

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL OF COUNTY AND
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO

Involving Certain Employees of

IRON COUNTY

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: Case V
: No. 23832 ME-1613
: Decision No. 16821
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:

Appearances:

Mr. Jack Bernfeld, Business Representative, Wisconsin Council of
County and Municipal Employees, AFSCME, AFL-CIO, appearing
on behalf of the Petitioner.

Mr. Italo Bensoni, Chairman, County Board of Iron County, appearing
on behalf of the Municipal Employer.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME,
AFL-CIO having filed a petition on December 6, 1978 with the Wisconsin
Employment Relations Commission, requesting the Commission to conduct
an election, pursuant to the provisions of the Municipal Employment
Relations Act, among certain employees of Iron County; and a hearing
in the matter having been held on January 25, 1979, at Hurley, Wisconsin
before Michael Rothstein, Examiner and the parties having waived,
in writing, transcript of the record made at the hearing in the above-
captioned matter, and the Commission having considered the evidence,
and being satisfied that questions concerning the appropriate bargain-
ing unit and representation have arisen involving certain employees
of the Municipal Employer named above, makes and issues the following

FINDINGS OF FACT

1. That the Wisconsin Council of County and Municipal Employees,
AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor or-
ganization and has its offices at Route 1, Box 112-B, Superior, Wis-
consin.

2. That Iron County, hereinafter referred to as the Municipal
Employer, having its offices at the Iron County Courthouse in Hurley,
Wisconsin, performs governmental functions and operates a County Court-
house, where various county departments, as well as the Department
of Social Services are located.

3. That in the petition initiating the instant proceeding the
Union alleged that it desired to represent employees of the Municipal
Employer in a unit described as "all regular full-time and regular
part-time employees of the Iron County Courthouse and the Iron County
Department of Social Services, except managerial, supervisory, and
confidential employees"; and that said claimed appropriate unit would
include both professional and non-professional employees.

4. That the following classifications of employees are employed
in the Courthouse and in the Department of Social Services, which
department is also located in the Courthouse:

No. 16821

Resource Agent	Director of Social Services
Home Economist	Deputy Treasurer
Secretary	Nurse
Zoning Officer	Deputy Circuit Clerk-Register in Probate
Social Worker II	Deputy County Clerk
Social Worker I	Deputy Register of Deeds
Typist II	Janitor
Clerk	Veteran Service Officer
Income Maintenance Worker	Agriculture and 4-H Youth Agent
Homemaker	Secretary (Nurse)

As well as the following employed under the Comprehensive
Employment Training Act

Secretary County Service Officer - Secretary County Resource Agent
Agent Trainee (Social Service Department)

Secretary to County Clerk

Handyman II

Driver IV

5. That during the course of the hearing herein the parties stipulated that the individuals occupying the positions of Resource Agent, Home Economist, Zoning Officer, Director of Social Service, Nurse, Veteran Service Officer, and Agriculture and 4-H Youth Agent are either managerial or supervisory employees, and, therefore should be excluded from any appropriate unit.

6. That the occupants of the positions of Social Worker II and Social Worker I are professional positions, while the other positions set forth in para 4., supra, excluding those positions agreed upon by the parties as being managerial and/or supervisory, are non-professional positions; that during the course of the hearing the Municipal Employer contended that Gary Aimone, the Social Worker II, is a supervisor; that Aimone, when the Director of Social Services is not present, performs some of the duties performed by the latter; that, however, Aimone lacks the authority to independently or effectively make determinations affecting the wages, hours and working conditions of any employees of the Municipal Employer; and that, in fact, Aimone spends the vast majority of his time in performing as a professional social service employee.

7. That also during the course of the hearing the Municipal Employer contended that the individuals occupying CETA positions should be excluded from the eligibles in the proposed bargaining unit, since said positions are federally funded; that said CETA employees perform duties similar to duties performed by other employees and have a common community of interest with other employees involved

herein; and that, while CETA employees are terminable at a specified time, pursuant to the CETA grant, their employment will not terminate in the near future, and thus they have an expectancy of continued employment.

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

CONCLUSIONS OF LAW

1. That Gary Aimone, occupying the position of Social Worker II, as well as the individuals occupying the CETA funded positions, are municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and therefore Aimone, as well as the individuals occupying the CETA funded positions, are included in any collective bargaining unit found to be appropriate herein.

