

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	Case IX
WISCONSIN COUNCIL OF COUNTY AND	:	No. 22200 ME-1488
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO	:	Decision No. 16402
	:	
Involving Certain Employees of	:	
	:	
TREMPEALEAU COUNTY (DEPARTMENT OF	:	
SOCIAL SERVICES)	:	
	:	

Appearances:

Mr. LaVern Michalak, District Attorney, appearing on behalf of Trempealeau County.
Mr. Robert Chybowsky, District Representative for the Wisconsin Council of County and Municipal Employees, appearing on behalf of the Petitioner.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO hereinafter referred to as AFSCME, having, on November 3, 1977, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct elections, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act among professional and non-professional employees in the employ of the Trempealeau County Department of Social Services, excluding managerial, supervisory and confidential employees to determine appropriate unit or units, and whether the employees involved desired to be represented by AFSCME for the purposes of collective bargaining with said Municipal Employer; and a hearing on said petition having been held at Whitehall, Wisconsin, on February 9, 1978, before Michael F. Rothstein, a member of the Commission's staff; and during the course of said hearing the Municipal Employer having raised issues as to the "employee" status of individuals occupying certain positions involved herein; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Direction of Elections.

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization and has its primary offices at Madison, Wisconsin.

2. That Trempealeau County, hereinafter referred to as the Municipal Employer, has its offices at Whitehall, Wisconsin, and among its governmental functions, operates a Department of Social Services, wherein individuals occupying the following classifications are employed:

<u>Classification</u>	<u>Number In Classification</u>
Director	1
Social Work Supervisor I	2
Basic Service Supervisor	1
Social Worker III	1
Social Worker II	5
Homemaker II	1
Case Aide II	3
Administrative Assistant I	1
Clerk II	2
Clerk I	1
Clerk I (CETA)	1

3. That the Director, Duane A. Michelson, is responsible for the operation and management of the Department of Social Services, and also supervises the work force employed therein; and that the parties have stipulated that Michelson is a managerial and supervisory employe.

4. That four of the Social Worker II's are assigned to work with Social Worker Supervisor I, Donald E. Howley; that one Social Worker III, one Social Worker II, and one Homemaker II are assigned to work with Social Work Supervisor I, Leslie J. Jordahl; that the three Case Aide II's are assigned to work with the Basic Service Supervisor, 1/ Wallace J. Swenson; and that the two Clerk II's and the two Clerk I's are assigned to work with the Administrative Assistant I, Kathleen E. Allen.

5. That Donald E. Howley and Leslie J. Jordahl, each occupying the classification of Social Work Supervisor I, and Wallace J. Swenson, occupying the Classification of Basic Service Supervisor, do not participate in the formulation, determination or implementation of management policies; that they have no authority to commit the Municipal Employer's resources; that they do not have access to, knowledge of, or participate in, on behalf of the Municipal Employer, matters affecting labor relations; and that further neither three of said individuals exercise a sufficient combination of supervisory duties to constitute any one of them as a supervisor.

6. That Kathleen E. Allen, occupying the classification of Administrative Assistant I, does not participate in the formulation, determination, or implementation of management policies; that she does not have the authority to commit the Municipal Employer's resources; that she does not directly participate in matters directly affecting the Municipal Employer's labor relations; that her access and knowledge of such matters is not of such significance as to constitute her a confidential employe; and that further she does not exercise a sufficient combination of supervisory duties and responsibilities to constitute her a supervisory employe.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That Donald E. Howley and Leslie J. Jordahl, each occupying the classification of Social Work Supervisor I; Wallace J. Swenson, occupying the classification of Basic Service Supervisor, and Kathleen E. Allen, occupying the classification of Administrative Assistant I, all in the Department of Social Services of Trempealeau County, are municipal employes within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That all regular full-time and regular part-time employes employed in the Trempealeau County Department of Social Services, excluding professional employes, managerial, supervisory and confidential employes may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(c)2.a. of the Municipal Employment Relations Act.

1/ The position of Basic Service Supervisor derives from the County's Organizational Chart (Ex. No. 1) and the County Merit System Classification Plan (Ex. No. 5); however, testimonial references to this position during the hearing listed that position as Income Maintenance Supervisor. We uniformly use the term Basic Service Supervisor to refer to the position which is presently held by Wallace J. Swenson.

3. That all regular full-time and regular part-time professional employes in the employ of the Trempealeau County Department of Social Services, excluding all other employes, managerial, supervisory and confidential employes may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(c)2.a. of the Municipal Employment Relations Act.

4. That should a majority of all regular full-time and regular part-time professional employes vote, in an election conducted by the Wisconsin Employment Relations Commission, for inclusion in the unit consisting of all regular full-time and regular part-time non-professional employes, then all regular full-time and regular part-time employes, including professional employes in the employ of Trempealeau County Department of Social Services, excluding managerial, supervisory and confidential employes, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(c)2.a. of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

DIRECTION OF ELECTIONS

That elections 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 following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time employes in the employ of Trempealeau County Department of Social Services, excluding professional employes, managerial, supervisory and confidential employes, who are employed on June 5, 1978, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Trempealeau County on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time professional employes in the employ of Trempealeau County Department of Social Services, excluding all other employes, managerial, supervisory and confidential employes, who are employed on June 5, 1978, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

- (1) whether a majority of the employes in said voting group desire to be included in the bargaining unit described in Voting Group No. 1; and
- (2) whether a majority of such employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO,

for the purposes of collective bargaining with Trempealeau County on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 17th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

The Petitioner and the Municipal Employer agree that the appropriate collective bargaining unit should consist of all regular full-time and regular part-time employes of the Trempealeau County Department of Social Services with the exception of managerial, supervisory and confidential employes, and that in order to include professional employes in a non-professional unit a majority of the professional employes eligible must vote for inclusion in the non-professional unit. Thus, the Direction of Elections provides the method of determining whether the professional employes wish to be included in a unit with non-professional employes for the purposes of representation, or whether they wish to establish a separate professional unit. In the conduct of the elections the ballots cast by the professional employes with respect to their unit determination will be counted and tallied first. If a majority of the eligible professional employes vote to be included in a unit with the non-professional employes, the ballots cast by the professional employes with respect to the representation will be comingled with the representation ballots cast by the non-professional employes and thereafter be tallied. Should less than a majority of the eligible professional employes vote to be included in a unit with the non-professional employes, then the representation ballots cast by the professional employes will be counted separate and apart from the ballots cast by the non-professional employes.

During the course of the hearing the Municipal Employer contended, contrary to AFSCME, that the individuals occupying the classifications of Social Work Supervisor I, Basic Service Supervisor and Administrative Assistant I are supervisory, and, therefore, said classifications should be excluded from the eligibles in the bargaining unit or bargaining units involved. Further, the Municipal Employer maintains that the Administrative Assistant I is also a confidential employe and should be excluded from the eligibles on that basis. Included in the record is an inference suggesting that the occupants of the above-noted classifications may be managerial as well as supervisory and/or therefore the Commission has made a determination with regard to whether any of the individuals occupying any of said classifications are managerial employes.

The Petitioner and Municipal Employer have agreed to exclude Duane Michelson, Director of Social Services, from the bargaining unit on the basis of his managerial, supervisory and confidential duties.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act contains the following definition of the term supervisor:

"As to other than municipal and county firefighters any individual who has authority in the interest of the municipal employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

In determining whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes.
2. The authority to direct and assign the work force.
3. The number of employes supervised, and the number of other persons exercising a greater, similar or lesser authority over the same employes.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or his supervision of employes.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.
7. The amount of independent judgment and discretion exercised in the supervision of employes. 2/

Social Work Supervisor I (Donald E. Howley and Leslie J. Jordahl)

Mr. Howley, who has been a Social Work Supervisor I for nine years, sits in on interviews for hiring, but has no authority to hire; in addition, he has no authority to promote, transfer or discipline. Mr. Howley cannot suspend employes, nor does he have authority to effectively adjust grievances, except by the method of sitting down with the employe and discussing the employe's problem in an attempt to achieve work habit changes. Mr. Howley has no authority to layoff, discharge or rehire. He does have the authority to recommend discipline. However, decisions regarding discipline rest ultimately with Mr. Michelson and the Board. Mr. Howley spends approximately eighty percent of his time in case work supervision and twenty percent of his time in social work per se on cases of his own. Mr. Howley receives a regular monthly salary, works a scheduled eight hour day, and is given compensatory time in the same manner as the other professional employes of the department. On the limited occasions that Mr. Howley has made recommendations to Mr. Michelson concerning the hiring of a new employe, the recommendations were not followed by Mr. Michelson. Mr. Howley estimates that he spends only about five percent of his time supervising employes relative to their work habits, and that the remainder of his time is spent in dealing with the Social Worker II's and their management of the department's cases.

Mr. Jordahl has been a Social Work Supervisor I for seven years. He has never participated in the interviewing process because there have been no new hires during this period of time. Mr. Jordahl has been responsible for the supervision of two Social Worker II's and one Homemaker II; he evaluates these employes on an annual basis. Mr. Jordahl has no authority to promote or effectively recommend promotion; he also has no authority to transfer employes. On the issue of adjusting grievances, Mr. Jordahl talks to employes concerning the proper forms to be used and similar types of agency policy. In dealing with issues of agency policy which go beyond basic ministerial issues, the employes have been dealing directly with the agency director, Mr. Michelson. Mr. Jordahl has no authority to discipline employes nor to discharge

2/ Fond du Lac County (10579-A) 1/72; St. Croix County (Health Care Center) (14518) 4/76.

employees. Mr. Jordahl estimates that he supervises employes for seventy-five percent of his work week; the other twenty-five percent of his work week consists of performing basic social work activities. Mr. Jordahl, like Mr. Howley, is entitled to compensatory time in the same manner as other professional employes of the department. Mr. Jordahl's supervisory work consists primarily of helping the other employes that he works with in regards to finding resources for clients, effective case handling, and other social work activities. He has not been called upon to attempt to change an employe's work habits. Mr. Jordahl assigns work and directs the work of the employes that he supervises. In addition, he approves the use of vacation time and sick leave, although the record indicates that this function is primarily ministerial.

The record indicates that Mr. Howley and Mr. Jordahl do not effectively participate in the hiring, firing, discipline, promotion, layoff or transfer of any of the Social Workers in the department. In addition, it would appear that the majority of the work done by the Social Work Supervisor I is that of supervising the social work activities of the Social Workers and the Homemaker, and is not one of primarily supervising employes. While it is true that the Social Work Supervisor I position does have the authority to direct and assign work we conclude that decisions concerning the key supervisory matters are made by the Director of the Department of Social Services and the Social Services Board, and that such decisions are routinely transmitted to the Supervisors. We therefore conclude that the position of Social Work Supervisor I is properly within the proposed bargaining unit, and that this position is not excluded by Section 111.70(o)(1) of the MERA.

Basic Services Supervisor (Wallace J. Swenson)

Swenson has been a Basic Services Supervisor for eight years and was a Social Worker for two years prior to that time. He has some supervisory authority as regards three Case Aide II's. Swenson has no authority to hire job applicants, although he sits in on the interviews which, in the past, have been conducted by the Director of the Department. Swenson has no authority to promote or to effectively recommend promotion. However, Swenson does evaluate the performance of the Case Aide II's on a standard Department evaluation form; this evaluation is done on an annual basis. Swenson has no authority to transfer, suspend or adjust grievances of the Case Aide II's in fact, during the either years that Swenson has been a Basic Service Supervisor, he has never recommended or suggested to the Director or the Board that any of the Case Aide II's be disciplined in any manner. Swenson spends about twenty percent of his working time supervising the Case Aide II's which primarily consists of consulting with his Case Aides and acting as a "resource person"; his supervision is mostly of an education function. Swenson works a designated forty-hour work week and spends at least eighty percent of his time doing the same type of work as the Case Aide II's.

