

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LINCOLN COUNTY (DEPARTMENT OF SOCIAL SERVICES)

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Case XX
No. 23622 ME-1590
Decision No. 16845

Rogers, Alberg and Hertel, Attorneys at Law, by Mr. James T. Rogers
and Mr. Harry R. Hertel, appearing on behalf of the Association.
Schmitt, Nolan, Hansen and Hartley, Attorneys at Law, by Mr. Wayne
Hansen, appearing on behalf of the Municipal Employer.

Social Services Workers' Association having, on October 12, 1978, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election pursuant to the provisions of the Municipal Employment Relations Act, among employees of Lincoln County, employed in its Department of Social Services, and a hearing on the matter having been held on November 1, 1978 before Ellen J. Henningsen, Examiner, and on November 14, 1978 before Douglas V. Knudson, Examiner, and the transcript having been received by November 30, 1978 and briefs having been received by December 26, 1978; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusions of Law and Direction of Election.

1. That Social Services Workers' Association, hereafter referred to as the Association, is a labor organization and has its offices c/o James T. Rogers, Attorney at Law, P.O. Box 398, Merrill, Wisconsin 54452.

2. That Lincoln County, hereafter referred to as the County, has its offices at Merrill, 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 Worker II (Professional Position)	5
Social Worker I (Professional Position)	1
Income Maintenance Supervisor	1
Homemaker II	1
Income Maintenance Worker	3
Income Maintenance Assistant	1
Administrative Assistant	1
Clerk III	1
Typist II	2
Typist I	4

3. That in its petition initiating the instant proceeding the Association requested the Commission to conduct an election to determine whether "all regular full-time and regular part-time employees of the

Lincoln County Department of Social Services, but excluding managerial, supervisory and confidential employees" desired to be represented by the Association for the purposes of collective bargaining; that, however, during the course of the hearing, the Association acknowledged that the Municipal Employment Relations Act requires that professional employees can be included in a unit with non-professional employees only when a majority of the professional employees vote to be so included; that also during the course of the hearing the County contended that the unit and/or units sought by the Association is (are) inappropriate, and that the appropriate unit should consist of all employees of the County who are not presently represented for the purposes of collective bargaining, including, in addition to the employees of the Department of Social Services, approximately 42 employees (including supervisors and professionals) employed by the County in its Courthouse, its Courthouse Annex, and Highway Department; and that there presently exists the following units of County employees, who are presently represented for the purposes of collective bargaining: (a) deputized law enforcement, (b) blue collar employees of the Highway Department, and (c) County Hospital employees.

4. That during the course of the hearing herein, with respect to the employees in the Department of Social Services, the parties agreed that the Director, Curtis Moe, was a managerial, supervisory and confidential employee, and that the Administrative Assistant, Lorraine Liberty, was a supervisory employee, performing such duties in relation to the Clerk III, Typist II and Typist I positions; and that, however, an issue arose as to the supervisory nature of the position of Income Maintenance Supervisor, Evelyn Taylor; and in that respect the County contended that the position was supervisory, contrary to the position taken by the Association.

5. That the employees of the Department of Social Services, hereinafter referred to as the Department, work in a building separate from the Courthouse, Courthouse Annex and Highway Department; that they do not share common supervision with other employees of the County; that there is no established employee interchange between the Department and other employees of the County; that the professional and non-professional Department employees share a community of interest distinct from that of other professional and non-professional employees of the County; and that the program of the Department is separate and distinct from the programs and functions of other County departments.

6. That Evelyn Taylor has had the title of Income Maintenance Supervisor since January, 1978, although she has performed the duties of that position since mid 1976; that Taylor handles most of the general relief cases for the County and, occasionally, provides intake services in place of the Income Maintenance Workers and Assistant; that Taylor directs the work of three Income Maintenance Workers and one Income Maintenance Assistant, assigns their workload, evaluates their work and resolves, sometimes in conjunction with the Department Director, or with the Wisconsin Department of Health and Social Services, questions of eligibility for relief presented to her by the four employees; that Taylor approves employees' requests for vacation and approves their overtime work; and that Taylor has effectively recommended to Director Moe, the hiring of at least two employees, the discharge of one employee, and the transfer of another employee.

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

CONCLUSIONS OF LAW

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

2. That all regular full-time and regular part-time professional employees in the employ of the Lincoln 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)(d)2.a. of the Municipal Employment Relations Act.

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

4. That Evelyn Taylor, Income Maintenance Supervisor, is a supervisory employee within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and therefore Taylor cannot be included in any bargaining unit consisting of any employees in the employ of Lincoln County.

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 Lincoln County Department of Social Services, excluding professional employees, managerial, supervisory and confidential employees, who are employed on February 16, 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 Social Services Workers' Association, for the purposes of collective bargaining with Lincoln County on questions of wages, hours and conditions of employment.

Voting Group No. 2

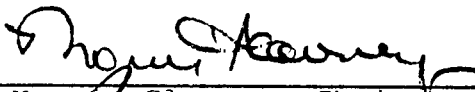
All regular full-time and regular part-time professional employees in the employ of Lincoln County Department of Social Services, excluding managerial, supervisory, confidential, and all other employees who are employed on February 16, 1979, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:

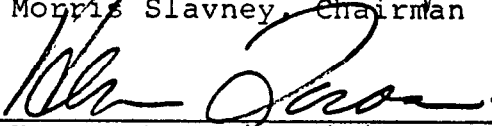
- (1) whether a majority of the eligible employees in said voting group vote to be included in the bargaining unit described in Voting Group No. 1; and,
- (2) whether a majority of such employees voting vote to be represented by Social Services Workers' Association,

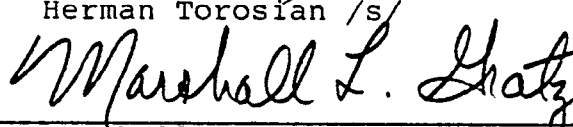
for the purposes of collective bargaining with Lincoln County on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin this 16th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian /s/


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

The Appropriate Bargaining Unit(s)

Section 111.70(4)(d)2.a. of the MERA 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. Before making its determination, the commission may provide an opportunity for the employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. The commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit. The commission shall not decide that any unit is appropriate if the unit includes both craft and noncraft employees unless a majority of the craft employees vote for inclusion in the unit. Any vote taken under this subsection shall be by secret ballot.

The Commission has interpreted the foregoing to mean that there is a need for a pattern of bargaining units which permits employees the right to be represented in workable units 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 large group of employees are likely to be submerged does not, in the Commission's opinion, give adequate protection to the rights guaranteed to employees in the Act. However, the Commission had held the units cannot be so fragmented so as to be inadequate for viable collective bargaining. 1/

Regarding both the professional unit and the non-professional unit, the Commission is satisfied that each group within the Department of Social Services constitutes an appropriate bargaining unit. Both groups function in a department which is distinct from the departments where the other non-represented professional and non-professional employees work in terms of location, supervision and function. In addition, there is little interchange of employees in the Department of Social Services and other County departments and present employees have no greater opportunity to secure a different County job than do applicants from the public. In the past several years, four employees who worked in other departments have become employees of the Department of Social Services. This does not indicate a high degree of interchange. Two were transferred from the County Judge's office, pursuant to a change in state statutes, which provided the County with the choice of assigning these employees to the County Judge or to the Department of Social Services. The other two appear not to be transfers, but rather successful applicants for new jobs.

1/ City of Madison (Department of Public Health) (14463-A) 7/76.

Furthermore, the Social Workers have unique interests, aspirations, duties and educational requirements apart from other professionals, such as Public Health Nurses, employed by the County. Finally, the size of the two voting groups -- six Social Workers and twelve non-professionals -- in relation to the size of the total work force does not result in undue fragmentation. Accordingly, the Commission has directed an election in each voting group and we have provided the professionals with the choice of determining whether they desire to be included in a single unit with the non-professionals in the Department.

The Position of Income Maintenance Supervisor

Based on the credible facts 2/ adduced during the course of the hearing we conclude that Taylor performs substantial duties of a supervisory nature sufficient to establish that she is a "supervisor" within the meaning of Section 111.70(1)(c) of the Municipal Employment Relations Act, and therefore the position of Income Maintenance Supervisor is excluded from any bargaining unit of County employees.

The Balloting Procedure

When an employe organization in an election proceeding desires to include professional employes in a single unit with non-professional employes, Section 111.70(4)(d) of the Municipal Employment Relations Act requires that the professional employes be given an opportunity to vote to determine whether they desire to be included with the non-professional employes in a single unit. In order to be included in a unit with non-professional employes, a majority of the eligible professional employes must vote for such inclusion. Therefore, in this proceeding, the professional employes (Voting Group No. 2) will be given two ballots: (1) to determine whether they desire to be included in a single unit with non-professional employes (Voting Group No. 1); and, (2) whether they desire to be represented by the Association. The professional employes who appear to vote will be instructed to place their representation ballots in a furnished blank white envelope and to seal such envelope and deposit same in the ballot box. The unit determination ballot will be a separate colored ballot and the professionals will be instructed to deposit their unit determination ballots in the ballot box.

The unit determination ballots cast by the professional employes will be initially counted, and should a majority of the eligible professional employes vote in favor of being included in a unit with non-professional employes, the sealed envelopes containing the ballots of the professionals with respect to representation will be opened and their ballots will be co-mingled with the representation ballots cast by the non-professional employes, and thereafter the tally will include the representation ballots cast by all employes.

Should a majority of the professional employes eligible not vote in favor of being combined in a unit with non-professional employes, then the professional employes shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the non-professional employes. Should that

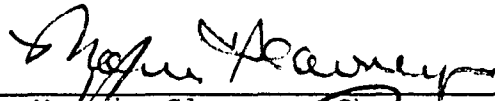
2/ The testimony of Director Moe, and the exhibits introduced in support thereof, rather than the testimony of Taylor with regard to her duties and responsibilities, which, for the most part, was indefinite, perhaps as a result of her expressed desire to be included in the unit.

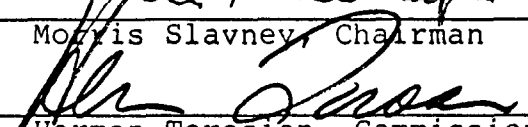
end result the representation ballots cast by the professional employes will be tallied to determine whether the professional employes desire to be represented by the Association for the purposes of collective bargaining.

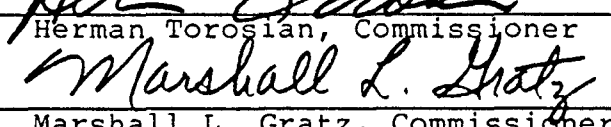
Dated at Madison, Wisconsin this 16th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner