

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIII
No. 19887 ME-1268
Decision No. 14442

Appearances:

ORDER CLARIFYING BARGAINING UNIT

ORDER

That the position held by Ms. Jean Bestul shall be, and hereby is, excluded from the collective bargaining unit consisting of all Walworth County Courthouse employees, but excluding elected officials, professional employees, social service employees represented by Local 1925, supervisors, court reporters, the Deputy Coroner, confidential employees in the Personnel Office and all other employees of Walworth County.

Given under our hands and seal at the
City of Madison, Wisconsin this 17th
day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

In February 1970, Local 1925B, WCCME, AFSCME, AFL-CIO, hereinafter referred to as the Union, was certified as the exclusive collective bargaining representative of certain employees employed in the Walworth County Courthouse by Walworth County, hereinafter referred to as the Municipal Employer. On December 11, 1975, the Union requested that the Commission clarify the bargaining unit status of a clerical employee, Ms. Jean Bestul.

Ms. Bestul was employed by the Municipal Employer on a part-time basis during 1971 and 1972 performing simple clerical duties due to her mental limitations. In October, 1972 the Municipal Employer desired to employ Ms. Bestul on a full-time basis but would do so only if the Union would agree to her exclusion from the bargaining unit. The Municipal Employer desired this exclusion because Ms. Bestul's mental limitations prevented her from performing all the duties in any of the applicable job classifications contained in the parties' bargaining agreement. In December, 1972, the Union, which has never disputed the aforesaid judgment of mental limitations, and the Municipal Employer, agreed to Ms. Bestul's exclusion from the bargaining unit, and a written agreement reflecting the exclusion was signed by the Union's President and its District Representative, and by the Chairman of the Municipal Employer's Personnel Committee. Shortly thereafter Ms. Bestul was made a full-time employee.

In October, 1974, the Union negotiated a fair share agreement with the Municipal Employer and, through a mutual mistake, Ms. Bestul began having dues deducted from her paycheck. These deductions have continued to be made. Ms. Bestul joined the Union in May, 1975.

The Union's challenge to Ms. Bestul's status was raised in an October, 1975 grievance which culminated in the filing of the instant petition for unit clarification. Its belief that Bestul should be in the bargaining unit is based upon her performance of bargaining unit work and her Union membership. The Union contends that the 1972 agreement to exclude Ms. Bestul is invalid because the Union representatives, who executed the document, violated the Union's constitution in reaching said agreement. 1/ The Municipal Employer counters by urging that the 1972 agreement remains valid and that Bestul's status as a Union member does not affect said validity.

The parties stipulated that Ms. Bestul performs bargaining unit work but that her duties do not fall within any single existant job classification. The record reflects the accuracy of this stipulation. The routine clerical and keypunch duties which she performs have remained substantially unchanged during her employment due to the continuing nature of her mental limitations.

Confronted with a petition requesting clarification of a certified bargaining unit, the Commission will generally make its determination based exclusively upon the duties and responsibilities of the affected position and the unit description contained within the parties' collective bargaining agreement. Thus, when it is deemed to be appropriate, the Commission will negate any past agreement of the parties with respect

1/ No conclusion is reached herein respecting this contention.


to the bargaining unit status of an individual employee. The Commission will not allow labor organizations and employers to deprive employees of their statutory right to be represented by a labor organization, even by mutual agreement of such parties. In this instance, given the unique considerations involved, the Commission finds her continued exclusion from the bargaining unit to be appropriate. However, if her employment ends, and the Employer hires a replacement to perform the same or substantially similar duties, said individual would be included within the bargaining unit.

Dated at Madison, Wisconsin this 17th day of March, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner