

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

COUNTY OF MILWAUKEE :

For Clarification of the Collective :  
Bargaining Unit Consisting of Certain :  
Employes of :

Case XXXIX  
No. 13657- ME-546  
Decision No. 10172-C

COUNTY OF MILWAUKEE :  
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In the Matter of the Petition of :

DISTRICT COUNCIL 48, AFSCME, AFL-CIO :

For Clarification of the Collective :  
Bargaining Unit Consisting of Certain :  
Employes of :

Case LXXXI  
No. 20298 ME-1305  
Decision No. 14489-B

COUNTY OF MILWAUKEE :  
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Appearances:

Podell and Ugent, Attorneys at Law, by Ms. Nola J. Hitchcock Cross,  
appearing on behalf of the Union.

Mr. Patrick J. Foster, Assistant Corporation Counsel, appearing on  
behalf of the Municipal Employer.

Mr. James R. Eaton, appearing on behalf of the Technicians, Engineers  
and Architects of Milwaukee County (TEAMCO).

ORDER CLARIFYING BARGAINING UNIT

District Council 48, AFSCME, AFL-CIO, having on March 22, 1976,  
requested the Wisconsin Employment Relations Commission to issue an  
Order Clarifying Bargaining Unit to determine whether certain positions  
should be included in or excluded from the existing certified collective  
bargaining unit consisting of:

"All regular full time and regular part time employes of the  
County of Milwaukee, excluding housekeepers, fire fighting  
classifications, and other craft employes, registered nurses,  
and other professional employes, confidential employes,  
supervisors, department heads and exempt positions";

and the County of Milwaukee having, on April 23, 1976, requested the  
Wisconsin Employment Relations Commission to issue an Order Clarifying  
Bargaining Unit to determine whether certain additional positions should  
be included in or excluded from the aforementioned collective bargaining  
unit; and the Commission having, on May 7, 1976, issued an Order  
consolidating said petitions; and hearing in said matters having been  
held at Milwaukee, Wisconsin on November 9 and 10, 1976, Douglas V.  
Knudson, Examiner, being present, and the Technicians, Engineers and  
Architects of Milwaukee County, hereinafter TEAMCO, having been permitted

No. 10172-C  
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to intervene without objection from the parties; and the Commission having considered the evidence and arguments, and being fully advised in the premises, makes and issues the following

ORDER

IT IS ORDERED that the following classifications shall be, and hereby are, included in the collective bargaining unit described above:

Arts and Crafts Instructor (Recreation Division)\*  
Radiology Clerk\*  
Form Control Technician II\*  
Telephone Information Clerk\*  
Mail Room Machine Operator\*  
Citizen Contact Specialist\*  
Equipment Operator I\*  
Equipment Operator II\*  
Housing Program Analyst\*  
Dental Assistant (Oral Surgery)\*  
Cardiology Laboratory Aide\*  
Physical Fitness Instructor\*  
Commodity Code Clerk I\*  
Citizen Victim Complaint Specialist\*  
Inmate Contact Coordinator\*

Neighborhood Security Aid Program positions of:

Training Officer\*  
Information Officer\*  
Assistant Supervisor\*  
Communications Dispatcher\*  
Aides\*  
Courthouse Complex Information Aide\*  
Park Security Aide\*  
Welfare Parking Lot Aide\*  
Administrative Aide I\*  
Clerical Aide II\*

Accountant III (Project Turnaround)\*  
Cultural Activities Director\*  
Clerk Stenographer III (County Clerk's office)

IT IS FURTHER ORDERED that the following classifications shall be, and hereby are, excluded from the collective bargaining unit described above:

Transportation Planner I\*\*\*  
Transportation Planner II\*\*\*

Neighborhood Security Aid Program positions of:

Program Director\*\*  
Assistant Program Director\*\*  
Administrative Officer\*\*  
Supervisor\*\*

Director (Project Turnaround)\*\*  
Citizen Contact Coordinator (Project Turnaround)\*\*  
Supervisor of Group Living\*\*

Respiratory Therapy Assistant Supervisor\*\*  
Real Estate Agent III  
Park Supervisor III  
Administrative Assistant I (Recreation Department)  
Community Center Program Director  
Administrative Assistant III (Parks Department)  
Inpatient Account Information Supervisor  
Assistant Program Coordinator Alcoholism and Drugs  
Administrative Assistant II (Nursing Home)  
Cook III

- \* Stipulated during the course of the hearing as being properly included in the unit.
- \*\* Stipulated during the course of the hearing as being properly excluded from the unit.
- \*\*\* Stipulated during the course of the hearing as being properly included in the bargaining unit represented by TEAMCO.

Given under our hands and seal at the  
City of Madison, Wisconsin this 10th  
day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

The Union's initial petition sought the inclusion of thirty-four positions in the bargaining unit. Subsequent amended petitions listed three additional positions which the Union believed should be included in the bargaining unit. In an initial petition, and two subsequent amended petitions, the Municipal Employer sought the exclusion of twenty-five positions from the bargaining unit.