On the basis of the facts presented by the record herein, we find that the supervisory duties and responsibilities of the Basic Service Supervisor do not exist in sufficient combination and degree to warrant the conclusion that said position is supervisory; therefore, the position of Basic Service Supervisor is occupied by a "municipal employe" whom we have ordered included in the unit.

Administrative Assistant I (Kathleen Allen)

The Municipal Employer contends that Kathleen Allen is a supervisor and a confidential employe.

In order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, the Commission has held that such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 3/ Ms. Allen types the minutes of the Social Services Board meetings; at times, during these meetings, employes' performance is discussed. However, the record indicates that Ms. Allen types only those portions of the minutes which are provided to her by the Director of Social Services, Mr. Michelson. It has been Mr. Michelson's practice in the past to not include in the material given to Ms. Allen specific information concerning employe' performance, nor is there any indication that Ms. Allen has been privy to information discussed at Board meetings concerning the Municipal Employer's labor relations policies. The only confidential files to which Ms. Allen has access are the confidential records of clients of the Social Services agencies. It is clear from the record that she has no information about employes and Board reaction to the performance of co-workers. Therefore, there is no basis for concluding that the Administrative Assistant I is a confidential employe.

As regards Ms. Allen alleged supervisory status, she works with the clerical employes in the Department of Social Services, and is the highest paid clerical position in the department. She works in conjunction with two Clerk II's, one Clerk I and a CETA position, which is also designated as a Clerk I position. The Municipal Employer contends that Ms. Allen's role in the clerical department is that of a supervisor. Ms. Allen is responsible for making annual evaluation reports of the Clerk II and Clerk I positions in her office; in addition, Ms. Allen assigns work to these employes, directs the work of these employes and sometimes checks on their work. Ms. Allen spends approximately five percent of her work week actually supervising the work of other employes. The remainder of her time is spent performing routine clerical work. Ms. Allen does sit in on hiring interviews together with Mr. Michelson; however, she does not make the decision to hire, nor can she effectively recommend that an individual be hired. In addition, Ms. Allen has no authority to promote, although she can suggest to the Director of Social Services that a particular individual be promoted. The Administrative Assistant I position has no authority to transfer an employe, nor to layoff, rehire, discipline or reprimand, suspend without pay, nor can Ms. Allen effectively recommend the discharge of an employe. Ms. Allen characterizes her position as that of lead worker whose basic tasks are typing, filing and preparing reports for individuals and agencies at the Department of Social Services. We conclude that Ms. Allen does not perform substantial duties of a supervisory nature sufficient to conclude that that position is one of a "supervisor" within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act. Therefore, the position of Administrative Assistant I is occupied by a "municipal employe", whom we have ordered included in the unit.

During the course of the hearing an organizational chart of the Department of Social Services was introduced as an exhibit. Said organizational chart contained the names of the various employes occupying the various classifications noted in the Findings of Fact. The Commission assumes that the only professional employes are non-the Social Workers and that the Homemaker II and Case Aide II classifications are non-professional employes, along with the clerical positions. A statement was included on said exhibit which indicated that Nancy Pronschinske was employed as a clerical as a "CETA" clerical employe

3/ City of Menasha (14523) 4/76; Juneau County (Pleasant Acres Infirmary) (12814) 5/74; Watertown Unified School District No. 1 (12166-A) 3/74; Gateway Technical Institute (14993) 10/76; Green County (Sheriff's Department) (16270) 3/78.

on a temporary basis. No evidence was adduced with regard to the temporary nature of Pronschinske's employment. The mere fact that she occupies a CETA financed position does not, in itself, convert her to a temporary employe, nor does the fact that she is a CETA employe otherwise disqualify said employe from being eligible to vote in the election involving the non-professional employes. Since she is performing clerical work and is employed under the same conditions applied to other clericals, 4/ and since the parties did not adduce any evidence with regard to the temporary nature of Pronschinske's employment, should she appear to vote either party may challenge her ballot.

Dated at Madison, Wisconsin this 5th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

4/ Sheboygan County (14180) 12/75.