

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of :  
WISCONSIN COUNCIL OF COUNTY AND : Case LXVIII  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : No. 20806 ME-1361  
Involving Certain Employes of : Decision No. 15250-B  
MANITOWOC COUNTY :  
-----

Appearances:

Mr. Michael J. Wilson, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, appearing on behalf of the Union.  
Mr. Richard Garrow, Corporation Counsel, appearing on behalf of the Employer.

ORDER RULING ON CHALLENGED BALLOTS

Pursuant to a Direction of Election in the above-entitled matter, issued February 8, 1977, the Wisconsin Employment Relations Commission, on February 24, 1977, conducted an election in a bargaining unit of

" . . . all activity therapists, psychotherapists, chief clinical psychologist, clinical psychologists, outreach workers and drug and alcohol abuse counselors, but excluding all other employes of Manitowoc County . . ."

to determine whether said employes desired to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, herein the Union, for the purposes of collective bargaining; that following the conduct of the election, the parties, in conjunction with the Commission's agent, executed a tally sheet which reflected the following:

1.	Total number claimed eligible to vote	9
2.	Total ballots cast	9
3.	Total ballots challenged	2
4.	Total ballots void	0
5.	Total ballots blank	0
6.	Total valid ballots counted	7
7.	Total ballots cast for the Union	4
8.	Total ballots cast against the Union	3

Since the two challenged ballots could possibly affect the results of the election, the Commission on March 9, 1977, ordered that a hearing be held to determine whether Jill Paulus and Alice Sebor, the individuals whose ballots were challenged by the Union, were eligible to vote; a hearing having been held in Manitowoc, Wisconsin, on March 23, 1977, before Hearing Examiner Peter G. Davis, at which time the parties submitted evidence and argument with respect to the issues involved; the parties having thereafter filed briefs, which were received on August 24, 1977; and the Commission having considered the record and the arguments of the parties, and being satisfied that the challenges to the ballots of the two individuals should be sustained;

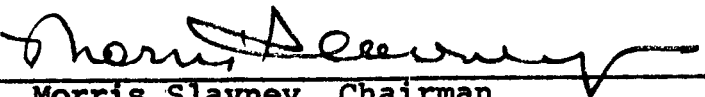
NOW, THEREFORE, it is

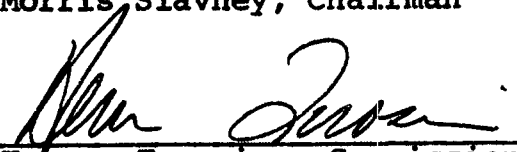
ORDERED

That the challenges to the ballots of Jill Paulus and Alice Seborabe, and the same hereby are, sustained.

Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of September, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING  
ORDER RULING ON CHALLENGED BALLOTS

The Union's challenge to the two ballots in question is premised upon its belief that on the eligibility date of February 8, 1977, which was established in the Commission's Direction of Election, neither Jill Paulus nor Alice Seborá were permanent professional employes of Manitowoc County. The Union contends that the instant proceeding was its first opportunity to litigate the eligibility of the two employes inasmuch as their status was not raised at the election petition hearing and their alleged eligibility first surfaced when it saw the County's prepared eligibility list on the day of the election. The County asserts that both employes were permanent professional employes as of February 8, 1977, and thus were eligible to vote in the election.

The record reveals that Jill Paulus was hired on September 17, 1976, as a part-time activity therapist and that she was employed in that capacity on February 8, 1977. Inasmuch as the Direction of Election indicates that "all activity therapists . . . employed by the County on February 8, 1977" are eligible to vote, it must be concluded that Paulus was eligible to vote unless, as urged by the Union, she was a temporary employe on the eligibility date in question.

The Commission has consistently defined a temporary employe as one who lacks an expectation of continued employment and it has excluded such employes from voting eligibility because as a result of their tentative employment status they do not have the requisite community of interest with other employes. 1/ The County Program Director testified that Paulus, who is not a certified occupational therapist, was hired "with the understanding that she might continue to work with us only until we found an occupational therapist to fill that position, which is what we prefer." It also reveals that in January 1977 the County had advertised for an occupational therapist to replace Paulus. While there is also testimony that the County hoped to retain Paulus once an occupational therapist was hired, such an alleged possibility, when viewed in light of the above quoted testimony, clearly does not create any reasonable expectation of continuing employment. In light of the foregoing, the Commission must conclude that Paulus was a temporary employe who was therefore ineligible to vote in the instant election.

Turning to the status of Seborá, the record reveals that she was hired on September 1, 1976, "to provide alcoholism prevention consultation services from September 1, 1976 through December 31, 1976" pursuant to a "temporary consultation arrangement". This consultation was continued on a monthly basis during January and February, 1977, and the County's Program Director testified that Seborá had no expectation of continuing employment during this period. Given these factors, the Commission also concludes that Seborá was a temporary employe and thus that the Union's challenge to her ballot should also be sustained.


---


1/ Pierce County (12316) 12/73; The Pad, Inc. (13751) 6/75.

Based upon the aforesaid we are today issuing a certification of the results of the election.

Dated at Madison, Wisconsin this 2nd day of September, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Charles D. Hoornstra, Commissioner