the Petitioner proposed that the Social Services Department professional social workers be afforded the opportunity to determine for themselves whether they desired to be included in the same bargaining unit with Courthouse and Social Services Department non-professional employees.

The Municipal Employer contends that, by virtue of the fact that Petitioner filed two separate and distinct petitions, the Petitioner thereby acknowledges there is no common ground of craft or any community of interest existing among the professionals and non-professionals involved herein and, that the professionals and non-professionals cannot form the basis for a single appropriate unit.

Section 111.70(4)(d)2a of the Municipal Employment Relations Act provides that:

"The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot."

The Commission is satisfied that a question of representation affecting Courthouse and Social Services Department employees is present and regards the proposed unit of all regular full-time and regular part-time Courthouse and Social Services Department employees, conditionally excluding professional social workers and, fully excluding elected officials, supervisors, confidential, managerial or executive employees and all other employees may be an appropriate unit. Furthermore, the Commission is satisfied that the professional social workers of the Department of Social Services have the right to determine whether they desire to be included in a unit of non-professionals. 1/

1/ St. Croix County (11179) 7/72.

The sequence of counting the ballots will be as follows:

1. The ballots cast by the professional social workers as to their desire to be included in the non-professional unit will be tallied first.
2. If a majority of the eligible professional social workers do not vote in favor of inclusion in the non-professional unit, the representation ballots cast by the professional social workers will be tallied separately, as will the ballots cast by the non-professional employees.
3. If the professional social workers vote in favor of being included in the non-professional unit, the Commission election agent shall co-mingle their ballots with the ballots of the non-professional employees and thereupon tally the combined ballots.

In the event that the professional social workers vote for inclusion in the non-professional unit, the appropriate bargaining unit shall consist of all regular full-time and regular part-time Courthouse and Social Services Department employees of Vernon County, including professional social workers, but excluding elected officials, supervisors, confidential, managerial or executive employees, and all other employees. Should the professional social workers reject inclusion in the non-professional unit, the appropriate units shall consist of: (1) all regular full-time and regular part-time Courthouse and Social Services Department employees of Vernon County, excluding professional employees, supervisors, confidential, managerial or executive employees and all other employees; and, (2) all regular full-time and regular part-time professional employees in the Social Services Department of Vernon County, excluding supervisors, confidential, managerial or executive employees and all other employees.

PART-TIME EMPLOYEES

During the hearing the Municipal Employer proposed that the unit description provide that only those regular part-time employees, who work at least 20 hours per week or one-half time, be included within the unit, contending that, although certain part-time employees who work less than 20 hours per week are employed on a regular basis, they would have a disproportionate voice in those matters affecting the unit, particularly in a small unit such as if involved herein. 2/ The Petitioner opposes the exclusion from the unit of those regular part-time employees, who work less than 20 hours per week.

Since the parties to this proceeding are unable to stipulate as to whether regular part-time employees working less than 20 hours per week should be excluded, the Commission must determine the appropriateness of such proposed exclusions pursuant to its obligations under Section 111.70 (4)(d)2a. Regular part-time employees are employees under the Act and have a right to be represented. 3/ If the Commission were to allow the exclusion of regular part-time employees working less than 20 hours per week, in the face of a claim by the Petitioner that it seeks to represent those employees, it would be depriving said employees of their right to representation unless the Commission were willing to establish a separate collective bargaining

2/ Of approximately 33 possible eligible employees in the unit the Municipal Employer contends 5 could fall into this category.

3/ Marinette General Hospital (7569) 4/66; Eau Claire County (7649) 7/66; Manitowoc County (10899) 3/72.

unit for such employees. In view of the fact that the Commission has been mandated by the Municipal Employment Relations Act to "whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force" 4/ the Commission deems it inappropriate to exclude such employees from the bargaining unit involved. As regular part-time employees they have a sufficient interest in the wages, hours and other conditions of employment to be included in the bargaining unit and, therefore, may participate in the election.

EXCLUSION OF EMPLOYEE GROUPS CONSTITUTING OTHER UNITS

The Municipal Employer requested that the unit description specifically, exclude Law Enforcement, Highway Department and Institution employees who are presently included in established units. The Petitioner believes this is unnecessary.

