

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY AND	:	Case IV
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO	:	No. 26133 ME-1836
	:	Decision No. 18147
Involving Certain Employes of	:	
	:	
GRANT COUNTY	:	
	:	

Appearances:

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

Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, appearing on behalf of the Municipal Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having on May 6, 1980 filed a petition requesting the Wisconsin Employment Relations Commission to conduct a representation election among certain employes of Grant County, pursuant to the provisions of the Municipal Employment Relations Act; and hearing in the matter having been conducted on June 19, 1980, in Lancaster, Wisconsin, before Examiner Peter G. Davis; the Commission having considered the evidence and briefs of the parties, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, herein AFSCME, is a labor organization having its offices at 5 Odana Court, Madison, Wisconsin.
2. Grant County, herein the County, is a municipal employer having its offices in Lancaster, Wisconsin.
3. AFSCME seeks elections to determine whether professional employes in the employ of the County's Department of Social Services desire to be included with certain non-professional employes of the County in a single collective bargaining unit, or whether said professional employes desire to constitute themselves a separate bargaining unit. AFSCME also seeks an election among employes in such a single unit, or elections in both units, should same be established, to determine whether the employes involved therein desire to be represented by AFSCME for the purposes of collective bargaining with the County on wages, hours and conditions of employment.
4. While AFSCME and the County agree, in concept, as to the potential unit or units, they do not agree on the description of said potential unit or units. AFSCME would describe the two voting groups as follows:

Voting Group No. 1

"All regular full time and regular part time employes of the Grant County Courthouse and related departments, but excluding supervisory, professional, confidential, craft, law enforcement employes, blue collar Highway Department employes, and employes of the Grant County Nursing Home and Grant County Hospital."

Voting Group No. 2

"All professional Social Workers employed in the Grant County Social Services Department, but excluding supervisory and confidential employes."

5. The County would describe the two voting groups as follows:

Voting Group No. 1

"All regular full time and regular part time employes of the Grant County Court Clerk's office, Social Services Department, Extension Office clerical employes, County Clerk's office, Public Health Department, Commission on Aging, Child Support Department, Tax Description Department, Register of Deeds office, County Treasurer's office, Register in Probate office, Soil Conservation Department and Highway Department clerical employes; but excluding non-clerical employes of the Highway Department, all employes of the Sheriff's Department, all nursing home and hospital employes, the Register in Probate, Deputy Registers in Probate, the County Treasurer, Deputy County Treasurers, the County Clerk, Deputy County Clerks, the Clerk of Courts, Deputy Clerks of Courts, the Register of Deeds, Deputy Registers of Deeds, Volunteers, Court Reporters, professional employes, supervisors, and managerial employes, confidential employes, craft employes and all other employes."

Voting Group No. 2

"All regular full time and regular part time professional employes of the Grant County Social Services Department, excluding supervisors, managerial and all other employes."

6. The County, contrary to AFSCME, contends that the position of Social Worker II, employed in the Department of Social Services, Resource Unit, Homemaker Services, occupied by Mary Faherty, as well as the position of Office Manager, Highway Department occupied by Cleo Stenner, are both supervisors; and that the individuals who occupy the positions of Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, Deputy County Treasurer, and Deputy Register in Probate, are not employes within the meaning of the Municipal Employment Relations Act.

7. Faherty spends 40% of her time directing the work of three regular full-time and one regular part-time Homemakers, with the remaining 60% of her time being spent in performing professional social work duties. She assigns duties to the Homemakers, evaluates their job performance, participates in their hiring, and can effectively recommend that a Homemaker be disciplined. Faherty also has the independent authority to grant Homemaker requests pertaining to sick leave, vacation or compensatory time.

8. Cleo Stenner performs certain clerical and record keeping functions along with two other employes in the Highway Department office. She has no authority to direct the work of any employe nor does she effectively recommend the hiring or disciplining of any employe. She has no authority to grant sick leave requests, and she does not evaluate any employe.

9. The individuals who occupy the positions of Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, and Deputy County Treasurer, were appointed to their positions pursuant to authority vested, by Sec. 59.15, Wisconsin Statutes, in the Clerk of Court, County Clerk, Register of Deeds, and County Treasurer, all elected officials of the County. The Deputy Register in Probate was appointed to said position by the Register in Probate, pursuant to Chapter 851, Wisconsin Statutes.

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

CONCLUSIONS OF LAW

1. That the duties and responsibilities of Mary Faherty, occupying the position of Social Worker II, in the Department of Social Services, Resource Unit, Homemaker Services, are in sufficient combination and degree to warrant the conclusion that Faherty occupies a supervisory position within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act; and that therefore Faherty is not a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the duties and responsibilities of Cleo Stenner, occupying the position of Highway Department Office Manager, are not in sufficient combination and degree to warrant the conclusion that Stenner occupies a supervisory position within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act, and therefore Stenner is a municipal employe within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

3. That the fact that the occupants of the positions of Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, Deputy County Treasurer and Deputy Register in Probate are appointed by elected County officials to perform duties set forth in Wisconsin Statutes does not preclude the Wisconsin Employment Relations Commission from concluding that the occupants of said positions are municipal employes within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

4. That the following Voting Groups, singularly may constitute separate appropriate collective bargaining units, or jointly may constitute a single appropriate collective bargaining unit, of employes of Grant County, within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act; and that a question of representation has arisen among employes in said Voting Groups, as well as a question concerning appropriate bargaining unit or units, all within the meaning of said section of the Municipal Employment Relations Act:

Voting Group No. 1

All regular full-time and regular part-time employes employed in the County Court Clerk's office, Social Services Department, Extension Office clerical employes, County Clerk's office, Public Health Department, Commission on Aging, Child Support Department, Tax Description Department, Register of Deeds office, Register in Probate office, County Treasurer's office, Register

in Probate office, Soil Conservation Department and Highway Department clerical employes, and also including the Highway Department Office Manager, Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, Deputy County Treasurer and Deputy Register in Probate, but excluding non-clerical employes of the Highway Department, all employes of the Sheriff's Department, all nursing home and hospital employes, the Register in Probate, County Treasurer, County Clerk, Clerk of Courts, Register of Deeds, volunteers, court reporters, professional and craft employes, confidential, supervisory and managerial employes, and all other employes.

Voting Group No. 2

All regular full-time and regular part-time professional employes employed in the County Social Services Department, excluding confidential, supervisory and managerial employes, and all other employes.

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

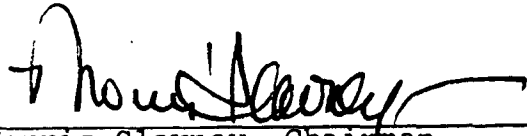
DIRECTION OF ELECTIONS

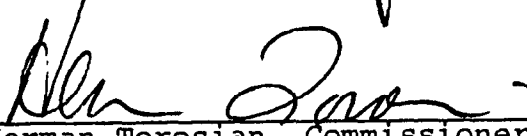
IT IS HEREBY DIRECTED that elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date hereof among employes of Grant County employed in the following Voting Groups for the following stated purposes: Voting Group No. 1 - All regular full-time and regular part-time employes employed in the County Court Clerk's office, Social Services Department, Extension Office clerical employes, County Clerk's office, Public Health Department, Commission on Aging, Child Support Department, Tax Description Department, Register of Deeds office, Register in Probate office, County Treasurer's office, Register in Probate office, Soil Conservation Department and Highway Department clerical employes, and also including the Highway Department Office Manager, Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, Deputy County Treasurer, and Deputy Register in Probate, but excluding non-clerical employes of the Highway Department, all employes of the Sheriff's Department, all nursing home and hospital employes, the Register in Probate, County Treasurer, County Clerk, Clerk of Courts, Register of Deeds, volunteers, court reporters, professional and craft employes, confidential, supervisory and managerial employes, and all other employes, who were employed on October 3, 1980, 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 voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Grant County on questions of wages, hours and conditions of employment. Voting Group No. 2 - All regular full-time and regular part-time professional employes employed in the County Social Services Department, excluding confidential, supervisory and managerial employes, and all other employes, who were employed on October 3, 1980, 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 the employes 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 employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Grant County on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

While the parties are in agreement as to the scope of the two voting groups of employes involved herein, they disagree as to the description of such voting groups. The Union prefers a general description, while the County would have Voting Group No. 1 described on a departmental or office basis. The Commission has established the voting groups in such a manner as the parties and the employes involved will not be confused as to the employes included and excluded therefrom.

Issues remain as to whether individuals occupying certain positions are or are not employes within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act (MERA), and thus whether said individuals should or should not be included among the eligibles in the voting groups. The County, contrary to the Union, contends that Mary Faherty, Social Worker II (Department of Social Services) and Cleo Stenner, Office Manager (Highway Department) are supervisors. The County would also exclude from the eligibles the individuals appointed to deputy positions as indicated in the Findings of Fact.

The term "supervisor" is defined in Sec. 111.70(1)(o)1 of MERA as follows:

As to other than municipal and county firefighters, 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.

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position in question is supervisory, considers the following factors: 1/

1. The authority to recommend effectively 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 supervisor is paid for his skills 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 and discretion exercised in the supervision of employes.

1/ City of Milwaukee (6960) 12/64; City of Merrill (14707) 6/76.

Applying the foregoing to the individuals at issue herein, the Commission finds that Faherty's authority and responsibilities in the areas of evaluation, discipline, hiring, work assignment, and employe use of sick leave, vacation and compensatory time warrant a finding that she is a supervisory employe. On the other hand, Stenner possesses no authority or responsibility which could conceivably yield supervisory status and thus she is included in the non-professional voting group.

Turning to the question of whether the deputies to the Clerk of Court, County Clerk, County Treasurer and Register of Deeds are "employes" within the meaning of Sec. 111.70(1)(b) of MERA, the County makes several arguments. Initially it contends that in Sec. 59.15, Stats., the Legislature clearly drew a distinction between deputies to elective officers and employes, and that when it subsequently enacted MERA it did not choose to eliminate this distinction. As to the Deputy Register in Probate, the County argues that Sec. 851.71 (3), Stats., evidences a legislative intent to distinguish such an individual from "employes" as defined in MERA. The County also asserts that even the definition of "employe" found in Sec. 111.70(1)(b), Stats., would exclude the deputies in question as they are not employed by the County, but rather by the elected officials who appoint them. It further notes that the County is in no position to define the parameters of the deputies' work as their duties are statutorily established.

The County additionally argues that the placement of deputies within a collective bargaining unit which has the option of utilizing the interest arbitration procedures of Sec. 111.70(4)(cm), MERA, will improperly eliminate every vestige of the local electoral control which Article VI, Section 4 of the Wisconsin Constitution and Chapters 59 and 851, Stats., mandate. It asserts that the basis for excluding deputies is not derived from the "executive" or "supervisory" labor law concepts, but rather from their involvement with events and duties which form the essence of County government and from the statutory requirement that they actually function with the authority of the elected officer. It alleges that virtually all provisions in typical collective bargaining agreements would improperly impact upon the deputies' performance of statutorily mandated responsibilities and the elected officials' statutory right to control both the choice of their deputies and the manner in which their statutory duties are performed.

The issue of the "employe" status of individuals occupying the positions of Deputy Clerk of Court, Deputy County Clerk, Deputy Register of Deeds, Deputy County Treasurer and Deputy Register of Probate has confronted this Commission in the past. Arguments similar to those made herein have been advanced by other municipal employers. In each instance said arguments have been rejected. In Ashland County (7214) 7/65, when confronted with an issue as to the status of the deputies to the County Clerk, Treasurer, Clerk of Court and Register of Deeds, the Commission stated:

Four separate sections relate to the appointment of the deputies at issue. They are Sections 59.16(1), 59.19(1), 59.38(1) and 59.50. They provide that the elected official appoint the deputies, that the deputies may act in the elected official's absence, or in the event of a vacancy in his office, and in the first two sections cited, relating to deputy clerks and deputy treasurers, that the county board sets the salaries for these positions. In the latter regard, Section 59.15 (a)(c) provides that the County Board has the

power to set the salary of the deputy without regard to the tenure of the incumbent, determine the number of deputies and "establish regulations of employment" for them, as well as other county employes.

Although the elected official has power to appoint his deputy, the County Board has the power to veto such selection, if it chooses, by failing to appropriate a salary for the appointee. Moreover, the County Board is the locus of the authority to determine the deputies' conditions of employment not prescribed by statute. These conditions might be the subject of conferences and negotiations between the Union and the County, in the event the Union is selected as the bargaining representative. The fact that statutes affect the nature of a seniority provision which the County and the Union might effectively negotiate has no bearing on the question of whether the deputy may be considered an employe under the statute. Therefore, except so far as tenure is concerned, the deputy is in the same situation as any other County employe. His conditions of employment are set by the County Board.

The deputies' bonds and oath are not determinative of their status. Even the common law distinctions between municipal employes and municipal officials acknowledge that a person merely by being bonded does not thereby attain the status of an official. Similarly, oath-taking does not necessarily have any significance regarding a determination as to whether the Legislature intended such person be granted the right to collective bargaining, if he so chose.

. . .

The most serious contention in support of the County's position is the fact that, on occasion, deputies perform the statutory duties of the office they serve. Although this is true, such duties are essentially ministerial as opposed to the exercise of either the executive or supervisory duties of their supervisors. The official himself, who appoints the deputy and might discharge him at will, bears full responsibility for the administration of the office, which is reviewed by the public every two years. The greater salary paid the elected officer reflects this authority and responsibility. The deputies have no supervisory authority or responsibilities, in the instant case, by reason of the minimal number of employes also employed in their respective offices. The fact that a deputy fills in for his supervisor during the latter's absence, does not, under the situation existing in this matter, convert the deputy into a supervisor or executive. We conclude, therefore, as we did in a previous matter that no reason exists to exclude deputies from the coverage of Section 111.70. They are eligible to vote in the election.

The Commission reaffirmed its conclusion regarding the status of deputies to elected officials in Shawano County (12310) 12/73, Kewaunee County, supra; and Oconto County (12970) 3/75, (14740) 6/76, (Affirmed Dane County Circuit Court, Case No. 152-467, 2/77). The County has presented no arguments which would warrant a different conclusion than that reached above.

As to the position of Deputy Register in Probate, the Commission stated in St. Croix County, supra:

The County has advanced two lines of argument favoring the exclusion of the Register in Probate and Deputy Register in Probate from the collective bargaining unit. First, the County contends that persons holding these positions hold their office at the will of the County Judge, and that this circumstance is inconsistent with their inclusion in a bargaining unit. The County asserts that the Award of the Board of Arbitration confirms its position here, and argues that the power of a court to appoint and remove assistants cannot be diminished by other branches of County government. The County also contends that the Courts can protect themselves against anything that materially affects their efficiency, and that the inclusion of these positions in the bargaining unit is such an impairment on the Court.

. . .

The primary considerations relied upon by the Commission in the Ashland case, and those found to be controlling here, concern the authority vested in the County Board over the wages and hours of the employes in question and over their conditions of employment other than tenure. Chapter 253 of the Statutes does not purport to give the County Judge authority with respect to all aspects of the employment relationship, and Section 253.31(3) specifically vests control over salaries in the County Board. Tenure of employment is only one of the items within the broad scope of subjects of collective bargaining in municipal employment. The removal of one subject from the scope of bargaining does not foreclose bargaining on the remaining subjects, and the possibility of a limited scope for bargaining has been encountered in other situations in municipal employment, such as in Milwaukee County, Decision No. 9904-B (12/70), where the Commission concluded that there was some room for bargaining within the framework of maximums and minimums established by State regulations concerning the operation of County public welfare agencies.

The definition of "Municipal Employee" set forth in the Municipal Employment Relations Act makes no provision for the exclusion of employes holding appointive positions from the rights secured to municipal employes in Section 111.70(2), Wisconsin Statutes. Nothing contained in the Municipal Employment Relations Act prohibits the inclusion of appointed employes in bargaining units with employes holding non-appointive positions

The foregoing rationale remains applicable and thus the County's position as to the Deputy Register in Probate is also rejected.

The County makes much of allegedly horrific impact which collective bargaining will have upon local control and the performance of the statutory duties of local elected officials. Initially it must be noted that any arguments which are premised upon the Union becoming the bargaining representative and then obtaining contractual provisions which impact negatively upon deputies are purely speculative even with the advent of interest arbitration. More importantly, as the above quoted rationale indicates, it is conceivable that the County's duty to bargain with respect to the deputy positions may be limited in certain areas due to the content of applicable statutory provisions. However it would be premature for the Commission to define the parameters of these limitations, if they exist, at this time.

When a Union 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 (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 Union.

The unit determination ballots cast by the professionals will be initially counted, and should a majority of the eligible professionals in the voting group vote in favor of being included in a unit with non-professional employes, the ballots of the professionals with respect to representation 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 professionals not vote in favor of being combined in a unit with non-professional employes, then the professionals shall constitute a separate unit, and their representation ballots will be counted separately from those ballots cast by the non-professional employes.

Dated at Madison, Wisconsin, this 17th day of October, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary I. Covelli
Gary I. Covelli, Commissioner