

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 Employes of	:
CRAWFORD COUNTY	:
-----	:

Case X
No. 23552 ME-1582
Decision No. 16931

Appearances:

Mr. Darold O. Lowe, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, appearing on behalf of the Petitioner.

Brynelson, Herrick, Gehl & Bucaida, Attorneys at Law, by Mr. Ronald M. Trachtenberg, 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 September 21, 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 employes of Crawford County; and a hearing in the matter having been held on November 6 and 27, 1978, at Prairie du Chien, Wisconsin, before James D. Lynch, Examiner. Following the distribution of a transcript and the submission of a post-hearing brief by the Employer, the Commission having considered the evidence, and being satisfied that questions concerning the appropriate bargaining unit and representation have arisen involving certain employes 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 organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.
2. That Crawford County, hereinafter referred to as the County, has its main offices at Prairie du Chien, Wisconsin.
3. That in its petition initiating the instant proceeding the Union seeks elections among employes employed by the County in the following alleged appropriate units:

Unit No. 1

All employes employed in the Courthouse and related departments, including employes of the Highway Department office, but excluding supervisory, professional, confidential, craft and law enforcement employes presently represented by Local 1972, AFSCME, AFL-CIO, for the purpose of determining whether said employes desire to be represented by the Union for the purpose of collective bargaining; and

Unit No. 2

All professional social workers, excluding supervisory and confidential employes, for the purpose of determining:

1. whether said employes desire to be included in a single bargaining unit with employes in Unit No. 1; and
2. whether said employes desire to be represented by the Union for the purpose of collective bargaining.

4. That the employes, which the Union desires to include in Unit No. 1 are employed in County departments described as General Government, Social Services, Unified Board, Developmental Disabilities and Agriculture Department; that the Union would include in Unit No. 1 non-professional "white collar" positions, as well as custodial and maintenance employes, who perform duties in the Courthouse and the Satter Building, located some five blocks from the Courthouse; that during the course of the hearing the County contended that all otherwise eligible employes of the Highway Department should also be included in Unit No. 1; and that prior to the close of the hearing the Union indicated that it desired the Commission to exclude all otherwise eligible Highway Department employes from Unit No. 1, including the clerical employes in the latter department.

5. That the office of the Highway Commissioner is located in the Courthouse, where Geraldine Myers and Marlene Emerson, Clerk and Assistant Clerk, respectively, are employed; that no other "white collar" positions are employed in the Highway Department; that the parties agree that Myers performs confidential duties, and therefore should be excluded from any unit; that all remaining non-managerial and non-supervisory positions in the Highway Department are "blue collar" positions, and the occupants thereof are employed in seven shops located throughout the County; that said "blue collar" positions, and the number of employes occupying such positions, consist of the following:

Auxiliary Patrolman	1	Mechanic	3
Bridge Foreman	1	Oiling Foreman	1
Heavy Equipment Operator	9	Parts Man	1
Laborer	13	Patrolman	6
Maintenance Man	1	Shop Foreman	1

6. That the duties performed by the employes employed in the Courthouse and related departments are separate and distinct from the duties performed by employes in the Highway Department; that the rates of pay and hours of work of the employes in the Courthouse and related departments are different than the rates of pay and hours of work of the employes in the Highway Department; and that, therefore, because of their work location, rates of pay and hours of work, the community of interest existing among the employes of the Courthouse and related departments is separate and distinct from the community of interest existing among the employes of the Highway Department.

7. That during the course of the hearing the parties agreed that certain positions, and the individuals occupying same, be excluded from any unit or units found to be appropriate by the Commission on the basis of managerial, supervisory or confidential status; that, however, the County, contrary to the Union, contended that Delores Bonney (Tax Lister), Daniel Lipke (Head Maintenance Man--Satter Building), and LaVerne Kellogg (Chief Custodian--Satter Building) were supervisory employes, and that Alene Novey (Deputy County Clerk) was a confidential employe; and, further, during the hearing the parties agreed that the

following individuals; occupying positions funded by the Comprehensive Employment and Training Act (CETA), are excluded from the eligibles in any unit: Kim Dickey, Roandl Dvorak, Wayne Hardy, Sue Kramer, Richard Lassard, Gordon Olson, David Picha, Julie Smethurst, and Murray Steiner; and that, however, the Union, contrary to the County, contends that three remaining CETA employes, namely, Cindy Marfilius, Roxy Polodna and Bradley Smrcina, should be eligible to vote.

8. That Delores Bonney, the County Tax Lister, is responsible for care of the descriptions of properties located in the County for tax purposes; that she works with a Mapper, Brad Smrcina, a CETA employe, and also an irregular part-time CETA employe, in performing said work; that on one occasion Ms. Bonney sent a recommendation to the Personnel Committee that Smrcina be employed as the Mapper.

9. That Daniel Lipke, Head Maintenance Man at the O. E. Satter Building, spends the vast majority of his time performing routine custodial and maintenance duties; that he is paid the same salary as is Joseph Valley, who is employed as Maintenance Man No. 2 at the O. E. Satter Building; that both individuals purchase small amounts of materials and supplies.

10. That LaVerne Kellogg, Chief Custodian at the O. E. Satter Building, is responsible for the total cleaning process at the Satter Building; that he is assisted in this work by an individual employed under a federal funded program; and that Kellogg spends the vast majority of his time performing routine custodial and maintenance duties.

11. That Alene Novey, Deputy County Clerk, performs various clerical duties for the County Clerk, Milo Cooper; that Cooper attends meetings of various County committees, at which he takes notes during which time there may be discussion regarding labor related matters, including contract negotiations; that his notes are transcribed by a clerical employe within the County Clerk's office; that Novey does not attend negotiation sessions, disciplinary hearings or executive caucuses of the County Personnel Committee, however, except on one or two occasions within the period of a year she has performed labor related typing, or set up meetings at which labor related matters would be discussed, when Cooper was unavailable.

12. That Cindy Marfilius (employed by the Unified Board as a Coordinator-Secretary), Roxy Polodna (employed by the Unified Board as an Alcoholic Outreach Worker), and Bradley Smrcina (employed as a Mapper in General Government) occupy CETA funded positions; that the funding of Marfilius' position will expire on June 5, 1979; that the funding of Polodna's position expired as of January 16, 1979; that the funding of Smrcina's position will expire on October 17, 1979; and that the County does not intend to seek CETA funding to extend the employment of said individuals beyond the date which the funding for their respective positions expire.

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 employes of the Crawford County Courthouse and related departments, including Highway Department clericals employed in the Courthouse, but excluding managerial, supervisory, professional, confidential, craft, law enforcement employes, and blue collar Highway Department employes constitute an appropriate collective bargaining unit within 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 social workers employed by Crawford County, but excluding managerial, supervisory and confidential employes 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 should a majority of the eligible employes in the unit described in paragraph 2, supra, vote, in an election conducted by the Wisconsin Employment Relations Commission, to be included in a single unit with the employes in the unit described in paragraph 1, supra, then all regular full-time and regular part-time employes of the Crawford County Courthouse and related departments, including professional social workers and Highway Department clericals employed in the Courthouse, excluding managerial, supervisory, confidential, craft and law enforcement employes, and blue collar Highway Department employes, 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 Delores Bonney, Daniel Lipke and LaVerne Kellogg are not clothed with sufficient duties or responsibilities to constitute said individuals as supervisors, and, therefore, said individuals are "municipal employes" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

5. That Alene Novey is not clothed with sufficient duties and responsibilities to constitute said individual as a confidential employe, and, therefore, said individual is a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

6. That since the CETA funded positions occupied by Cindy Marfilius, Roxy Polodna and Bradley Smrcina have or will be terminated by a specific date, and since such funding will not be renewed, said individuals are deemed to be temporary employes, and are, therefore, not eligible to vote in any election conducted by the Wisconsin Employment Relations Commission.

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 employes of the Crawford County Courthouse and related departments, including Highway Department clericals employed in the Courthouse, but excluding managerial, supervisory, professional, confidential, craft, law enforcement employes, and blue collar Highway Department employes who are employed on March 29, 1979, 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 Crawford County on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time professional social workers employed by Crawford County, but excluding managerial, supervisory and confidential employes, who are employed on March 29, 1979, 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 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 Crawford County on questions of wages, hours and conditions of employment; and
- (2) Whether a majority of the eligible employes in said voting group desire to be included in a single bargaining unit with employes in Voting Group No. 1

Given under our hands and seal at the City of Madison, Wisconsin, this 29th day of March, 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 DIRECTION OF ELECTIONS

The Union seeks bargaining elections in two units consisting of (1) all employes of the Crawford County Courthouse and related departments, but excluding supervisory, professional, confidential, craft and law enforcement employes now represented by Local 1972, AFSCME, AFL-CIO; and (2) all professional social workers employed by Crawford County, but excluding supervisory and confidential employes to determine whether said employes desire to be represented by the Union for the purposes of collective bargaining. The Union also desires the Commission to conduct an election among the professional social workers to determine whether said employes desire to be included in a single bargaining unit with the non-professional employes employed in the Courthouse and related departments. The County contends that the unit sought by the Union is not an appropriate bargaining unit in that the appropriate non-professional bargaining unit should also include all individuals employed by the County's Highway Department. Issues also have arisen as a result of the County's claim that certain individuals are supervisory and/or confidential.

In determining whether employes constitute an appropriate unit, the Commission must consider Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act, which provides as follows:

The Commission shall determine the appropriate 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 determination, the Commission may decide whether, in a particular case, the employes in same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above-statutory criteria and establishing appropriate bargaining units, the Commission has considered the following factors: 1/

1. Whether the employes in the unit share a "community of interest" distinct from that of other employes.
2. The duties and skills of employes in the unit sought as compared with duties and skills of the other employes.
3. The similarity of wages, hours and working conditions of the employes in the unit sought as compared to wages, hours and working conditions of other employes.
4. Whether the employes in the unit sought have separate or common supervision with all other employes.
5. Whether the employes in the unit sought have a common work place with the employes in said desired unit or whether they share the work place with other employes.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

1/ See Kenosha Unified School District No. 1, No. 13431 (3/75); Hartford Union High School, No. 15745 (8/77); Madison Joint School District No. 8, No. 14814-A (12/76).

The facts pertinent to the unit issue are set forth in paragraphs 5 and 6 of the Findings of Fact, and on the basis thereof, the Commission concludes that all regular full-time and regular part-time employes of the County, and conditionally including professional social workers, who are employed in the Courthouse and related departments, but excluding supervisory, confidential, craft, law enforcement employes and blue collar Highway Department employes, constitute an appropriate collective bargaining unit under the Municipal Employment Relations Act, and that said determination does not result in undue fragmentation of bargaining units. There is no issue as to the appropriateness of the professional social workers unit. However, Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act permits professional employes the opportunity to vote to be included in a unit of non-professional employes, and, therefore, we have directed such an election among the professional social workers to determine whether a majority of such eligible employes desire to be included in a single unit with the non-professional Courthouse employes employed in the Courthouse and related departments.

The County, contrary to the Union, contends that Delores Bonney, Daniel Lipke and LaVerne Kellogg are supervisors and therefore should be excluded from the bargaining unit.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act defines the term "supervisory" as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, 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 its interpretation of the above definition, the Commission has, on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

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 greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisors paid for his skill or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or 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 exercised in the supervision of employes. 2/

2/ Fond du Lac County, No. 10579-A (1/72); St. Croix County (Health Care Center), No. 14518 (4/76); Wood County, No. 13760 (6/75).