The Commission also deems it unnecessary to set forth the specific exclusions requested by the Municipal Employer and believes the exclusion "all other employees" is sufficient inasmuch as the expression by inference, excludes Law Enforcement, Highway Department and Institution employees, all of who are not employed in the Court House or Social Service Department.

STATUTORY DEPUTIES

An issue arose concerning the eligibility of Deputies to Clerk of Court, County Clerk, Register of Deeds and Treasurer. The Petitioner contends the Deputies are "employees" eligible to vote and that the Municipal Employer has given no justification for their exclusion. The Municipal Employer contends that they are appointed officials, who serve at the pleasure of the elected official and, by statute, perform the duties of the elected official in the absence of said official. The Municipal Employer acknowledges that, except in those situations when the Deputies assume the position of those whom they serve they are not supervisors, managerial or executive. The Municipal Employer, however, does contend, in addition to the foregoing, that the Deputy County Clerk is a confidential employee and, therefore, not eligible for inclusion in the unit.

This Commission on several previous occasions has dealt with the question of eligibility of statutory deputies. 5/ The Commission has previously said:

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

4/ Section 111.70 (4) (d) 2a.

5/ Ashland County (7214) 7/65; Oneida County (9134) 7/65; Columbia County (12218) 10/73; Shawano County (12310) 12/73; St. Croix County (12425-A) 4/74.

situation existing in this matter, convert the deputy into a supervisor or executive." 6/

None of the arguments advanced herein constitute a basis for a contrary result. We conclude, therefore, that the aforesaid Deputies are eligible to vote in the election involving employees in voting Group No. 1.

Concerning the confidential status of the Deputy County Clerk, it has been the Commission's position in the past that an employee's confidential status is determined by said employee's access to, or participation in, confidential matters relating to labor relations. 7/

The Petitioner takes the position that the Deputy Clerk properly falls within the description of the unit and should be included therein. The Municipal Employer contends, inter alia, that the position is confidential and should therefore be excluded. The testimony establishes that the County Clerk's office deals with labor relations and personnel matters which involve computing costs of various collective bargaining proposals being considered by the County Board members, as well as taking and transcribing minutes of County Board meetings, where such matters are discussed and, that said minutes are not a matter of public record. The Deputy Clerk has in the past been assigned to perform the aforesaid duties, although the present incumbent has only been in the position since March and has yet to perform any of these duties. The Commission is, however, persuaded that the position of Deputy County Clerk should be excluded from the bargaining unit by reason of the confidential status of taking and/or transcribing the above-described minutes, as well as involvement with the development of cost figures for labor negotiations. 8/

DEPARTMENT HEADS

The Municipal Employer contends that the positions of Addressograph Operator as well as the Register in Probate are department heads and as such should be excluded from the unit as supervisors. The Petitioner opposes the aforesaid exclusion on the basis that individuals who supervise an activity or operation, as opposed to employees, are not "supervisors".

The Municipal Employer acknowledges that the Addressograph Operator, and Register in Probate, do not directly supervise other employees. The Register in Probate is the caretaker of any assortment of files and documents. On the other hand, the Addressograph Operator, who is responsible for tax listing, has daily dealings with employees in the offices of the Register of Deeds, Treasurer and Clerk, but exercises no supervisory authority over said employees.

The Commission is persuaded that the Addressograph Operator, and also the Register in Probate possess no supervisory authority or responsibility by reason of the fact that no employees are employed in their respective offices and, although they may direct or supervise an activity they are not supervisors. 9/

6/ Ashland County (7214) 7/65.

7/ Milwaukee County (11971) 7/73; Juneau County (12814) 5/74.

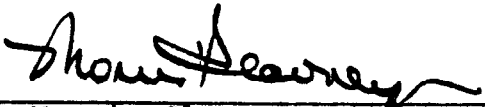
8/ Calumet County (11158) 7/72.

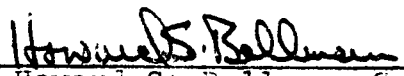
9/ Juneau County (12814) 5/74.

Finally, the Commission cannot agree, with the Municipal Employer, absent evidence of supervisory authority over other employees, that the classification "department head" should be excluded from the unit on the basis that their responsibility for the direction of the operation of a department is inconsistent with 'employee' status. The status of a supervisor is determined by an individual's duties and not his title or job classification.

Dated at Madison, Wisconsin this 16th day of July, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner