

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
KENOSHA COUNTY ASSISTANT ATTORNEYS : Case XXVIII
ASSOCIATION : No. 21254 ME-1400
Involving Certain Employees of : Decision No. 15371
COUNTY OF KENOSHA :

Appearances:

Mr. Jerold W. Breitenbach, Attorney at Law and Director, appearing
on behalf of the Association.
Messrs. Joseph Salituro, County Corporation Counsel, and Charles Rude,
Director of Labor Relations and Personnel, appearing on behalf
of the County.

DIRECTION OF ELECTION

Kenosha County Assistant Attorneys Association, hereinafter referred to as the petitioner, having, on January 18, 1977, filed a petition with the Wisconsin Employment Relations Commission requesting the commission to conduct an election, pursuant to section 111.70(4)(d), Stats., among certain employees of County of Kenosha, to determine whether said employees desire to be represented by said petitioner for the purposes of collective bargaining; and a hearing 1/ on such petition having been held at Kenosha, Wisconsin, on February 16, 1977, Marshall L. Gratz, examiner, being present; and the commission having considered the evidence and the briefs of the parties and being fully advised in the premises, and being satisfied that a question has arisen concerning representation of certain employees of said municipal employer;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive in the collective bargaining unit consisting of all legal professional employees employed by County of Kenosha, excluding managerial, supervisory, confidential and elected personnel, who were employed by County of Kenosha on March 22, 1977, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose

1/ The parties waived, in writing, the preparation of a transcript and the provisions of sec. 227.09(4), Stats., with respect to the above-captioned matter. The petitioner also waived, in writing, the effects upon the election petitioned for herein of county prohibited practices alleged in its complaint filed in County of Kenosha, Case XXIX, No. 21404, MP-726, which is currently pending before the commission.

of determining whether such employees desire to be represented by Kenosha County Assistant Attorneys Association for the purposes of collective bargaining with County of Kenosha.

Given under our hands and seal at the City of Madison, Wisconsin this 22nd day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

NOTICE OF DECISION
The Wisconsin Employment Relations Commission has received a petition for enforcement of an order of the National Labor Relations Board. The Commission has considered the petition and the record in the case and has decided to grant the petition. The Commission's decision is based on the following findings of fact and conclusions of law.

IT IS THE ORDER OF THE COMMISSION

That the National Labor Relations Board's order be enforced. The Commission's decision is based on the following findings of fact and conclusions of law.

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The parties stipulated that petitioner's amended unit description constitutes an appropriate unit. That unit consists of "all legal professional employees employed by County of Kenosha excluding managerial, supervisory, confidential and elected personnel." There is no dispute over exclusion of the positions district attorney and the county corporation counsel. The parties further stipulated that the county's law student "interns" were temporary employees lacking the expectation of continued employment that would be necessary to warrant their unit inclusion, and that the "investigator" working in the district attorney's office is not a professional employee within the meaning of MERA. They also stipulated that their disputes over the status of first assistant district attorney and assistant family court commissioner need not be determined herein since neither of those positions is currently filled, and since the duties of the latter position have not yet been specifically defined.

The sole issue concerns the status of the assistant corporation counsel, Frank Volpintesta. The employer, contrary to the petitioner, contends that Volpintesta's position is a supervisory, confidential and/or managerial position, and thus should be excluded from the unit.

BACKGROUND:

The assistant corporation counsel and the secretary to that position are organizationally within the county's department of public welfare. Their offices, however, are geographically separated from that department's offices, and are located in the same suite of offices utilized by the corporation counsel, Joseph Salituro, and his secretary.

The legal professionals currently employed by the county, other than Salituro and the district attorney (DA), are all assistant district attorneys within the DA's office, budget, and supervision. Volpintesta receives the same salary and fringe benefits as an assistant DA with comparable length of county service.

Volpintesta serves as legal counsel to the county department of public welfare, to its director, Paul Hickey, and to its governing body, the Board of Public Welfare, which is constituted and acts under specific statutory authority. Volpintesta advises and/or represents those clients as regards the legal aspects of their responsibilities in administering various programs and in operating the department internally. He participates in support and alimony cases, paternity cases, child abuse and probate matters, terminations of parental rights, real estate matters and others. He regularly attends periodic meetings of the Board of Public Welfare, meets and converses frequently with Director Hickey, and periodically confers individually or in group in-service training sessions with other department personnel.

While the foregoing duties absorb approximately 90% of his time, Volpintesta also assists Corporation Counsel Salituro by "filling in" for him in his absence due to vacation, illness or scheduling conflict. In such capacity, Volpintesta has attended meetings of the County Board of Supervisors and various of its committees, has served as parliamentarian and attorney to the county board chairman at such meetings; and has responded to requests for legal advice on county matters referred by county supervisors and department heads. In addition, Volpintesta performs legal research on matters assigned to him by Salituro, and he and Salituro frequently consult with one another on legal problems on which they are working.

DISCUSSION:

Alleged Supervisory Status

The county contends that Volpintesta's exercise of supervisory authority with respect to his secretary is sufficient to make him a supervisor within the meaning of sec. 111.70(1)(c), Stats. Volpintesta does exercise considerable supervisory authority as regards his secretary. He has effectively recommended which of three nominees shall be hired to the position, he directs and formally evaluates the work of his secretary for probation and perhaps other purposes, he may, and infrequently has, authorized overtime work by the secretary, and he may, but has not had occasion, to receive and adjust grievances and to effectively recommend discipline or discharge. On the other hand, a good deal of such supervisory activity is routine, and some of the responsibility (including participation in hire and discipline decisions) rests, at least in part, with Salituro and/or with department of public welfare officials. Most importantly, however, the supervision of his secretary constitutes an insignificant portion of Volpintesta's work time. While Volpintesta could not give an estimate in percentage terms, it would appear that supervision of his secretary involves less than 10% of Volpintesta's time. Under the circumstances, and also considering the additional training and work direction Volpintesta provides to certain other welfare department employees, the amount of time spent by Volpintesta on supervisory functioning is so small as to be insufficient to warrant his exclusion from the unit as a supervisor. 2/

Alleged Confidential Status

Employees are excluded as confidential by reason of their participation in the municipal employer's labor relations function and their access to sensitive labor relations information. The confidentiality, in any other sense of the term, of Volpintesta's roles or of the materials to which he has access is immaterial to the question of his status as a confidential employee.

The county's labor relations function has been carried on primarily by the county board's personnel committee. That committee, the county board and department heads have been advised and assisted in labor relations matters almost exclusively by outside labor relations counsel for many years and, in addition, since mid-1975, by an in-house director of personnel, Charles Rude, rather than by the corporation counsel. The personnel committee of the county board has also been primarily responsible for conducting the labor relations in the department of public welfare except as regards job classifications where the board of public welfare shares responsibility with the state. As a result, Volpintesta has not been called upon by Director Hickey or the board of public welfare for legal advice in labor relations matters. Moreover, so far as the record would indicate, Volpintesta has not been assigned to research labor relations matters for Salituro, nor has he engaged in any significant degree in discussions of labor relations law problems with Salituro. This has been true notwithstanding the fact that, following its negotiation of three year contracts with several unions of its employees, the personnel

2/ See e.g., Stanley-Boyd Area Schools, Joint District No. 4, (11589-A) (7/73). (School "building supervisors" spend insufficient portion of work time on supervisory duties to warrant exclusion).

committee informed Salituro that from and after mid-1976, his office--rather than outside counsel--would be increasingly looked to for legal advice and representation in labor relations matters.

In its brief, the county cited OAG 59-76 (9-9-76) for the proposition that boards of public welfare, rather than county boards, are responsible for hiring and firing of employees in the departments they operate. It is not clear from the evidence presented herein whether the Kenosha County Board of Public Welfare has undertaken such responsibilities, however. The evidence does indicate that Hickey has not sought advice from Volpintesta with respect to grievances filed by department employees. The recent attorney general's decision cited by the county would not appear to necessitate a change in Hickey's practice in that regard.

The county contends that Salituro will require Volpintesta's help in researching and discussing the increasing volume of labor relations law matters that can reasonably be expected to be referred to Salituro, and in responding to requests for labor relations legal advice from county officials in Salituro's absence. The record, however, indicates that no such reliance on Volpintesta in labor relations matters has occurred as yet. Moreover, there is no assertion that either Salituro or Volpintesta is expected to participate in contract negotiation. Nor is there a showing that either of them has been or shall be privy to negotiations strategy discussions or to other sensitive bargaining data. While it appears likely that Salituro will advise and/or otherwise participate in some phases of contract administration and in other aspects of labor relations (as evidenced by his representation of the county in the instant proceeding), Volpintesta has not yet been called upon to participate therein, and the extent of his role therein is too speculative at this time to warrant his exclusion as a confidential employee.

For the foregoing reasons, the commission concludes that Volpintesta is not a confidential employee within the meaning of MERA.

Alleged Managerial Status

The record reveals that the role of the assistant corporation counsel herein is in most respects parallel to that of the assistant city attorneys in the City of Milwaukee. 3/ Volpintesta advises public officials concerning the law, recommends acceptance or rejection of settlements and courses of legal action, etc. While his professional inputs are often relied upon by those he advises and represents, and while he provides advice and representation in a manner that is loyal and favorable to the management of the department of public welfare and the county, such do not constitute grounds for the conclusion that Volpintesta is a managerial employee. 4/ His inputs as to resource allocation policies are limited to suggestions to Salituro and Hickey as to desired provisions in their budgets for the operation of his own office. While he did formulate and propose on his own a detailed plan for the creation and organization of a county child support office, which plan was adopted in nearly

3/ See, City of Milwaukee, (12035-A) (2/74), aff'd, City of Milwaukee v. WERC, 71 Wis. 2d 209 (1976).

4/ Id.

all respects by the board of public welfare, that is an isolated exception to Volpintesta's normal mode of functioning. 5/

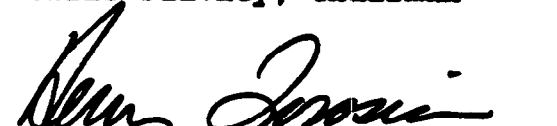
For the foregoing reasons, and because, contrary to the county's position, the assistant corporation counsel is found to share a community of interests with the other employees in the unit, that position is included in the unit and Volpintesta shall be eligible to vote in the election directed herein.

Dated at Madison, Wisconsin this 22nd day of March, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Charles D. Hoornstra, Commissioner

5/ See, Shawano County Sheriff's Department, (15257) (3/77) (sporadic nature of burglary investigator's development of policy recommendations cited as one factor negating his managerial status).