The duties and responsibilities of Bonney, Lipke and Kellogg have been set forth in the Findings of Fact. We are satisfied, considering the above-noted factors, that such factors are not sufficient in degree, nor in combination, to warrant a conclusion that the said three individuals are supervisors within the meaning of the Municipal Employment Relations Act.

The County, contrary to the Union, contends that Alene Novey is a confidential employe and therefore should be excluded from the unit. In order for an employe to be considered in a confidential relationship with management and thereby excluded from the unit, the Commission has held that such employe must be privy to decisions of the employer with respect to personnel and labor relations policies. ^{3/} The Commission has also concluded that the fact that an employe may occasionally be assigned confidential duties is not a basis for exclusion from the unit. ^{4/} For reasons recited in the Findings of Fact, the Commission concludes that Alene Novey, Deputy County Clerk, is not a confidential employe within the meaning of the Act and, therefore, Novey is included among the eligibles in Voting Group No. 1.

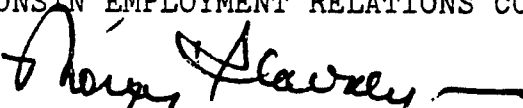
The County also argues that three CETA employes should not be included among the eligibles in any unit established by the Commission, contending that funding for their positions will terminate before the end of the year. CETA funding has generally been rejected by the Commission as a basis for deeming an employe ineligible to vote, because it has been our experience that such funding, though nominally of limited duration, is frequently renewed. Here, however, an exception to that approach is warranted since it is undisputed that the County will not seek such a renewal.

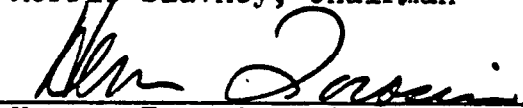
There is attached hereto, and marked Appendix "A" and "B", lists of employes eligible to vote in the two voting groups. Said lists include employes employed as of March 5, 1979. If individuals have been hired since that date, and prior to the eligibility date, to fill otherwise eligible positions, the names of said individuals should be added to the proper eligibility list.

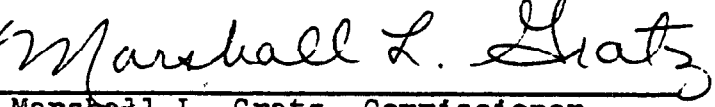
Dated at Madison, Wisconsin, this 29th day of March, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner

^{3/} City of Milwaukee, No. 11971 (7/73).

^{4/} Outagamie County, No. 11932 (6/73); Watertown Unified School District No. 1, No. 12166-A (3/74).

APPENDIX "A"

Employees Eligible to Vote in Voting Group No. 1

General Government

Bonney, Delores
Balk, Arnold
Burr, Jane Anita
Hurda, Joan
Ingle, George
Johnson, Faye
Lipke, Daniel
Kozelka, Lawrence

Lingreen, Doris
Kellogg, LaVerne
Mainor, Lorraine
Novey, Alene
Oestreich, Violet
Slama, Belva
Valley, Joseph

Social Services

Aurand, Rachel L.
Burrington, Delores
Durst, Karen
Elvert, Bruce
Mezera, Mary L.

Paulson, Janet L.
Welsch, Joanne
Zabel, Helen
Zinkle, Winsome

Unified Board

Modjeski, Patricia

Developmental Disabilities

(None)

Agriculture Department

Geisler, Janet

Wolcott, Carol

Highway Department

Emerson, Marlene

APPENDIX "B"

Employees Eligible to Vote in Voting Group No. 2

Social Services

Carlson, Linda A.
Smith, David J.

Stonesifer, Kurt O.

Unified Board

Gilbertson, Peter
Gruhlke, Raymond
Hyland, Dale

Jackley, Marianne
Stevenson, Michael
Turner, Vernon

Developmental Disabilities

Roach, Louise