

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

DODGE COUNTY COMMUNITY HEALTH CENTER  
EMPLOYEES, LOCAL 1323A, AFSCME, AFL-CIO,  
affiliated with WISCONSIN COUNCIL OF  
COUNTY AND MUNICIPAL EMPLOYEES, AFSCME,  
AFL-CIO

Case VI (Reopened)  
No. 12388 ME-404  
Decision No. 8733-B

Involving Certain Employees of

DODGE COUNTY (COMMUNITY HEALTH CENTER)  
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In the Matter of the Petition of

DODGE COUNTY (51.42/437 BOARD)

Involving Certain Employees of

DODGE COUNTY (COMMUNITY HEALTH CENTER)  
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Case XXXVI  
No. 22935 ME-1538  
Decision No. 16860

Appearances:

Mr. James L. Koch, Council 40 Staff Representative, appearing  
on behalf of the Union in Case VI (Reopened).

Mr. Michael J. Wilson, Council 40 Staff Representative, appearing  
on behalf of the Union in Case XXXVI.

Mr. John Cherrier, Dodge County Administrative Secretary, appearing  
on behalf of the County in both cases.

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND ORDER DISMISSING PETITIONS

The above-named Union petitioned the Commission on March 1, 1978 to order inclusion of certain unrepresented positions in a bargaining unit of Dodge County non-professional employees represented by it. A hearing was held in that matter at Juneau, Wisconsin on April 7, 1978 by Examiner Stephen Pieroni. Thereafter, on April 24, 1978, Dodge County, by its 51.42 Board (further identified below), petitioned the Commission to exclude from said unit certain non-professional employees under its supervision. A hearing on that matter was held at Juneau, Wisconsin on May 12, 1978 by Examiner Pieroni. The Commission having considered the evidence, arguments and briefs submitted in said matters, and being fully advised in the premises, makes and issues the following consolidated Findings of Fact, Conclusions of Law and Order Dismissing Petitions.

FINDINGS OF FACT

1. Dodge County Community Health Center Employees, Local 1323A, AFSCME, AFL-CIO, affiliated with Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with a mailing address of 2301 Church Road, Route 2, Fond du Lac, Wisconsin.

2. Dodge County, hereinafter referred to as the County, is a municipal employer with offices at 199 Home Road, Juneau, Wisconsin.

3. The County provides long-term patient care services at a facility known as the Dodge County Community Health Center, known

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during and before 1973 as the Dodge County Hospital. Said long-term patient care services are provided by County employes supervised by a board organized under Sec. 46.18, Stats., hereinafter referred to as the 46.18 Board. Said 46.18 Board employes include non-professional municipal employes employed in, inter alia, the following classifications:

Account Clerk I  
Account Clerk II  
Receptionist/Typist

Clyncial Typist  
L.P.N.

4. The County also provides short-term and out-patient care services at the Community Health Center, provided by County employes supervised by a board organized under Secs. 51.42 and 51.437, Stats., hereinafter referred to as the 51.42 Board.

5. At all times since 1969, the Union has been the certified collective bargaining representative of a unit described as "all regular part-time and regular full-time employes of the Dodge County Hospital, excluding the Superintendent, supervisory personnel and confidential employes." That unit currently consists of 125 non-professional County employes--116 (comprising all of the) 46.18 non-professional municipal employes and the remainder comprising 9 of the 21 non-professional 51.42 non-professionals. The remaining 51.42 personnel, all of whom are employed at the Center, consist of 12 unrepresented non-professionals and approximately 30 others who are either supervisory, confidential, managerial or unrepresented professionals. So far as the record indicates, the only persons employed at the Center are the 51.42 and 46.18 Board employes.

6. On March 1, 1978, the Union petitioned the Commission to order accretion (inclusion in the existing unit without a vote) of the unrepresented 51.42 non-professional municipal employes. The Union contends that the unrepresented 51.42 non-professional municipal employe positions currently consist of the following:

<u>Classification</u>	<u>Number and Status</u>
Chemical Dependency Counselor I	2 Full-time
Chemical Dependency Counselor II	2 Full-time
Account Clerk I	1 Full-time
Account Clerk II	1 Full-time
Receptionist/Typist	1 Full-time
Clinical Secretary I	2 Full-time
Clinical Secretary II	1 Full-time
Outreach Counselor	2 Full-time
Psychiatric Nurse (L.P.N.)	Vacant

The County contends that the Chemical Dependency Counselor I and II positions are professional and concedes that the other above positions are non-professional municipal employe positions.

7. Following the hearing on said Union petition, the County, by its 51.42 Board, petitioned the Commission to order removal of the 51.42 non-professionals currently included in the unit. The 51.42 non-professionals currently included in the unit consist of the following:

<u>Classification</u>	<u>Number and Status</u>
Program Assistants	6 Full-time
Ward Clerk	1 Full-time
Payroll Expediter	1 Part-time
Medical Records Clerk	1 Part-time

8. Both the 51.42 non-professionals currently represented by the Union and the 51.42 non-professional municipal employees who are currently unrepresented share a community of interest with the 46.18 non-professionals in the existing unit and perform job functions similar or related to those of several of the 46.18 non-professionals in said unit.

9. Inclusion of the currently unrepresented 51.42 non-professional municipal employees in the unit currently represented by the Union would draw into question the continuing status of the Union as representative of a majority of the employees in the resultant unit.

Based on the foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. Creation of a unit consisting of the non-professional municipal employees supervised by the Dodge County 51.42/437 Board would constitute undue fragmentation of bargaining units of County employees within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A bargaining unit consisting of the non-professional municipal employees of Dodge County employed at its Community Health Center (including employees supervised by the 46.18 and 51.42/437 Boards) would constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. Since accretion of the currently unrepresented non-professional County employees supervised by the 51.42/437 Board would draw into question the continuing majority representative status of the Union with respect to the unit described in Conclusion 2 above, granting the Union's request for such an accretion herein would be inconsistent with the underlying purposes of the Municipal Employment Relations Act.

Based on the foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### ORDER


The respective petitions filed by the Union and the County herein shall be, and hereby are, dismissed.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER DISMISSING PETITIONS

The two unit clarification petitions dealt with in this decision both concern non-professional employees of the County working at the Dodge County Community Health Center, known during and before 1973 as the Dodge County Hospital. The Union became the certified representative of Hospital employees in 1969 <sup>1/</sup>, though it was unsuccessful in an election among the County's Courthouse employees in the same year. <sup>2/</sup> Prior to 1973, the Hospital provided primarily long-term geriatric in-patient care services but also some short-term psychiatric care. In 1971, employees previously performing out-patient mental health counseling at the County clinic in the Courthouse were relocated to the Hospital grounds, but were not treated as a part of the Hospital bargaining unit and remained unrepresented. In 1973, the County reorganized its provision of patient services pursuant to statutory mandates enacted at that time. As a result: long-term care services were placed under the supervision of a Sec. 46.18 Board; short-term patient-care services were placed under the supervision of a Sec. 51.42 Board; the Hospital was renamed the Community Health Center; and the out-patient psychiatric services formerly provided by the Hospital were taken over by the 51.42 Board. The employees who had been performing the short-term psychiatric care services for the Hospital (certain ward clerk and program assistant classification personnel) were transferred to the supervision of the 51.42 Board, but they continued thereafter to be treated as part of the Union's bargaining unit. When, in 1976, the 51.42 Board discontinued its Acute Psychiatric Treatment Unit, several affected 51.42 program assistants were transferred to work under the supervision of the 46.18 Board, rather than laid off.

As a consequence of the foregoing, the "Hospital" unit represented by the Union now consists of 125 non-professionals. It consists of all of the non-professional 46.18 municipal employees working at the Center and 9 51.42 non-professionals (six full-time program assistants, one full-time ward clerk, one part-time payroll clerk shared with the 46.18 Board and one part-time medical records clerk shared with the 46.18 Board).

The Union's petition in Case VI (reopened) requests that the Commission order include in the unit without any vote (i.e., accrete to the unit) the remaining non-professional 51.42 municipal employees consisting of 9 classifications and 12 of the approximately 51 total 51.42 personnel.

The County opposes the Union's request on the ground that the non-professional employee groups supervised by the 51.42 and 46.18 Boards, respectively, are employed in organizational structures sufficiently separated, and in jobs sufficiently different to warrant the establishment of separate units. Consistent with that view, the County "counter-petitioned" after the hearing on the Union's petition. In its petition, the County seeks exclusion of the 51.42 employees now included in the existing unit.

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<sup>1/</sup> Case VI, (8733-A), 2/69.

<sup>2/</sup> Case V, (8735-A), 2/69.

The non-professional employees employed by the County (whether under 51.42 or 46.18 Board supervision) belong most desirably in a single unit. 3/ The two groups share the same geographic location as their workplace, they have common lunch and coffee breaks in the same lounge, they are invited to common in-service training presentations on at least some occasions, they are part of the same County-prepared payroll, they pick up their checks from a common location and, most significantly, the two groups have the same County Board and County Board committee exercising the municipal employer role in the determination of their salaries and fringe benefits. The fact that the two Boards share certain 46.18-provided services such as activity therapy, maintenance, food service, laundry, central supply and transportation also suggests that members of the two groups come into contact with one another with significant frequency during their work periods. Moreover, while interchange between the two groups is not frequent, it did occur in 1976 when some 51.42 program assistants were transferred to 46.18-supervised duties rather than laid off. The job duties of many of the respective group members are quite similar, and the differences between short-term or even out-patient patient populations and long-term patient populations does not appear likely to generate such divergent employee concerns and interests as to make a single unit difficult to represent or otherwise inappropriate. The fact that separate budgets and funding authorities exist for the two groups is not persuasive evidence favoring separation; the Commission has long held that the source of funding of employee compensation will not control determinations of inclusion or exclusion from a given unit. While the separate supervision of the two groups and the spontaneous expressions of 51.42 employee sentiment against union representation favor separate units, they are outweighed by the other factors noted above, in view of the statutory policy against undue fragmentation of bargaining units. 4/

Since the County's petition to exclude the 51.42 non-professionals already in the unit would alter the unit in a direction inconsistent with the preferred outcome under the anti-fragmentation mandate, it is rejected.

There remains the question of the propriety of including the remaining non-professional 51.42 municipal employees in the unit without a vote. Favoring that result are the factors that, based on the above analysis, a community of interest exists between the proposed accretion and the existing unit, and the two groups perform similar or related duties. Also favoring accretion are the facts that the 1969 treatment of the out-patient clinic employees as part of the Courthouse unit separate from the Hospital unit occurred before enactment of the anti-fragmentation provision in MERA and before those employees moved to the Hospital and developed the relationship they now have with the employees in the existing unit.

There are factors bearing against accretion, however. It remains true, for example, that the proposed accretion was part of a unit which voted (39 to 16) against representation by the Union in 1969. Moreover, the addition of the 12 employees not constituting the proposed accretion would draw into question the continuing majority status of

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3/ A case by case determination of the propriety of combining 51.42 employees with other County employees is the approach that has been chosen by the Commission. LaCrosse County (12931) 8/74. Compare id. and Rock County (13131) 11/74 (single unit) with Brown County (12381) 1/74 (separate units).

4/ Section 111.70(4)(d)2.a., Stats.

the Union with respect to the combined unit 5/, since the Union's original margin of election victory in the Hospital unit was eight votes (33 to 25).

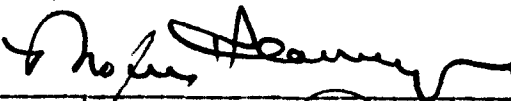
In view of the foregoing, we conclude that the combined unit is the most desirable, but that to assure that the Union would represent a majority in such unit, an overall election 6/ therein is an appropriate condition precedent to representation of the currently unrepresented non-professional 51.42 municipal employees by the Union.

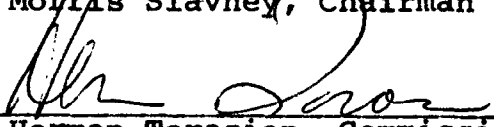
The foregoing disposition of the instant matters makes unnecessary an immediate determination as to whether the Chemical Dependency Counselor I and II classifications are professional. When and if such a determination becomes necessary, the record developed with respect to those positions may make a further evidentiary hearing with respect to said issue unnecessary.

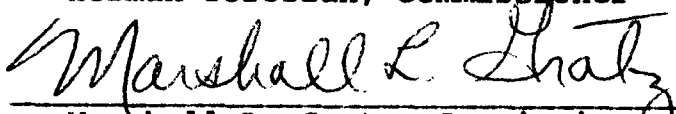
Dated at Madison, Wisconsin this 26th day of February, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

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- 5/ Nonaffectation of the Union's majority status has been recognized by the Commission as a condition precedent to an accretion order. E.g., City of Menasha (11714-A) 6/73.
- 6/ The existence of a collective bargaining agreement as regards the currently existing unit would not constitute a bar to the conduct of such an election, but the election results would not affect the continuation of any such existing agreement as regards the employees in the currently existing unit. See, City of Menomonie (11023) 5/72.