

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
MONTICELLO EMPLOYEES' ASSOCIATION	:	Case II
	:	No. 27391 ME-1961
Involving Certain Employees of	:	Decision No. 18463-A
	:	
VILLAGE OF MONTICELLO	:	
	:	

Appearances:

Mr. John Strause, Representative, Monticello Employee's Association, appearing on behalf of the Monticello Employee's Association.
Melli, Shiels, Walker & Pease, S.C., Attorneys at Law, by Mr. James Ruhly, appearing on behalf of the Village of Monticello.

ORDER OVERRULING CHALLENGE TO BALLOTS AND
ORDER DIRECTING THE COUNTING OF BALLOTS

On March 6, 1981, the Wisconsin Employment Relations Commission having conducted an election among employes of the Village of Monticello employed in a unit described below, and during the course of said election, the Association having challenged the ballots of Harry Schuerch and Orpha Voegeli, and hearing in the matter having been conducted on April 9, 1981 at Monticello, Wisconsin, Sherwood Malamud, being present; and the parties having filed written argument which was exchanged on April 20, 1981; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Monticello Employees' Association, hereinafter the Association, is a labor organization, and maintains its offices in Monticello, Wisconsin.
2. That Village of Monticello, hereinafter the Village, is a municipal employer, and maintains its offices in the Village Hall, Monticello, Wisconsin.
3. That pursuant to a direction issued by it, the Wisconsin Employment Relations Commission on March 6, 1981 conducted an election in a collective bargaining unit consisting of all full-time and regular part-time employes of the Village of Monticello, but excluding law enforcement, confidential, supervisory, managerial and executive employes, to determine whether said employes desired to be represented by the Association for the purposes of collective bargaining; that during the course of said election, the Association challenged the ballot of Harry Schuerch, contending that Schuerch is a supervisor, and the Association also challenged the ballot of Orpha Voegeli, claiming that Voegeli is not a Village employe.
4. That Harry Schuerch holds the position of Street Superintendent of the Village, a position he has held for the past six years; that he spends almost all of his time performing labor tasks, such as operating a front end loader in the cleaning of storm drains, patching holes in the streets, and clearing snow in the winter time; that approximately two to three times per week, Schuerch calls in the Street Department's only other employe, Huntley, who works on a part-time basis and who assists Schuerch; that Huntley was hired by the Village President and the Village Board; that Schuerch does not evaluate Huntley nor does he have the authority to discipline the latter; that Schuerch has no authority to assign Huntley any overtime; that during the summer months, CETA employes are assigned to the Street Department; that Schuerch is not involved in their

hire, nor does he evaluate their work; that Schuerch receives \$6.75 per hour and he receives the same fringe benefits as other full-time employes; that Huntley is paid \$4.50 per hour, and receives no fringe benefits; that Schuerch is present at Village Board meetings and he reports to the Village Board and its committees with respect to the activity of the Street and Cemetery Departments; that approximately 3-4 times per week, Schuerch speaks with the Village President to ascertain the work projects to be done by the Street Department; and that Schuerch is a leadman or working foreman who supervises an activity, but who does not possess the authority to supervise employes.

5. That Orpha Voegeli has worked for the Village since May, 1979, working four hours every Wednesday in cleaning the Village Hall; that she is paid \$3.35 and she receives no fringe benefits, and that if she is unable to work on a Wednesday because of illness, she cleans the Village Hall on another day of the week; that since Voegeli's schedule is both fixed and regular, she is a regular part-time employe of the Village.

Based upon the above and foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That Harry Schuerch is a municipal employe of the Village of Monticello within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That Orpha Voegeli is a regular part-time employe of the Village of Monticello and therefore a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

ORDER

That the challenges of the Monticello Employees' Association to the ballots of Harry Schuerch and Orpha Voegeli be, and the same hereby are, overruled, and therefore, counsel for the parties shall agree, within 10 days, on a time and date on which the ballots can be opened and tallied in the Madison office of the Wisconsin Employment Relations Commission.

Given under our hands and seal at the City of Madison, Wisconsin this 1st day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Gary L. Covelli
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING
ORDER OVERRULING CHALLENGE TO BALLOTS AND
ORDER DIRECTING THE COUNTING OF BALLOTS

At the March 6, 1981 election, the Association challenged the ballots of Harry Schuerch and Orpha Voegeli. The Association asserts that Schuerch is a supervisor, and that Voegeli is not an employe of the Village.

Harry Schuerch

On the basis of the entire record, the Commission is satisfied that Schuerch is a municipal employe rather than a supervisor. Schuerch schedules and assigns work to himself and Huntley. This is the only authority he possesses over part-time employe Huntley. Schuerch has no authority to hire, fire, discipline or evaluate Huntley or any other employe. Almost all of Schuerch's time is spent performing manual work. At best, Schuerch's authority to supervise extends over the day to day work of the Street and Cemetery Departments. In this regard, he supervises an activity, not employes; he is functioning as a leadman or working foreman. ^{1/} Accordingly, as a municipal employe, Schuerch's ballot must be counted and included in the tally of the March 6, 1981 vote.

Orpha Voegeli

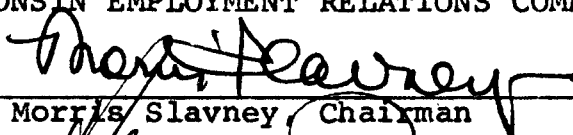
The Association argues that since Orpha Voegeli does not come into contact with other employes when she works and because she works so few hours per week, she does not share a community of interest with other employes included in the unit.

The Commission has often stated that the determinative factor in deciding whether an employe is a casual and therefore precluded from voting in an election, is the regularity of employment. ^{2/} The number of hours worked is not determinative of this issue. Here, Voegeli works four hours every Wednesday. She is regularly employed. Therefore, the Commission finds that she is included in the above described unit, and that her ballot should be counted.

Dated at Madison, Wisconsin this 1st day of May, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary I. Covelli, Commissioner

^{1/} See City of Richland Center (17950) 7/80 wherein the Commission found a Cemetery Sexton, Water Department Foreman and Waste Water Treatment Plant Superintendent to be municipal employes and it included said positions in the collective bargaining unit.

^{2/} Ashland School District (18085) 10/80 (Servers).