

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

MILWAUKEE DISTRICT COUNCIL 48 AND ITS :  
AFFILIATED LOCAL 1954, AFSCME, AFL-CIO :

For Determination of Bargaining :  
Representatives for Certain Employees of :

WISCONSIN HUMANE SOCIETY :  
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Case I  
No. 19638 E-2901  
Decision No. 14198

Appearances:

Podell & Ugent, Attorneys at Law, by Mr. Alvin Ugent, for the  
Petitioner.

Foley & Lardner, Attorneys at Law, by Mr. George Cunningham  
and Mr. Michael Paulson, for the Employer.

DIRECTION OF ELECTION

The above named Labor Organization having, on October 1, 1975, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested that the Commission conduct an election among certain employees of the above named Employer to determine whether said employees desired to be represented by said Labor Organization for the purposes of collective bargaining; and hearing in the matter having been held on November 3 and 4, 1975, at Milwaukee, Wisconsin, before Stanley H. Michelstetter II, Hearing Officer; that during the course of the hearing issues arose as to whether three individuals were supervisory and/or managerial employees, and whether the occupants of four federally funded positions should be included in the unit and, therefore, eligible to vote in the election; and prior to any further action by the Commission the parties having, on December 11, 1975, filed with the Commission a stipulation for an election, wherein the parties agreed to the description of the bargaining unit, as well as to the employees eligible to participate in the election; and the Commission having reviewed the stipulation and the evidence presented at the hearing, and being satisfied that the stipulation with respect to the eligibles is not acceptable to the Commission; 1/ and the Commission, however, being satisfied that a question of representation has arisen for certain employees of Wisconsin Humane Society;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this Directive within the collective bargaining unit consisting of all regular full-time and regular part-time employees of Wisconsin Humane Society, at its location at 4415 North Humboldt Boulevard, Milwaukee, Wisconsin, with the following job titles: General Substitutes, Kennel Persons, Drivers, Clerical/Secretarial,


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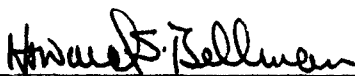
1/ See Memorandum Accompanying Direction of Election.

Maintenance, and including CETA employes, excluding managerial, confidential secretarial, and supervisory employes, who were employed on December 8, 1975, 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 for the purpose of collective bargaining by Milwaukee District Council 48 and its Affiliated Local 1954, AFSCME, AFL-CIO.

Given under our hands and seal at the  
City of Madison, Wisconsin this 23rd  
day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing the parties had stipulated to all relevant matters except the Employer's contentions that Brown was a supervisory/managerial employee, that Loeffler and Jankowski were supervisory personnel, and that the federally funded CETA employees are not appropriately included in the unit, or eligible to vote, and Petitioner's assertion during the course of the hearing that Frey was not a supervisory employee. Thereafter the parties stipulated that Brown, Frey, Loeffler and the four CETA employees were ineligible and that Jankowski was eligible to vote.

We find no inconsistency with our policy with respect to the exclusion of Education Director Brown from the instant unit. On October 1, 1975 she was promoted to a different position in which she supervises one unit employee and develops internal training programs, compiling a budget of twenty to thirty thousand dollars therefor. The developed programs are likely to commit the Employer's resources and personnel. We find the Education Director position is supervisory/managerial.

Frey, Loeffler and Jankowski are leadpersons. Frey is the day shift leadperson (wage range \$885-\$1007) and in that regard has exercised the authority to effectively recommend the hire and discipline of unit employees as well as responsibly directing eight unit employees. We accept the parties' stipulation that he is a supervisory employee.

On the other hand Loeffler and Jankowski are night leadpersons (wage range \$769-\$953) who alternate days and weekends between themselves. In 1972, Jankowski sent an employee home for refusing to do his assigned job. The then assistant manager told him that he should not have done so but left the matter to him. Since that time neither Jankowski nor Loeffler believed that they had the authority to hire, discharge or otherwise discipline fellow employees. On March 1, 1975, Keller became the new manager (chief executive of the Employer). He testified that during approximately July, 1975 he had conversations with Jankowski and Loeffler during the course of which he told them that they have the authority to hire discharge, discipline and direct employees under their control. He also testified that they have always had the authority to redirect the work force in an emergency. Although an employee whose hours extended beyond 5:00 p.m. was thereafter hired, neither was consulted. Except as specified above neither has ever exercised the authority to hire, discharge or discipline or effectively recommend the same and we conclude that they do not have said authority.

Each night leadperson performs unit work of answering emergency calls. On rare occasion it may be necessary for him to hold over other employees for overtime work or call in others. Each reports at 5:00 p.m. after all supervisory and non-supervisory people have left except for inside workers and one driver. The night leadperson is the most senior of the remaining employees and is responsible for the 5:00 p.m. to 8:00 p.m. night customer operation. At that time he mans the four-line switchboard, takes reports of stray animals, assigns units on the road as necessary and handles customers at the desk. At 8:00 p.m. he oversees the closing of customer operations, puts the phones on answering service and the four employees leave. From 8:00 p.m. to 11:30 p.m. he communicates with the remaining driver as necessary, makes out ward slips, feeds animals, cleans cages and takes his dinner break. At 11:30 p.m. the driver leaves; the leadperson takes 2-3 hours sleep and continues work. At 6:00 a.m. the four stray control people arrive and leave for their assigned areas. At 6:30 a.m. three kennel people begin their work on the premises. The leadperson is in charge of the premises until 8:00 a.m. when he leaves

and the day shift clerical, supervisory and management people arrive. We are satisfied that leadpersons do not have sufficient authority to assign fellow employees or responsibly direct them to be supervisors; they are at most non-supervisory leadmen. Accordingly we reject the parties' stipulation that leadman Loeffler be excluded from the list of eligibles and that Jankowski be included in the list. Both are eligible to vote.

The Employer is party to a contract with Milwaukee County for the period March 3, 1975 to February 10, 1976 by which Milwaukee County provides federal funds under the Federal Comprehensive Employment and Training Act of 1973, as amended with which the Employer employs disadvantaged and unemployed persons in addition to its regular work force. These employees perform unit work under virtually the same wages, hours and working conditions that regular employees enjoy except that the agreement specifies limitations on their political activity and other incidental matters. The Employer hires CETA employees from the specified groups without skills found in other employees while it hires other employees through the normal employment market with specified requirements. Thus, it prefers to keep them separate for promotion and retention purposes. Retention is primarily related to continued funding. During the course of the hearing the Employer took the position that the instant employees should be excluded from the unit on the basis of their separate hiring and retention. It also contended that since the program might be terminated by Milwaukee County or the Employer as of February 10, 1976 that they should be considered casual. Thereafter the parties stipulated that they should be excluded from the unit.

We have consistently held the source of funding alone does not disqualify employees from their statutory rights or inclusion in an otherwise appropriate unit with other employees under the Municipal Employment Relations Act. 2/ We see no basis for a different holding under the Wisconsin Employment Peace Act. Section 111.02(3) in defining "employee" does not exclude such employees and Section 111.06(6) does not expressly permit their exclusion from the statutory collective bargaining unit. These employees share unit work under virtually the same wages, hours and working conditions as other employees; the Employer, if it so desires, might collectively bargain special provisions regarding their hire, retention and promotion. The evidence also reveals that neither the Employer nor Milwaukee County had taken any action prior to hearing evincing an intent to end the program. Thus, both the program and the Employer's general service contract with the County might theoretically be terminated. We are satisfied that these employees have no different likelihood of layoff than other unit employees, and find no justification in the express language of the Statute or policy considerations to deny these employees their rights. We have today rejected the parties' stipulation and included these employees in the unit specified in our Direction of Election.

Dated at Madison, Wisconsin this 23rd day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman  
Howard S. Bellman  
Howard S. Bellman, Commissioner

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2/ Tomah School District No. 1 (8209-C) 3/72 and cases cited at note M127 of the Commission's November 11, 1971 to December 31, 1974 municipal digest and cases cited at note M127 in older municipal digests.