

fessional employes of the department and all other employes of Marathon County,

Voting Group No. 2

All professional employes of Marathon County CETA Program Department, excluding managerial, supervisory, confidential non-professional employes of the department and all other employes of Marathon County,

to determine whether employes in Voting Group No. 2 desire to be included in the same bargaining unit with employes in Voting Group No. 1, and whether the employes in the established unit or units desired to be represented by the Union for the purposes of collective bargaining with the County.

4. That the County does not oppose the Union's petitions 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 employes involved; and that, contrary to the position of the Union, the County contends that Robert Farganus, occupying the professional position of Program Analyst, should be excluded from any bargaining unit established in this matter, contending that Farganus is either a supervisory and/or managerial employe.

5. That the County is the prime sponsor for the CETA program; that the County has given the CETA program office the authority to operate programs under the Comprehensive Employment and Training Act (CETA), which involves the planning, management information systems responsibilities and fiscal responsibilities of the CETA program and the Education Opportunities Program (EOP); that the CETA program office will enter into agreements with community based organizations and local governmental units also known as "subrecipients" whereby the "subrecipients" will operate portions of the CETA program; that the CETA Program office is governed by the CETA Policy Committee, a committee of the Marathon County Board of Supervisors; that the CETA Planning Council is a citizens committee which makes recommendations to the CETA Policy Committee; and that Mr. Gary Denis has been the Director of the CETA program office since June 16, 1980.

6. That the Program Analyst reports directly to the Director and issues quarterly reports to the CETA Planning Council; that according to federal regulation each prime sponsor must establish an independent monitoring unit for the purpose of periodically monitoring and reviewing all program activities, services, program administration and management practices supported with funds under the Comprehensive Employment and Training Act; that the Program Analyst fulfills the function of the independent monitoring unit for the County; that internal monitoring concerns an examination of an agency's operation to insure that the agency is meeting the intent of CETA, that its systems are efficient and auditable and may involve interviewing agency staff and program participants; that the Program Analyst has the responsibility to investigate fraud and abuse both in the CETA Program office and with subrecipients, which includes the evaluation of monitoring systems, investigation of programs, auditing of subrecipient performance, and investigating of complaints by program participants against subrecipients; that the Program Analyst may recommend changes in the operation of the CETA Program office or subrecipient's program; that the Program Analyst's recommendation regarding a subrecipient may result in the termination of the relationship between the CETA Program office and the subrecipient due to fraud, abuse, gross mismanagement or performance or non-compliance with its agreement with the CETA Program office; that the Program Analyst spends 40% of his time in internal monitoring and 60% of his time in subrecipient monitoring; that the Program Analyst will meet with the Director to discuss policy decisions related to the prevention of fraud or abuse, but would not be involved in a

discussion to change work hours at the CETA Program office. that the Program Analyst will in the future provide training in contract monitoring to Program Assistants and Program Coordinators; that the Program Analyst implements the policy of the Comprehensive Employment and Training Act as it relates to his monitoring function; that the Program Analyst does not prepare the budget for the CETA Program office; that the Program Analyst prepares a budget which funds his operation, is primarily an expense budget and is \$600; that the annual budget for the CETA Program office is 4 million dollars and that the Program Analyst receives an annual salary of \$10,119.

7. That the Program Analyst effectively recommended the hire of the summer youth monitor for a term of nine weeks during the summer of 1980; that the summer youth monitor, under the direction of the Program Analyst, conducts audits of the summer youth programs to determine whether participating youths are working in their proper classifications, to insure compliance with child labor laws and with CETA requirements; that the direction of the summer youth monitor involved a very small portion of the Program Analyst's work time; that the Program Analyst signed the summer youth monitor's time sheet and trained her in the applicable regulations, laws and forms; and that the Personnel and Labor Relations Committee of Marathon County determines the salary of the summer youth monitor.

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, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among the employes of the Marathon County CETA Program Department in the voting groups set forth in paragraph 3 of the Findings of Fact, supra.

2. That the position of Program Analyst in the Marathon County CETA Program Department, presently occupied by Robert Farganus, is a "municipal employe" position within the meaning of Section 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 employes of the Marathon County CETA Program Department, who were employed on November 19, 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 the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Marathon County on questions of wages, hours and conditions of employment.

Voting Group No. 2

All regular full-time and regular part-time professional employes of the Marathon County CETA Program Department, who were employed on

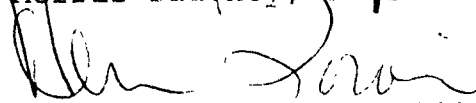
November 19, 1980, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining (1) whether a majority of the employes in said Voting Group desire to be included in the bargaining unit described as Voting Group No. 1; and (2) whether a majority of such employes desire to be represented by the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining with Marathon County on questions of wages, hours and conditions of employment.


Given under our hands and seal at the City of Madison, Wisconsin this 19th day of November, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slayney, Chairman


Herman Torosian, Commissioner


Gary I. Covelli, Commissioner

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

The only issue presented by the subject petitions was whether Robert Farganus, the Program Analyst, is a municipal employe within the meaning of the Municipal Employment Relations Act. The County asserts that the Program Analyst position is supervisory/managerial and on that basis should be excluded from any unit deemed appropriate by the Commission. The Petitioner claimed that the Program Analyst is a professional but is not a supervisory, managerial or confidential employe.

In determining whether an individual is a managerial employe and thus excluded from the definition of the term "municipal employe" contained in Section 111.70(1)(b) of the Municipal Employment Relations Act, the Commission has stated: "managerial status is related to an employe's participation in the formulation, determination and implementation of management policy, as well as said employe's effective authority to commit the Employer's resources." 1/

Here, the federal government formulates policy for prime sponsors such as Marathon County. Mr. Denis, Director of the CETA Program Department, testified that the Program Analyst's basis function is to investigate and to make recommendations to preclude fraud and abuse in the CETA Program and to make systems recommendations that would prevent the re-occurrence of fraud or abuse. Each prime sponsor must have a position such as the Program Analyst to insure that no fraud occurs in the CETA program and the person occupying that position does not determine or formulate the basic federal government policy, i.e., to insure that CETA funds are administered in an honest and fair manner. Rather, the Program Analyst administers this policy through his investigations and subsequent recommendations to Denis. Denis acts pursuant to these recommendations or take whatever action he deems appropriate. Denis indicated that he has met with the Program Analyst regarding policy administration, but that these discussions would be related to the actual prevention of fraud or abuse, accounting systems or whatever is necessary to protect the integrity of the CETA program. However, Denis stated that he would not meet with the Program Analyst to discuss a change in the work hours for CETA Program Department personnel.

Although the Program Analyst establishes his own budget, to cover his expenses, it is small, six hundred dollars (\$600.00) and must be approved by Denis. Moreover, the Program Analyst may not commit any portion of the CETA Program budget which is four (4) million dollars.

Further, the Program Analyst's job description indicates that he is not a managerial employe. It describes the job function as "administrative and staff work at the beginning level". In addition, "they make recommendations to their superior in the development of overall administrative policies." Although there is "latitude for the exercise of independent judgement it is limited by "review and general policies determined by the supervisor." Further, the Program Analyst, will prepare directives, "upon direction and with general policy guidance. Lastly, the record reveals that the Program Analyst's annual salary is lower than the Program Assistants and Program Coordinators, the classifications to whom he will provide training in contract monitoring to in the near future. In fact, the Program Analyst's salary is the lowest annual salary in the proposed professional bargaining unit. Accordingly, the Program Analyst's low salary when coupled with the inability to

1/ City of Wausau (14807) 7/76.

determine policy and commit the County's resources demonstrate that he is not a managerial employe.

Supervisory Status

The only indicia of supervisory status is the Program Analyst's interaction with the summer youth monitor. Last year's summer youth monitor was hired with the recommendation of the Program Analyst who also trained and directed her activities. The Program Analyst spends a small portion of his time directing the summer youth monitor and further, the Program Analyst directs no other employes. Moreover, with respect to the summer youth monitor, the Program Analyst is supervising an activity rather than the employe in that the summer youth monitor performs monitoring functions that the Program Analyst would otherwise have to do himself. Thus, we conclude that the Program Analyst does not possess sufficient supervisory authority to warrant his exclusion on the basis of supervisory status.

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 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 Union. 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 professional employes will be instructed to deposit their unit determine 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 end result the representation ballots cast by the professional employes will be tallied to determine whether the professional employes desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purposes of collective bargaining.

Dated at Madison, Wisconsin this 19th day of November 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner