

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN COUNCIL OF COUNTY AND : Case XXI  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : No. 25439 ME-1771  
Involving Certain Employes of : Decision No. 17828  
JACKSON COUNTY :  
- - - - -

Appearances:

Mr. Daniel R. Pfeifer, Representative; WCCME, AFSCME; Route 1;  
Sparta, Wisconsin 54616, appearing on behalf of the Petitioner.  
Mr. William Theiler, Personnel Chairman; Jackson County; Jackson  
County Courthouse; Black River Falls, Wisconsin 54615, appearing  
on behalf of the County.

DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a petition on December 11, 1979, requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the Municipal Employment Relations Act, among certain employes of Jackson County; and a hearing in the matter having been conducted on March 10, 1980, at Black River Falls, Wisconsin, before William C. Houlihan, Examiner, and the Commission, having considered the evidence and arguments of counsel, makes and issues the following

FINDINGS OF FACT

1. That the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization, and has its office at 5 Odana Court, Madison, Wisconsin.
2. That Jackson County, hereinafter referred to as the County, has its offices in the Jackson County Courthouse, Black River Falls, Wisconsin.
3. That the Union initiated the instant proceeding by the filing of a petition requesting the Wisconsin Employment Relations Commission to conduct elections among certain employes of the County in the following two Voting Groups:
  - A. All regular full-time and part-time employes of the County Courthouse and County Nurses Department, excluding elected officials, supervisory, confidential, and professional employes.
  - B. All regular full-time and part-time professional nurses in the employ of the County Nurses Department, excluding supervisory and confidential employes,

to determine whether employes in Voting Group B desired to be included in the same bargaining unit with employes in Voting Group A, and whether the employes in the established Voting Group or Groups desired to be represented by the Union for the purposes of collective bargaining with the County.

4. That the County does not oppose the petition of the Union and agrees to the appropriateness of the Voting Groups and of the collective bargaining units or unit which may result from the elections conducted among the employees involved; and that, however, contrary to the position of the Union, the County contends that Steve Raith, Michael Kutcher, and David Egli, occupying the positions of County Zoning Administrator/County Energy Manager, Maintenance Supervisor, and County Sanitarian respectively, should be excluded from any bargaining unit established in this matter, on the claim that such individuals are either supervisory and/or managerial.

5. That Steve Raith, as the County Zoning Administrator/County Energy Manager, spends approximately ninety percent of his time performing duties relating to zoning and energy; that the remaining ten percent of his time is spent assigning and reviewing the work of his secretary, which position, at the time of the hearing herein, was occupied by Janice Swennes, who works a regularly scheduled forty hour week performing general secretarial duties; that said secretarial position is filled pursuant to the Youth Experience Program, which is supported by Federal funds; that the Federal Prime Sponsor, Western Dairyland, Whitehall, Wisconsin, furnishes candidates for said secretarial position, which applicants are interviewed by Raith, who has the authority to hire, discipline, discharge, and assign and direct the work of said secretary; and that while Raith submits a budget for the function performed by him and for the operation of his office, his participation therein is more or less perfunctory; and that, while said secretary's hours and working conditions are presently subject to the County's control, the occupant thereof, under said Youth Experience Program, is paid directly by Western Dairyland, after Raith submits a record of the time spent by said secretary in the performance of her duties.

6. That Michael Kutcher, as the Maintenance Supervisor, is responsible for the maintenance of the courthouse and the jail, as well as for the custodial work performed therein; that in said regard Kutcher assigns and directs the work of two custodial employees, and on occasions, part-time employees hired by Kutcher; that Kutcher spends approximately twenty-five percent of his time in said activity, and spends the remainder of his time in performing maintenance, repair and necessary remodeling of the physical premises in said County buildings; and that Kutcher has the authority to effectively recommend discipline and discharge of the custodial employees.

7. That David Egli, the Sanitarian, shares the same office with Raith, and the latter's secretary is available to Egli; that, however, Egli does not exercise any supervisory authority over said secretary, or any other employees of the County; that Egli prepares a proposed budget for the Department of Environmental Health, of which he is the sole employee; that the preparation of said budget is also perfunctory in nature, and the amount projected in the proposed budget are figures derived from previous year's experience.

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

#### CONCLUSIONS OF LAW

1. That questions concerning the establishment of appropriate bargaining unit or units, as well as a question of representation, have arisen among all regular full-time and regular part-time employees of Jackson County employed in its Courthouse and Nurses Department, excluding elected officials, supervisory, confidential, and professional employees, and also among all regular full-time and regular part-time professional nurses in the employ of Jackson County Nurses Department, excluding supervisory and confidential employees, all within the meaning of Sec. 111.70(4)(d) of the Municipal Employment Relations Act.

2. That the supervisory responsibilities and duties performed by Steve Raith, as the Jackson County Zoning Administrator/Jackson County Energy Manager, and by Michael Kutcher as the Maintenance Supervisor, are in sufficient combination and degree so as to constitute said positions as supervisory positions within the meaning of Sec. 111.70(1)(o)(1) of the Municipal Employment Relations Act.

3. That since David Egli, the Sanitarian, does not exercise any supervisory authority over any employee of Jackson County, and since his preparation of the budget for the Sanitation Department is insufficient to constitute Egli as a managerial employee, David Egli, the Sanitarian, is a municipal employee within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes and files 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 of the Jackson County Courthouse and Nurses Department, who were employed on March 10, 1980, 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 voting desire to be represented by the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Jackson County on questions of wages, hours and conditions of employment.


Voting Group No. 2

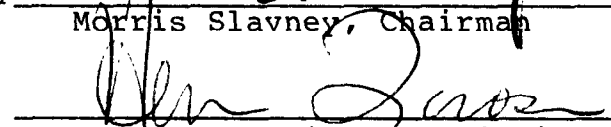
All regular full-time and part-time professional nurses, employed by Jackson County, who were employed on March 10, 1980, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employees in said Voting Group desire to be included in the bargaining unit described as Voting Group No. 1; and (2) whether a majority of such employees voting desire to be represented by the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Jackson County on questions of wages, hours and conditions of employment.

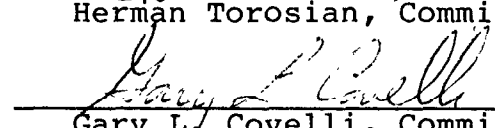
Given under our hands and seal at the  
City of Madison, Wisconsin this 22nd  
day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTIONS

As noted in the Findings of Fact, issues arose herein as to whether Steve Raith, Michael Kutcher, and David Egli were municipal employes or supervisors and/or managerial employes within the meaning of the Municipal Employment Relations Act. The Commission is satisfied that the record establishes that Egli has no supervisory responsibilities and his budget functions are insufficient so as to conclude that Egli is a managerial employe. Therefore Egli is in the unit.

With regard to Kutcher, the Maintenance Supervisor, the record reveals that at the time of the hearing Kutcher had occupied the position for approximately seven months and had no previous record of disciplining or discharging any employe, or having participated in the hire of permanent employes.

However, a County Board Supervisor, who served on the Personnel Committee, testified that, as a supervisor, Kutcher would be treated and relied upon in the same manner as other County department supervisors. Thus, Kutcher, as with other supervisors, would be relied upon to effectively recommend the discipline and discharge of employes, as well as recommending the hire of permanent employes. Also significant is that Kutcher has the authority to hire temporary employes without prior approval and has exercised said authority in the past. Kutcher therefore is excluded from the unit.

The record also establishes that Raith exercises supervisory authority over the secretary assigned to him and Egli. A collateral issue arises in the determination as to whether Raith is a supervisor within the meaning of MERA, namely as to whether said secretary position is occupied by an employe of the County.

At the time of the hearing the occupant of said position, Janice Swennes, is a participant in the Youth Work Experience Program, a federally funded program. The County does not pay for the service of Swennes. Her hours of work are reported by Raith to Western Dairyland, who pays Swennes from funds provided by the federal government. Nevertheless, in performing duties for the County, Swennes' hours of work, as well as her working conditions are established by the County. Raith, as an agent of the County, hired Swennes, and Raith has the authority to terminate her County employment. The source of funding for the position is not determinative of the issue as to whether Swennes is a County employe. 1/ Swennes is an employe of the County, 2/ supervised by Raith, and Raith cannot be included in any of the bargaining units involved herein, and therefore Raith is not eligible to vote in the elections directed herein.

When a union in an election proceeding desires to include professional employes in a single unit with non-professional employes,

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1/ Winnebago County, (10304-A) 9/79.

2/ By stipulation, Swennes was excluded from the voting eligibility list. In accepting this stipulation, it is the Commission's determination that by definition, Swennes has no reasonable expectation of continued employment with the County and thus lacks the requisite community of interest with other employes to be vested with voting rights in the representation election.

Section 111.70(4)(d) of the Municipal Employment Relations Act requires that the professional employees be given an opportunity to vote to determine whether they desire to be included with the non-professional employees in a single unit. In order to be included in a unit with non-professional employees, a majority of the eligible professional employees must vote for such inclusion. Therefore, in this proceeding, the professional nurses (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 employees (Voting Group No. 1) and, (2) whether they desire to be represented by the Union.

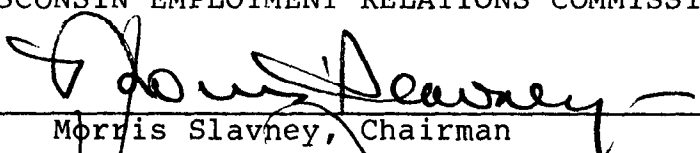
The unit determination ballots cast by the professional nurses will be initially counted, and should a majority of the eligible professional nurses vote in favor of being included in a unit with non-professional employees, the sealed envelopes, containing the ballots of the professionals with respect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

Should a majority of the professional nurses eligible not vote in favor of being combined in a unit with non-professional employees, then the professional nurses shall constitute a separate unit, and their representation ballots will not be co-mingled with the representation ballots cast by the non-professional employees. Should that end result the representation ballots cast by the professional nurses will be tallied to determine whether the professional nurses desire to be represented by the Union for purposes of collective bargaining.

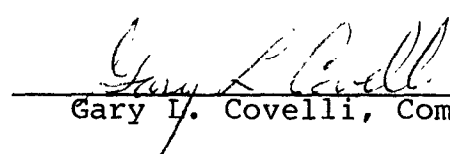
Dated at Madison, Wisconsin this 22nd day of May, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner