

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
WCCME, AFSCME, AFL-CIO :
Involving Certain Employees of : Case 7
JACKSON COUNTY : No. 36745 ME-78
Decision No. 14129-D

Appearances:

Ms. Mary Marco, Personnel Technician, Jackson County Courthouse, 307 Main Street, Black River Falls, WI 54615, appearing on behalf of Jackson County.
Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, WI 54656, appearing on behalf of the Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER CLARIFYING BARGAINING UNITS

WCCME, AFSCME, AFL-CIO, having, on March 21, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify two currently existing certified bargaining units of Social Services employees and Courthouse employees of Jackson County; and a hearing in the matter having been conducted on April 21, 1986, in Black River Falls, Wisconsin, before Examiner Douglas V. Knudson, a member of the Commission's staff; and a stenographic transcript having been made of the hearing and received on April 30, 1986; and the parties having waived the filing of briefs; and the Commission having reviewed the evidence and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Units:

FINDINGS OF FACT

1. That Jackson County, hereinafter the County, is a municipal employer and has its offices at the Jackson County Courthouse, 307 Main Street, Black River Falls, WI 54615.

2. That WCCME, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization with its offices at Route 1, Sparta, WI 54656.

3. That in Jackson County, (Social Services), Dec. No. 14129, (WERC, 12/75) the Union was certified as the exclusive collective bargaining representative of County Social Services Department employees, after an election conducted by the Commission, wherein the professionals voted to be included in a unit of non-professional employees, which unit consists of:

all employees in the employ of the Jackson County Social Services Department, including professional employees, but excluding the Director, Basic Services Supervisor, supervisors and confidential employees.;

and that the positions of Director, Social Worker Supervisor, and Income Maintenance Supervisor were excluded from said unit.

4. That in Jackson County, Dec. No. 17828, (WERC, 7/80) the Union was also certified as the exclusive representative of County Courthouse and Public Health Department employees, after an election conducted by the Commission, wherein the professional registered nurses voted to be included in a unit of nonprofessional employees, which unit consists of:

all regular full-time and regular part-time employees of the Jackson County Courthouse and Nurses Department, including professional nurses, but excluding elected officials, supervisory and confidential employees.;

and that the positions of Public Health Nurse Director, Child Support Administrator, Coordinator-Commission on Aging, Program Director-Developmental Disabilities, Director of Environmental Health and Zoning, and, Parks Supervisor were excluded from said unit.

5. That the County, on or near January 1, 1986, created a new Human Services Department under the direction of a Human Services Director, who is responsible to a Human Services Board, by consolidating into one department its previously separate departments of Social Services, Child Support, Commission on Aging, Development Disabilities, Health, and Environmental Health and Zoning; that prior to the reorganization, there were approximately 23 employees in the Social Services bargaining unit and approximately 37 employees in the Courthouse bargaining unit; and that the reorganization placed the following departments, in addition to the Social Services Department, and numbers of employees (who are in the Courthouse unit) in the Human Services Department: Child Support - 2, Commission on Aging - 2, Development Disabilities - 1, and Health - 8.

6. That on March 21, 1986, the Union filed a petition requesting the Commission to clarify the previously certified Courthouse and Social Services bargaining units in view of the County's creation of the Human Services Department.

7. That at hearing the County and the Union stipulated that the Commission should determine which bargaining unit the following positions, previously not included in either the Courthouse unit or the Social Services unit, but now covered by the Human Services Department table of organization, should be placed, namely, Coordinator of Commission on Aging, Development Disabilities Program Director, and a half time (1/2) clerical position under the Commission on Aging; that the parties stipulated that the Commission should determine whether the thirteen employees whose positions and departments were placed in the Human Services Department, should be attached to the Social Services bargaining unit (renamed Human Services Department bargaining unit), or remain in the Courthouse bargaining unit; that the parties further stipulated that the position of Director of Environmental Health and Zoning not be placed in either bargaining unit at this time because of insufficient evidence in the record concerning the position's bifurcated mix of responsibility to two separate County agencies; that the occupant of the position of Director of Environmental Health and Zoning, Steven Raith, spends approximately one-half of his time performing environmental health and sanitation duties, which are under the supervision of the Human Services Department, and approximately one-half of his time performing zoning and surveying duties, which are under the supervision of a County agency separate and distinct from the Human Services Department; and that, because Raith was not available to testify at the hearing, the parties agreed that the Commission should not rule on the status of his position at this time.

8. That the parties agreed to exclude from both the Human Services unit and the Courthouse unit, the positions of Human Services Director, Social Worker Supervisor, Public Health Nurse Director, Business Manager-Human Services Department, and Income Maintenance Manager; and that the position of Income Maintenance Manager was created by merging the positions of Income Maintenance Supervisor and Child Support Administrator.

9. That the employees of the former separate departments of Child Support, Commission on Aging, Development Disabilities, and Health are now assigned to divisions in the Human Services Department and report to supervisors under the direction and control of the Human Services Director; that, although the positions of said employees were included in the Courthouse bargaining unit, the collective bargaining agreements between the County and the Union covering the Courthouse and Social Services bargaining units provide for very similar, and in many cases identical, benefits, such as vacations, holidays, sick leave, Wisconsin Retirement Fund contributions, health insurance and life insurance; that said employees primarily perform duties under programs relating to the provision of economic and personal assistance to residents of the County, many of which programs are federally or state mandated and/or financed, similar to the employees of the former Social Services Department, who have also been placed in the Human Services Department; and, that those employees of the Human Services Department who were previously either unrepresented (Commission on Aging Coordinator and clerk, Development Disabilities Program Director and Mental Health, Alcohol and Drug Abuse Coordinator), or represented in the Courthouse bargaining unit, share a community of interest with the employees of the former Social Services bargaining unit sufficient to justify their inclusion in a bargaining unit consisting of all employees of the Human Services Department.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the occupants of the Human Services Department positions of Child Support Specialist, Commission on Aging Coordinator, Mini-bus Driver, Commission on Aging Clerk, Development Disabilities Program Coordinator, Development Disabilities Secretary, Public Health Nurse, Secretary (Public Health), E.P.S.D.T. Case Manager, Home Health Aide, and the Mental Health, Alcohol and Drug Abuse Coordinator share a community of interest with the other employees in the Human Services Department who formerly constituted the Social Services Department bargaining unit described in Finding of Fact 3 above.

2. That, pursuant to the stipulation of the County and the Union, the positions of Human Services Director, Social Worker Supervisor, Public Health Nurse Director, Business Manager - Human Services Department, and Income Maintenance Manager are excluded from any bargaining unit.

3. That the position of Director of Environmental Health and Zoning should not be included in either bargaining unit at this time.

4. That a collective bargaining unit consisting of all regular full-time and regular part-time employees, including professional employees, employed by the Jackson County Human Services Department, excluding confidential, supervisory and managerial employees, is an appropriate bargaining unit.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission issues the following

ORDER CLARIFYING BARGAINING UNITS 1/

1. That all positions in the Human Services Department, including those positions specifically described in Conclusion of Law 1 above, are hereby included in the bargaining unit as clarified in said Conclusion of Law.

2. That the positions of Human Services Director, Social Worker Supervisor, Public Health Nursing Director, Business Manager, Income Maintenance Manager, and Director of Environmental Health and Zoning hereby excluded from any bargaining unit.

3. That the descriptions of the certified bargaining units be revised to read as follows:

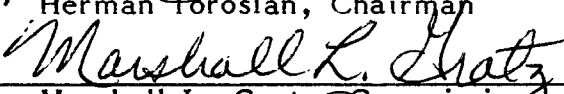
- a. all regular full-time and regular part-time employees of the Jackson County Courthouse, excluding elected officials, supervisory, managerial and confidential employees, and Human Services Department employees; and,
- b. all regular full-time and regular part-time employees of the Jackson County Human Services Department, including professional employees, but excluding confidential, supervisory, and managerial employees.


Given under our hands and seal at the City of Madison, Wisconsin this 11th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

1/ See Footnote 1 on Page 4.

- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

JACKSON COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CLARIFYING BARGAINING UNITS

PETITION AND POSITIONS OF THE PARTIES

The Union has requested the Commission to determine the proper alignment, or re-alignment, of certain positions between the previously certified Courthouse and Social Services bargaining units, as a result of the early 1986 creation by the County of a Human Services Department which includes all of the positions in the former Social Services Department and several positions previously located in separate departments and represented by the Courthouse unit. At hearing neither the County nor Petitioner advanced any position as to whether certain professionals and support personnel either should remain in the Courthouse unit, or should be attached to the former Social Services Department unit, thereby creating a Human Services Department unit.

In the course of hearing the parties did stipulate that the following positions should be excluded from either unit; Human Services Director (formerly Social Services Director), Social Worker Supervisor (same under Social Services), Public Health Nursing Director (formerly an exclusion from the Courthouse unit), Business Manager - Internal Affairs (new position under Human Services), and Income Maintenance Manager 2/ (new position under Human Services). The parties further stipulated that there was insufficient evidence for the Commission to determine the status of the Director of Environmental Health and Zoning, in view of the bifurcated reporting responsibilities said incumbent has with two separate County Board committees. 3/

DISCUSSION

The Commission considers the following factors on a case-by-case basis in establishing collective bargaining units under MERA:

1. Whether the employees in the unit sought share a community of interest distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history. 4/

2/ A new position created after reorganization by combining two previously excluded positions, namely Child Support Administrator (a non-represented Courthouse position) and Income Maintenance Supervisor (excluded from Social Services under a previous unit clarification).

3/ See Finding of Fact #7, supra.

4/ Mid State VTAE, Dec. No. 14526-A, (WERC, 5/85); City of Madison (Water Utility), Dec. No. 19584 (WERC, 5/82).

There is no issue over the appropriateness of including professional employees with the non-professional employees in either of the existing certified bargaining units.

The Commission infers from the classification titles, set forth in Exhibit No. 6, that a Courthouse Unit consisting of those classifications would constitute an appropriate bargaining unit containing an array of classifications in several departments commonly attributed to County Courthouse personnel who carry out general governmental functions for the County citizens at large.

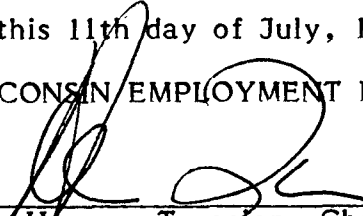
The record shows that all of the positions previously located in the separate agencies of Public Health, Aging, Child Support, and Development Disabilities are now assigned to divisions within the Human Services Department and are supervised by individuals who are responsible to the Human Services Director and the County's Human Services Board. The collective bargaining agreements between the County and the Union covering the Courthouse and Social Services bargaining units provide for very similar, and in many cases identical, benefits, such as vacations, holidays, sick leave, Wisconsin Retirement Fund contributions, health insurance and life insurance. Thus, a realignment of classifications between bargaining units would not create inequities for employees whose positions are realigned. The employees of the recently created Human Services Department all perform duties in the furtherance of common programs, many of which are mandated by State or Federally financed projects, relating to the provision of economic and personal assistance to residents of the County.

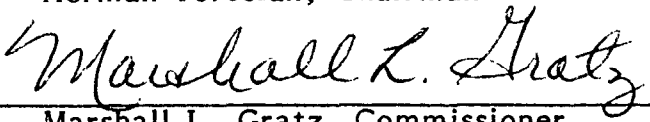
For the reasons noted above, the Commission concludes that the employees of the Human Services Department share a community of interest sufficient to justify the inclusion in one bargaining unit of all of the employees of the Human Services Department, even though some of said employees had been represented by the Courthouse bargaining unit prior to the creation of a Human Services Department.

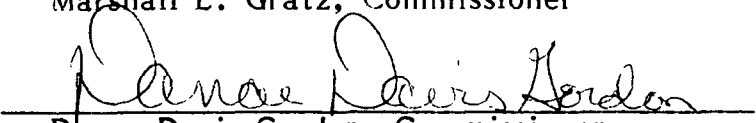
Dated at Madison, Wisconsin this 11th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner