

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIII
No. 19060 ME-1183
Decision No. 14180

Mr. Michael J. Wilson, District Representative, appearing on behalf of the Petitioner.
Mr. Alexander Hopp, Corporation Counsel, appearing on behalf of the Municipal Employer.

Local 1749C, Wisconsin Council No. 40, AFSCME, AFL-CIO, hereinafter the Union, having filed a petition with the Wisconsin Employment Relations Commission on April 16, 1974, wherein it requested that the Commission clarify a certified unit described as all regular full-time and regular part-time personnel employed in the Courthouse by Sheboygan County, Wisconsin, excluding elected public officials and all employees, in the Institutions and Highway and Sheriff's Departments, Guidance Center and professional employees employed in the Welfare Department, to determine whether the following positions should be included or excluded from the unit described above: Soil Services Technician, Key Punch Operator, Clerk Steno I (Clerical and Sight Manager), Dairy Herd Inspector, Systems Analyst Programmer, Payroll Clerk, Assistant Payroll Clerk, Deputy Register in Probate, Acting Deputy Registrar and Probate Registrar; and hearing in the matter having been conducted on May 29, 1975, Sherwood Malamud, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

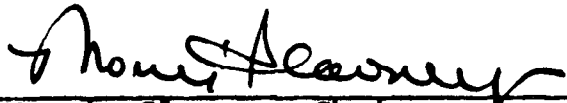
2. That the Probate Registrar shall be excluded from the above-described unit.


No. 14180

3. That the parties withdrew from the Commission's consideration the position of Systems Analyst Programmer and therefore the Commission makes no determination in regard thereto.

Given under our hands and seal at the
City of Madison, Wisconsin this 15th
day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

During the course of the hearing with regard to the positions at issue, both the Employer and the Union stipulated to the inclusion of the following positions in the courthouse unit:

The Key Punch Operator
Clerk Steno I (Clerical and Sight Manager)
Payroll Clerk
Assistant Payroll Clerk
Acting Probate Registrar
Deputy Register in Probate
Acting Probate Registrar (Acting Deputy Register in Probate)

The Commission is satisfied that the above-named positions are clerical in nature and are appropriately included in the Courthouse unit. The parties agreed to exclude the Probate Registrar on the basis of the Commission's prior decision concerning that position. 1/ However, the parties could not agree whether the Soil Services (Conservation) Technician and the Dairy Herd Inspector should be included in or excluded from the unit.

As to the positions of Dairy Herd Inspector and the Soil Services Technician, the Employer maintains that the Commission in its Certification 2/ included only those employees located in the confines of the Sheboygan County Courthouse in the Courthouse unit. Here, both the Dairy Herd Inspector and the Soil Services (Conservation) Technician are located at the County Educational Center (University Extension Offices) in Sheboygan Falls. In response to the County's claim, the Union maintains that the University Extension offices prior to 1972 were located in the Courthouse.

Since the parties raised the question of location relative to the two positions at issue, the Hearing Officer requested that the parties present evidence concerning the inclusion or exclusion of employees located at the University Extension in the Courthouse unit. On September 3, 1975, both parties directed a letter to the Hearing Officer inquiring:

" . . . if the Commission is going to determine the question of whether or not Sheboygan County Employees who work at locations outside of the Sheboygan County Courthouse but who have a community of interest with employees working inside the Sheboygan County Courthouse are included in the same Courthouse bargaining unit."

Since the parties have indicated no desire to amend the original petition to expand the issue before the Commission to encompass those employees located outside the confines of the Courthouse, and since the evidence presented at the hearing only dealt with one group of employees located at the Educational Center in Sheboygan Falls, the Commission has limited its determination to the two positions at issue, namely, the Dairy Herd Inspector and the Soil Services Technician.

DAIRY HERD INSPECTOR

The present incumbent was not available for the hearing. However, the parties were able to stipulate to the duties assigned and performed by the individual in this position. The Dairy Herd Inspector was created sometime after February, 1975 and funded with federal CETA

1/ Sheboygan County (8256-E) 4/70.

2/ Sheboygan County (8256-D) 1/68.

funds. It is anticipated that his job of counting the dairy herds in the County and providing general information to farmers relative to their herds will be completed by February, 1976. The Employer represents that it is unlikely that the position of Dairy Herd Inspector will be continued after its funding is eliminated. However, the decision to discontinue the position had not been made as of the date of hearing. The parties agreed that the qualifications established for the position of Dairy Herd Inspector do not require that the incumbent possess professional training to fill such position, nor is the incumbent a professional.

The Commission has determined that it does not consider the source of funding, by itself, as a criterion for determining whether a position should be included or excluded from a unit. 3/

The issue here is the appropriate placement of these positions established after the issuance of the Commission's certification in 1968. The Petitioner asserts, and the Employer opposes, placement of the Dairy Herd Inspector in the Courthouse unit.

The Courthouse unit is composed of clerical, maintenance and technical (non-professional) employees, as well as sanitarians, associate planners and draftsmen. While it is true that not all clerks, stenos, or maintenance employees employed by the County were placed in the Courthouse unit, the Courthouse unit was certified in 1968 under the then existing Section 111.70, which provided opportunity for employees to establish units on a departmental or divisional basis. In 1971, the Municipal Employment Relations Act (MERA) was enacted and it provided the Commission with the authority to establish appropriate bargaining units, however, the statute stated the following caveat:

"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."
111.70(4)(d)2.a., Wisconsin Statutes (Emphasis Added)

The duties of the Dairy Herd Inspector are clerical in nature and the occupant thereby shares a community of interest with employees in the one County unit dominated by employees in various clerical classifications. Although the Dairy Herd Inspector's office is located in Sheboygan Falls, outside of the confines of the Courthouse, the legislative intent expressed in 1971, to avoid fragmentation of units, dictates that the Dairy Herd Inspector be included in the Courthouse unit.

SOIL SERVICES TECHNICIAN

Like the Dairy Herd Inspector, the Soil Services Technician is located at the offices of the Education Center in Sheboygan Falls, and as in the case of the Dairy Herd Inspector, location is not determinative of the incumbent's employee status.

However, the Employer asserts contrary to Petitioner, that the Soil Services Technician is a professional employee and should be excluded from the unit. The job description for said position provides as follows:

3/ Adams-Friendship Area Schools (11881) 5/73.

"Position (Job) Description for Soil Conservation Technician

General supervision is received from the Soil Conservationist. 4/ Incumbent performs responsible conservation work of limited scope and complexity, such as:

1. Prepares simple engineering plans; recommends standard designs; and works with farmers and contractors in layout and application of conservation practices common to Sheboygan County.
2. Supervises layout and construction of conservation practices on the land, such as terraces, diversions; drainage ditches; grass waterways; tile systems; contour strip cropping; grade stabilizations structures, etc.
3. Determines that conservation practices are constructed in accordance with plans and specifications; recommends approval for cost-sharing payments to farmers.
4. Uses such instruments as level and transit in making surveys to obtain basic information for use in planning, designing and installing conservation structures, practices or systems.
5. Plots contours, cross-sections and profiles from field notes, takes measurements and calculates yardages used in planning conservation practices; prepares maps, field sheets, job sheets and work orders; uses planimeter to compute acreages.
6. Is responsible for follow-up and maintenance activity on previously planned projects.
7. Aids landowners and operators in pooling resources in order to establish and maintain conservation practices most efficiently.
8. Performs related duties as assigned." 5/

Mr. Elmer, the Soil Services Technician, was interviewed and employed by the Agricultural Committee of the Sheboygan County Board. He works closely with an employee of a federal agency the Agricultural Soils and Conservation Service (ASCS), who assigns and reviews Elmer's work, not as a supervisor, but as a result of his greater experience and knowledge of the field. The ASCS provides the office equipment for both the County's Soil Services Technician and the ASCS employee, Mr. Reed. It is also the agency which attracts the farmer-clients serviced by Elmer, for it is the federal government which provides funding for many of the projects designed and inspected by Elmer.

Elmer, the Soil Services Technician, possesses a Bachelor of Science degree in Natural Resources, and he has completed approximately five college level courses in Engineering. Prior to his employment with the County, he was employed as the fire control and park manager at Isle Royal National Park in Michigan.

The pay range for the Soil Services Technician for 1975 was \$665.00 per month minimum to \$835.00 after 36 months. The Courthouse unit, includes

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- 4/ The Conservationist is a federal employee who is located at the Educational Center and shares offices with the County's Soil Services Technician.
- 5/ The incumbent has developed a long-range plan for the soil conservation district.

sanitarians who receive a top salary of \$998.00 per month, and program operator who receives \$887.00 per month.

The incumbent Soil Services Technician is highly qualified for his job and his duties require that he have skills in engineering, hydrology, soils, geology and surveying. In this respect, the position is highly technical. However, Elmer is not called upon to make original designs for projects. He adapts standard designs and plans to the specific terrain of a particular farm. If a problem is complex, ASCS engineers are consulted by Elmer.

The Municipal Employment Relations Act defines a professional employee as:

"(1) 'Professional employee' means:

1. Any employee engaged in work:

a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

b. Involving the consistent exercise of discretion and judgment in its performance;

c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employee who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1. d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1."

The duties performed by the Soil Services Technician do not require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction". Furthermore, Elmer uses standardized plans and information bulletins in his work. Elmer's qualifications permit him to bring a greater expertise to his job than the position requires. However, on the basis of the record, in this case, the Commission concludes that the Soil Services Technician is not a pro-

fessional position 6/ and therefore, the Commission has included Elmer in the Courthouse unit.

Dated at Madison, Wisconsin this 15th day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

6/ In Kewaunee County (13185) 11/74, District Technician, a position identical to the Soil Services Technician was included in a non-professional courthouse unit.