The Union withdrew its request for the inclusion of the positions of Transportation Planner I and II in the bargaining unit which it represents. The Employer and TEAMCO then stipulated to the inclusion of said positions in the bargaining unit represented by TEAMCO. TEAMCO did not seek to represent any of the other positions at issue in the instant proceeding.

The parties agreed that those positions contained in their petitions, and amendments thereto, on which no stipulation was reached, or, for which no record was made, would be withdrawn, without prejudice, from the instant proceedings.

1. Real Estate Agent III

The parties agree that said position is professional in nature. The Union wants the position to remain in the bargaining unit, contending that other professional positions are in the unit notwithstanding the exclusion contained in the description. The Municipal Employer seeks the exclusion of said position. The Municipal Employment Relations Act states: "The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit". 1/

Even if the bargaining unit in question improperly includes other professional employes, the Commission does not believe it has the discretion, in view of the statutory mandate referred to above, to place professional employes in certified bargaining units of non-professional employes, or to approve such placement by the parties, when questions regarding the unit status of particular professional positions are brought before it. Accordingly, in such cases, as in the instant matter, when a professional employe has not had an opportunity to vote as to whether or not to be included in a unit composed, at least in part, of non-professional employes, said employe must be excluded from such a certified bargaining unit. Therefore, the position of Real Estate Agent III is excluded from the bargaining unit.

2. Parks Supervisor III

Said position was previously entitled Parks Supervisor II and was included in the bargaining unit. The Municipal Employer believes that

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1/ Section 111.70(4)(d)2.a. There is no substantive difference between this provision and Section 111.70(4)(d), of the 1965 Statutes as interpreted by the Commission, at the time that the instant unit was certified.

the position's duties have changed to such a degree that the position is now supervisory. The Union argues that the retitling of the position was not accompanied by any change in duties.

The Parks Commission is divided into eleven districts, each of which is directed by a District Supervisor. Six of the districts have employes in the Park Supervisor IV classification to whom the employes in the Park Supervisor III classification report. In the remaining five districts, the employes classified as Park Supervisor III report to the District Supervisor. Each Park Supervisor III directs the activities of a number of employes, which number varies from ten to twenty during the winter and from twenty to forty during the summer. The Park Supervisor III spends a majority of his time performing different duties than are performed by the subordinate employes. Employes classified as a Park Supervisor III have performed the following duties: recommended discipline of employes; evaluated the performance of probationary employes and recommended retention or termination of said employes; filed written answers to written grievances; called in off-duty employes to replace absent employes and to perform urgent unscheduled maintenance; interviewed job applicants and made recommendations with respect thereto; authorized use of personal leave by employes; and made out work schedules for their crews. The Park Supervisor III is involved in preparation of the District's budget and is responsible for the requisition and receipt of supplies.

Based on the preceding factors, the Commission concludes that the position of Park Supervisor III possesses supervisory status, and accordingly, is excluded from the bargaining unit.

### 3. Administrative Assistant I (Recreation Department)

The Administrative Assistant I, R. Williams, directs the work of three full time clerical employes and four seasonal clerical employes. Williams interviews job applicants and evaluates new employes during their probationary periods. Williams' supervisor has always followed her recommendations in both of those areas. Williams assigns work to the clerical employes and also performs some clerical duties. The majority of Williams' time is spent in preparing and administering the budget for the Recreation Division. After Williams prepares the budget it must be approved by the Recreation Director and then submitted to the County Board. Williams has participated in conferences which formulate management policies for the Recreation Division.

Based upon the above, the Commission concludes that the Administrative Assistant I position possesses sufficient supervisory functions so as to warrant its exclusion from the bargaining unit.

### 4. Community Center Program Director

The Director at the Martin Luther King Recreation Center is C. Pitts. Pitts is responsible for the planning, organizing and supervising of recreational programs and activities at the Center. In addition to Pitts, the Center has a staff of five full time and seven part time employes. Pitts has the authority to hire, discipline, terminate and schedule work of employes at the Center. Pitts prepares the Center's budget.

The Commission finds the position of Community Center Program Director to be supervisory, and therefore, it is excluded from the bargaining unit.

5. Administrative Assistant III (Parks Department)

R. Wanek is the incumbent in the captioned position. Wanek is responsible for preparing and administering the overall budget of the Parks Department, which budget is a composite of the individual budgets from the three divisions and eleven districts within the Parks Department. In addition, Wanek participates in the development and implementation of fiscal and budgetary policies, such as staffing patterns, and, he is authorized to transfer funds between accounts. Wanek evaluates and makes recommendations concerning the fiscal impact of departmental programs and procedures.

The Commission is satisfied that the position of Administrative Assistant III (Parks Department) is managerial, and therefore, is excluded from the bargaining unit.

6. Inpatient Account Information Supervisor

This position, currently occupied by M. Scoptur, is responsible for coordinating interviews of patients at the Mental Health Center to acquire the financial information necessary for proper billing. Scoptur assigns work to eight employes. Scoptur seldom performs the same work, i.e., interviewing of patients, as said eight employes, although she does review the written reports of the other interviewers and assists them with unusual interviews. Scoptur interviews applicants for employment and makes recommendations concerning the applicants to her supervisor. She also evaluates employes and makes recommendations concerning retention or termination of probationary employes to her supervisor. Said supervisor has always followed Scoptur's recommendations with respect to both applicants and probationary employes. Scoptur has authorized overtime work by the eight employes and approves their timecards.

The Commission is satisfied that the position of Inpatient Account Information Supervisor should be excluded from the bargaining unit as a supervisor.

7. Assistant Program Coordinator Alcoholism and Drugs

This position was created after the bargaining unit was certified. Contrary to the Union, the Municipal Employer believes the position is managerial in nature. The sole evidence introduced by the parties was a job announcement for the position. Said job announcement described the duties of the position as follows:

"Under direction, to assist in planning, developing, and administering a coordinated system of services for drug users; to review service programs for compliance with state and local regulations and county standards; to assist in developing procedures to insure continuity of care and interprogram cooperation with other related disability services; to review and evaluate program content and recommend changes for improvement or expansion; to confer with and assist agencies in establishing acceptable operating procedures; to evaluate and assist in the development of new resources based on the needs of the community; to maintain statistical data and prepare reports; to assist with the preparation of the annual budget; and to perform such other duties as may be assigned."

Although the job announcement indicates that the incumbent of the captioned position may have some involvement in policy development, the absence of any testimony, with respect to the incumbent's actual performance of those responsibilities, results in a record which is insufficient to permit a determination as to the position's managerial status in this proceeding.

However, the education requirement 2/ and the duties, contained in the job announcement, clearly demonstrate that this position requires the application of specialized skills and knowledge in the performance of varied and dissimilar functions. Accordingly, the Commission concludes that the position of Assistant Program Coordinator Alcoholism and Drugs is a professional position, and on that basis, it is excluded from the bargaining unit.

#### 8. Administrative Assistant II (Nursing Home)

The Administrative Assistant II position, currently occupied by D. Washburn, administers the Support Services Department at the Infirmary, which consists of six full time employes. Washburn has interviewed and hired for those positions, evaluated probationary employes, given verbal warnings to employes, and, has authorized employes to work overtime. Washburn is responsible for the Infirmary's employe orientation and in-service training program, for the publication of the employes' newsletter, for payments to patients who participate in work therapy programs, and, for the administration of the Infirmary when the Superintendent is absent. Washburn is the Employer's representative at the first and second steps of the grievance procedure in the Support Services Department, although no grievances have arisen during his tenure.

Washburn clearly functions as a supervisor of the Support Services Department. In addition thereto, based on his involvement in the development, implementation and administration of programs and policies at the Infirmary, as well as his frequent replacement of the Superintendent, Washburn functions as part of the management within the Infirmary. Accordingly, the position of Administrative Assistant II (Nursing Home) is excluded from the bargaining unit.

#### 9. Cook III

The Cook III position, currently occupied by M. Schultz, was created in late 1975 or early 1976 when the Mental Health Center eliminated the South Division kitchen and began preparing all food for the Center at the North Division kitchen. The Dietician IV is in charge of the entire food services operation. Said operation is divided into two sections; (1) dietetics, purchasing and serving; and, (2) preparation. The Chef II is responsible for the food preparation activities. Schultz reports to the Chef II. There are twenty-nine other employes also working in food preparation. Schultz works primarily in the kitchen area directing the actual food preparation, by assigning tasks, answering questions and checking

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2/ "Possession of an advanced degree from a college or university accredited by the appropriate professional or regional accrediting agency with a major in one of the behavioral sciences, including social work, psychology, rehabilitation, special education, or hospital administration."

to see if the prepared food is acceptable, but normally does not perform any cooking or other food preparation tasks. Both Schultz and the Chef II have performed the following activities: interviewed job applicants and made recommendations to the Dietician IV, who makes the final selection; requested approval of overtime work from the Dietician IV; called in replacement employes; and, recommended disciplinary actions to the Dietician IV. The Dietician IV usually has followed their recommendations in those areas.

The Commission finds that the position of Cook III should be excluded from the bargaining unit as a supervisor.

10. Clerk Stenographer III (County Clerk's Office)

The captioned position, currently occupied by C. Schwenson, is located in the County Clerk's office. Said office has a staff of ten employes, including the County Clerk, of which five employes are excluded from the bargaining unit. Schwenson spends the vast majority of her time in setting up and maintaining files for the County Board, which files are public records. Once in the past two years, Schwenson helped prepare a "sensitive" non-public research paper on County Board procedures. She has taken minutes of County Board proceedings and has prepared occasional memos from one County Board member to another member. However, Schwenson has not been involved in the preparation of non-public documents concerning labor relations. The de minimis amount of confidential work which Schwenson has performed could be channeled to the other employes who are already excluded from the bargaining unit, and consequently, said work does not justify Schwenson's exclusion from the bargaining unit. 3/ Therefore, the Commission concludes that the Clerk Stenographer III is not a confidential employe and is included in the bargaining unit.

Dated at Madison, Wisconsin this 10th day of November, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Charles D. Hoornstra  
Charles D. Hoornstra, Commissioner

3/ The School District of Onalaska (15339) 3/77.