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

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

4. That should a majority of all regular full-time and regular part-time professional employees 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 employees, then all regular full-time and regular part-time employees, including professional employees in the employ of the Iron County Courthouse and Iron County Department of Social Services, excluding managerial, supervisory and confidential employees, constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(c)2a of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions 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 employees in the employ of the Iron County Courthouse and Iron County Department of Social Services, excluding professional employees, managerial, supervisory and confidential employees, who are employed on February 8, 1979, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Iron County on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time professional employees in the employ of the Iron County Courthouse and Iron County Department of Social Services, excluding all other employees, managerial, supervisory and confidential employees, who are employed on February 8, 1979, except such employees 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 employees 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 employees voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO,

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

Given under our hands and seal at the
City of Madison, Wisconsin this 8th
day of February, 1979.

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 Union and the County have agreed that the appropriate collective bargaining unit should consist of all regular full-time and regular part-time employees of the Iron County Department of Social Services and the Iron County Courthouse with the exception of managerial, supervisory and confidential employees, and that in order to include professional employees in a non-professional unit a majority of the professional employees eligible must vote for inclusion in the non-professional unit. Thus, the Direction of Elections provides the method for determining whether the professional employees wish to be included in a unit with non-professional employees 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 employees with respect to their unit determination will be counted and tallied first. If a majority of the eligible professional employees vote to be included in a unit with the non-professional employees, the ballots cast by the professional employees with respect to the representation will be co-mingled with the representation ballots cast by the non-professional employees and thereafter the ballots will be jointly tallied. Should less than a majority of the eligible professional employees vote to be included in a unit with the non-professional employees, then the representation ballots cast by the professional employees will be tallied separate and apart from the ballots of the non-professional employees to determine their choice or do representation. During the course of the hearing, the County contended, contrary to the Union, that the individual occupying the classification of Social Worker II (Gary Aimone) is a supervisor, and, therefore, Aimone should be excluded from those eligible to participate in the elections directed herein. The basis for the County's contention that Aimone is a supervisor is the fact that he occupies the position of Assistant Director in the Department of Social Services. His duties, in addition to those normally performed by a Social Worker II, are to take the place of the Director of Social Services when the Director is not present or is unavailable to perform the Director's duties. However, at the hearing the Director testified that Aimone, even when performing the duties of Assistant Director, lacks the authority to hire, fire, transfer, discipline, promote, suspend, lay-off or recall employees in the Department of Social Services. The Director also testified that Aimone's duties were that of a lead worker as opposed to a supervisor, since all functions that inure to the Director remain with the Director, even in the Director's absence, and that Aimone lacks the ability to independently make determinations affecting co-employees. Pursuant to Commission policy in determining whether an individual is a supervisor, the Commission has concluded that Gary Aimone, Social Worker II, lacks the statutory criteria in sufficient combination and degree to warrant the conclusion that he is a supervisor. 1/

The County argues that the employees whose employment is funded under the Comprehensive Employment Training Act should be excluded from any bargaining unit on the basis that funding for those employees will terminate at specified dates, and therefore, CETA employees do not share the same expectancy of employment as do employees hired and

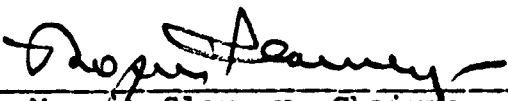
1/ Fond du Lac County (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; Trempealeau County (Department of Social Services), (16402) 6/78.

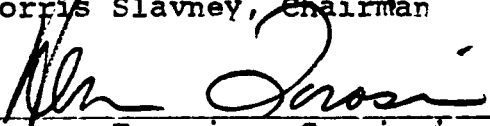
paid by the County from its own resources. In addition, the County argues that technically the County does not supervise CETA employees, but rather, supervision of CETA employees is handled by the CETA regional office. Finally, the County argues that the funding for these positions is not County funds, but rather federal funds.

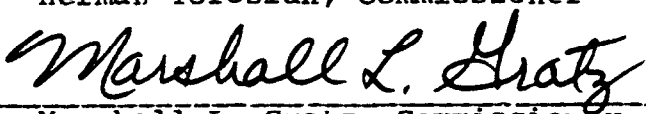
The Commission has often stated that the source of funding is not sufficient cause for excluding otherwise eligible employees from a bargaining unit. 2/ The Commission sees no factual or legal basis for changing this well established policy. It has been the experience of the Commission that CETA contracts, although of limited duration, are renewable and are in fact often renewed. Thus, CETA employees and other employees hired under similar federal programs share a community of interest with other employees in the appropriate voting groups. The Commission finds that the CETA employees are in classifications and positions similar to those filled by County funded employees. The CETA employees perform similar duties and enjoy similar conditions of employment as other employees of the County. Accordingly, they are eligible to participate in the elections directed herein.

Dated at Madison, Wisconsin this 8th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

2/ Lodi Joint School District No. 1 (16667) 11/78.