

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	Case XXXV
	:	No. 21603 ME-1431
PARINS & MC KAY, S.C., on Behalf of	:	Decision No. 15681
Certain Employees of BROWN COUNTY,	:	
(DEPARTMENT OF SOCIAL SERVICES),	:	
(BROWN COUNTY SOCIAL SERVICES NON-	:	
PROFESSIONAL EMPLOYEES)	:	
	:	
Involving Certain Employees of	:	
	:	
BROWN COUNTY (DEPARTMENT OF SOCIAL	:	
SERVICES)	:	
	:	

Appearances:

Parins & McKay, S.C., Attorneys at Law, by Mr. Thomas J. Parins, appearing on behalf of the Petitioner.

Brown County, Department of Social Services, by Mr. Donald A. Vander Kelen, Labor Negotiator, Mr. William C. Mann, County Personnel Director, and Mr. Kenneth Bukowski, Corporation Counsel, appearing on behalf of the Municipal Employer.

Drivers, Warehouse and Dairy Employees Union, Local No. 75, by Mr. Steve Hotchkiss, Recording Secretary, appearing on behalf of the Intervenor.

DIRECTION OF ELECTION

Parins & McKay, S.C., (Brown County Social Services Non-Professional Employees), hereinafter referred to as the Petitioner, having filed a petition on March 30, 1977, with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of Brown County, to determine whether said employees desire to be represented by said Petitioner for the purposes of collective bargaining; and a hearing on such petition having been held at Green Bay, Wisconsin, on June 2, 1977, Duane McCrary, Examiner, being present; and during the course of the hearing Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereinafter referred to as the Intervenor, was permitted to intervene in the matter on the basis that it presently represents the non-professional employees in the Brown County Department of Social Services; and the Commission having considered the evidence 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 non-professional employees employed by Brown County (Department of Social Services), but excluding the Director, supervisory and confidential employees, and all professional employees, who were employed on July 20, 1977, except such

employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether said employees desire to be represented by the Brown County Social Services Non-Professional Employees or by Drivers, Warehouse and Dairy Employees Union, Local No. 75, or by no organization, for the purposes of collective bargaining with Brown County.

Given under our hands and seal at the
City of Madison, Wisconsin this 20th
day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

Parins & McKay, S.C., hereinafter referred to as Petitioner, on behalf of certain non-professional employees employed by the Brown County Social Services Department, requested that an election be conducted by the Wisconsin Employment Relations Commission pursuant to section 111.70(4)(d) of the Municipal Employment Relations Act, (MERA), among those persons having the classification of Homemaker II, Steno I, Typist II, Clerk II, Clerk III, Case Aides I and II, and Social Services Aides I and II, and that Drivers, Warehouse and Dairy Employees Union, Local No. 75 be decertified as the bargaining representative for the bargaining unit consisting of the non-professional employees of the Brown County Social Services Department. At the hearing the Petitioner indicated that it desired to be identified on the ballot as Brown County Social Services Non-Professional Employees should an election be directed by the Commission. Further, Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereinafter referred to as the Intervenor, at the hearing was allowed to intervene on the basis that it was certified by the Commission and that it presently represents the non-professional employees in the employ of the Brown County Social Services Department. 1/

The parties stipulated that the Intervenor has requested Brown County, hereinafter referred to as the Municipal Employer, to open negotiations for the 1978 collective bargaining agreement, although the collective bargaining agreement for 1977 has not yet been agreed upon, and that the Municipal Employer and the Intervenor are functioning under a tacit extension of the 1976 collective bargaining agreement, which expired on December 31, 1976.

At the hearing the Municipal Employer requested a clarification of the description of the bargaining unit because it appears to the Municipal Employer that there are different communities of interest within the bargaining unit between the clerical positions and the Case Aide positions, which makes it difficult for the Municipal Employer to negotiate and administer the collective bargaining agreement. The Petitioner contends that the bargaining unit as presently certified by the Commission is the appropriate bargaining unit, and that any change would lead to fragmentation. The Intervenor stated that under the certification dated July 31, 1973, all of the job classifications set forth by the County were included in the single bargaining unit certified by the Commission.

Section 111.70(4)(d)2a of MERA, in pertinent part, provides that: ". . . the commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions, or other occupational groupings constitute a unit. . . ."

1/ Brown County (Dept. of Social Services) (11843) 7/73, wherein the Commission certified the Intervenor as the exclusive bargaining representative for a collective bargaining unit consisting of all non-professional employees employed by Brown County (Department of Social Services) but excluding professional employees, the Director, supervisors and all other employees of Brown County.

The Commission has interpreted the foregoing to mean that there is a need for bargaining units which allow employees to be represented by organizations of their own choosing which may be reasonably expected to be concerned with the unique interests and aspirations of the employees in said units. To establish a unit wherein the interests of a readily identifiable group of employees are likely to be submerged fails to give adequate protection to the rights guaranteed to employees by MERA. Further, the Commission has held that bargaining units may not be so fragmented as to cause or allow ineffective collective bargaining. 2/ Accordingly, the Commission will look to the facts of a given case to determine the appropriateness of a particular bargaining unit.

The Commission notes that while the Petitioner took the position that the non-professional bargaining unit as presently certified by the Commission is the appropriate bargaining unit, it called two witnesses who contend that the Case Aide positions should be in a bargaining unit separate from the remaining non-professional positions.

The current certified non-professional bargaining unit in the Brown County Social Services Department contains the following positions: Typist II, Case Aide I, Case Aide II, Stenographer I, Stenographer II, Clerk II, Clerk III, Social Services Aide I and Social Services Aide II. All bargaining unit positions are located in the same building. However, the Case Aides are supervised by three Basic Service Supervisors, while the clericals (Stenographer I and II, Clerk II, III and IV and Typist II) are under the supervision of an Administrative Assistant II. The Social Services Aide positions are in separate divisions. There was uncontroverted testimony that the Case Aide and clerical salaries are at comparable levels.

An examination of the job descriptions discloses some variance between the training and experience requirements for the Case Aide and clerical positions. The Case Aide I position requires high school graduation and one (1) year of relevant experience or successful completion of a Case Aide training program, while the Case Aide II position requires an additional two (2) years university education and three (3) years experience at the Case Aide I level or similar experience. The clerical positions basically require high school graduation, some course work and varying office experience requirements. However, the variance in training and experience pales in light of uncontroverted testimony that clerical employees transfer to Case Aide I positions and vice versa. Mrs. Johnson, an Administrative Assistant IV, and long time employe in the Brown County Social Services Department, testified that within the past calendar year two clericals transferred to the Case Aide position, and one Case Aide transferred to a clerical position. Ms. Conrad, presently a Case Aide II, testified that she was initially employed as a Stenographer I in August 1973, and that she received the Case Aide I classification in June 1974. Such lateral transfers have been a common occurrence.

The primary responsibility of the Case Aide position is the determination of client eligibility for benefits through interviews and verifications, all done in accordance with a manual of the State of Wisconsin. At times client records must be modified in accordance with the State manual and the Case Aide must effect the modification. The clerical positions generally maintain records, type and file correspondence and reports, as well as perform other office related duties.

2/ City of New Berlin (13173) 11/74; City of Madison (Department of Health) (14463-A) 7/76.

As to bargaining history, the record establishes that the clericals and the Case Aides have for a number of years bargained together in one certified unit. It is only in the current year that there is evidence of a division of opinion between the Case Aides and the clericals of sufficient intensity to stall contract negotiations. However, this Commission is not persuaded that the differences which have surfaced among the bargaining unit's members are sufficient to bifurcate the unit, especially where a viable collective bargaining history is well established.

Employees should be included in a single bargaining unit where they share a community of interest. Here, the Commission finds the requisite community of interest in the bargaining unit as presently certified. We have reached this conclusion by balancing the right of employees to be represented in units which will be responsive to their unique interests and the anti-fragmentation policy expressed in MERA which evinces a policy against the proliferation of units which would cripple an employer and the collective bargaining process. Both groups of employees share the same location, hours, fringe benefits and roughly the same salary in some classifications. There has been and continues to be some interchange between the clericals and the Case Aides. The Commission notes the differences in job functions and supervision, however, the importance of these differences are de minimis in light of the conditions of employment etc., which both groups share.

In light of the foregoing factors, the Commission concludes that the Case Aides do not constitute a readily identifiable homogeneous group having a substantial community of interest which is separate and distinct from the interests of the clerical employees. Furthermore, to bifurcate the present unit would result in undue fragmentation in violation of the mandate contained in Section 111.70(4)(d)2a of MERA. Accordingly, we find that the present bargaining unit as certified by the Commission in 1973 was, and continues to be, an appropriate bargaining unit under Section 111.70(4)(d)2a of MERA.

Dated at Madison, Wisconsin this 20th day of July, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Charles D. Hoornstra
Charles D. Hoornstra, Commissioner