

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ROCK COUNTY ASSISTANT DISTRICT  
ATTORNEYS' ASSOCIATION

Involving Certain Employees of  
ROCK COUNTY

Case XLIII  
No. 19791 ME-1258  
Decision No. 14173

Appearances:

Mr. Patrick M. Squire and Mr. Michael J. Trost, Assistant District Attorneys, appearing on behalf of the Association.  
Mr. Victor Moyer, Corporation Counsel, and Ms. Susan Steininger, Personnel Director, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Rock County Assistant District Attorneys' Association, having petitioned the Wisconsin Employment Relations Commission to conduct a representation election pursuant to the Municipal Employment Relations Act in a bargaining unit consisting of certain employees of Rock County; and hearing on said petition having been held at Janesville, Wisconsin on December 1, 1975, Kay Hutchison, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties <sup>1/</sup> and being satisfied that a question of representation has arisen;

NOW, THEREFORE, it is

DIRECTED

That an election by secret mail 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 collective bargaining unit consisting of all regular full-time and regular part-time Attorneys employed by Rock County but excluding supervisory, managerial and confidential employees who were employed on December 9, 1975, except such employees as may prior to the election quit their employment or be discharged for cause, to determine whether a majority of such employees desire to be represented by Rock County Assistant District Attorneys' Association for purposes of collective bargaining.

Given under our hands and seal at the  
City of Madison, Wisconsin this 9th  
day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

<sup>1/</sup> The parties waived, in writing, Section 227.12 of the Wisconsin Statutes.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Petitioner, in its petition filed with the Wisconsin Employment Relations Commission on November 11, 1975, requested the conduct of a representation election among "all regular full-time and regular part-time Assistant District Attorneys employed by Rock County but excluding supervisory, confidential and managerial personnel and all other employes".

Rock County presently employs four Assistant District Attorneys; two of whom are assigned to the Rock County Courthouse in Janesville and two are assigned to the County Courthouse Annex located in Beloit. In addition, the County employs Attorney Sandborn in the Department of Social Services and Attorney Belling as the Assistant to the Corporation Counsel. A third employe, Mr. Harris, possesses a law degree but does not serve in the capacity of an Attorney in his employment with the County at the Health Care Center. The Commission is satisfied that Mr. Harris is appropriately excluded from the collective bargaining unit herein since he is not performing duties normally performed by the Attorneys.

During the course of the hearing, the Municipal Employer concurred in the Petitioner's contention that the collective bargaining unit should be limited in scope to those attorneys working in the District Attorney's office. The parties individually and jointly cited a number of distinctions in the terms and conditions of employment between the Assistant District Attorneys and the two other Attorneys employed by the County.

The County and Petitioner argue that the Assistant District Attorneys possess a community of interest separate from that of the other County employed Attorneys. The parties aver that the work site, job functions and supervision are totally distinct between the Attorneys assigned to the District Attorney's office and those employed in the Social Services Department and Corporation Counsel's office. The County and Petitioner contend that there is no intermingling of job duties between the attorneys assigned to the various departments. Furthermore, the parties point out that the nature of legal work is distinguishable by the respective department to which the Attorneys are assigned. Whereas the Assistant District Attorneys participate primarily in criminal proceeding, the attorney in the Corporation Counsel's office is basically engaged in civil matters and the attorney in Social Services concentrates upon legal matters relating to juveniles and their custody.

In addition, the County contends that the Attorneys in the Corporation Counsel's office and Social Services occupy positions which are funded through sources other than those locally derived. The position of Attorney Sandborn is compensated through social security funds and Attorney Belling's position in the office of Corporation Counsel is funded through a federal grant under Title VI legislation. The County argues that continued funding for the two positions is highly uncertain and that therefore the two incumbents should be excluded from the collective bargaining unit herein.

Lastly, the County asserts that the position of Attorney Belling, as Assistant to the Corporation Counsel, is confidential and appropriately excluded from any collective bargaining unit on that basis. During the course of the hearing in the instant matter, Corporation Counsel stated that Attorney Belling has participated in the preparation for and conduct of labor negotiations and grievance arbitrations.

In the instant proceeding, it is the position of the parties that a unit comprised of less than all Attorneys employed by Rock County is appropriate on the basis of separation of work location, different job duties and separate supervision. However, the Commission, not the parties, is charged with sole responsibility for determining appropriate collective bargaining units. Section 111.70(1)(c) of the Municipal Employment Relations Act (MERA) grants the Commission exclusive jurisdiction to determine units appropriate for the purposes of collective bargaining, subject to the legislative mandate in Section 111.70(4)(d)(2)a of MERA to avoid fragmentation, whenever possible, by maintaining a few units as practicable in keeping with the size of the municipal work force. 2/ To relegate such authority to the discretion of the parties would conceivably enable the extent of organization rather than the community of interest to be determinative of the appropriateness of a collective bargaining unit.

In Milwaukee County (12571) 3/74, the Petitioner argued that Assistant District Attorneys constituted an appropriate, separate collective bargaining unit on the basis of physical location, the duties of the Assistant District Attorney, the ethical consideration and the potential conflict of interest inherent in an inclusive unit of all attorneys employed by the County. Therein, the Commission stated that:

" . . . a county-wide unit of attorneys is an appropriate collective bargaining unit, Dane County Decision No. 11482 (12/72)

The Commission is of the opinion that any unit which attempts to divide the unit of all attorneys employed by the Municipal Employer would cause unnecessary fragmentation. In the Dane County case, supra, the Assistant District Attorneys and the Assistant Family Court Commissioners are included in the same unit. In fact, in the State Employment Labor Relations Act at Section 111.81(3), the Legislature established appropriate collective bargaining units and included in that list of employees of the State engaged in the legal profession. The Commission noted in its City of Milwaukee decision, Decision No. 12035-A, that the attorneys employed by the State in diverse offices and positions such as the Assistant Attorney General in the Office of the Attorney General, the hearing officers of the Unemployment and Workmen's Compensation Divisions of the Department of Industry, Labor and Human Relations, the attorneys employed by the Department of Revenue and the Department of Natural Resources are all included in one unit under the State Act. The independence and the quasi-judicial nature of the duties performed by these State employees did not prevent the State Legislature from specifically listing and including in one unit all persons engaged in a profession whose professional function, skill and talent manifests itself in such a diverse manner in state employment. The attorneys employed by Milwaukee County in the positions listed above are no more independent nor subject to the ethical structures of the Bar than the attorneys employed by the State of Wisconsin.

. . .

There is a community of interest among all attorneys employed by the County, therefore, the Commission has determined that the appropriate unit is an inclusive county-wide unit as described in the Direction."

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2/ Whitefish Bay Public Schools (10799) 2/72.

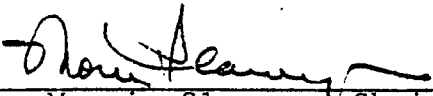
Accordingly, the Commission concludes that the appropriate collective bargaining unit in the instant proceeding, consists of all otherwise eligible Attorneys of Rock County regardless of employing department.


With regard to the County's contention that the non-local funding of the Attorney's positions in Social Services and Corporation Counsel's office warrants the exclusion of Attorney Sandborn and Attorney Belling from inclusion in a collective bargaining unit, the Commission has consistently held that the fact that salaries of employes may be funded by another unit of government does not provide a basis for the exclusion of such employes from a collective bargaining unit. <sup>3/</sup> Therefore, the Commission has concluded that the position of Attorney Sandborn, employed in the Social Services Department, is appropriately included in the collective bargaining unit. Although the Commission does not find the source of funding for the Assistant to the Corporation Counsel's position to be an appropriate basis for excluding Attorney Belling from the unit herein, the Commission is satisfied that Attorney Belling is a confidential employe due to his role in negotiating and grievance arbitration, and accordingly is appropriately excluded from the unit.

The Commission directs that the full name and home address of Attorney Sandborn, employed in the Social Services Department, be forwarded by the Municipal Employer to the Commission in Madison so that the mail ballot agreed to by the parties may be expedited.

Dated at Madison, Wisconsin this 9th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

<sup>3/</sup> Tomah School District No. 1 (8209-C) 3/72; City of Chetek (10757-A) 4/72; City of Edgerton (11340) 10/72; Adams-Friendship Area Schools (11881) 5/73; Village of Niagara (12449) 1/74; Merton Joint School Dist. No. 9 (12828) 6/74; Rock County (13131) 11/74; Kewaunee County (13185) 11/74.