

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

PORTAGE COUNTY

[illegible]


Decision No. 18792-A


No. 18792-A

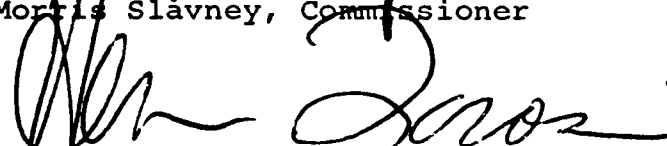
Disposition of Motion to Reconsider be, and the same hereby is,
denied.

Given under our hands and seal at the
City of Madison, Wisconsin, this 30th
day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER DENYING MOTION TO RECONSIDER AND STAY
PROCEEDINGS PENDING DISPOSITION OF MOTION TO RECONSIDER

In its motion Teamsters contends that the Commission erred when it concluded that the non-professional employees employed in the County's Department of Community Human Services are not an appropriate bargaining unit and should be accreted to the existing collective bargaining unit of Courthouse and Home Employees represented by AFSCME, Local 348. Teamsters points out that the employees involved have been represented by Teamsters pursuant to a Commission certification, following an election conducted by the Commission, which election was based in part on an earlier agreement between AFSCME and the County to exclude said employees from the non-professional Courthouse and Home bargaining unit. It therefore argues that the Commission's decision is contrary to its longstanding policy against the accretion of voluntarily excluded employees. Further Teamsters argues that the employees in question should have been given an opportunity to vote on the question of representation and the effect of the Commission's order is to eliminate that opportunity. Teamsters argues that the Commission should, consistent with its decision in City of Wisconsin Rapids (Decision No. 13753, 6/75) and in other cases cited in its motion, direct an election among the affected group of employees for the purpose of determining whether they desire to be represented by AFSCME or Teamsters or neither of said organizations and accrete said group only if they choose to be represented by AFSCME. According to Teamsters this procedure would give sufficient consideration to the anti-fragmentation policy and avoid an outcome which disregards its prior certification as the representative of such employees. In particular, Teamsters argues that the facts in this case are very similar to those that existed in the Wisconsin Rapids case.

In the alternative Teamsters argues that if the Commission does not order an election among the non-professional employees in question that it should direct an overall election in the unit consisting of Courthouse and Home employees, as well as non-professional employees in the Department of Community Human Services. Teamsters asks that the Commission stay its election proceeding in the bargaining unit of professional employees employed in the Department of Community Human Services, based on its claim that the simultaneous conduct of the elections requested herein and that election would be most efficient and least disruptive. It further argues that it would be appropriate under those circumstances to permit the professional employees to decide whether they wish to be a part of a joint professional and non-professional bargaining unit and points out that it is customary for the Commission to hold such elections on the same date, co-mingling the representation ballots in the event that the professional employees choose to be included with the non-professional employees.

The County requests that the Commission deny the Motion and argues: (1) that the arguments presented are the same as those which were previously made and have already been considered by the Commission; (2) reconsideration will result in further delay in the commencement of negotiations for both the professional and non-professional employees and exacerbate already existing morale problems for the employees who have gone without a wage increase for seven months; and (3) the Commission decision is consistent with the overall policies reflected in Commission decisions interpreting Section 111.70(4)(d)2.a. In the alternative, if the Commission decides to grant reconsideration, the County requests the opportunity to file an additional argument on the merits.

OPEIU takes the position that the issues raised by this motion do not in any way affect the Commission's decision directing an election among the professional employees in the Department of Community Human Services, and that therefore the requested stay

should be denied. With regard to Teamsters' claim that the election among professional employees should be delayed in the event that the Commission decides that said employees should be given a unit determination vote to decide if they wish to be included in a single unit with the non-professional employees, OPEIU points out that there is nothing in the record to indicate that the professional employees desire such a vote. For these reasons OPEIU asks that the Commission immediately conduct the representation election among the professional employees, regardless of whether it chooses to reconsider its decision as to the accretion of the non-professional employees.

AFSCME takes the position that the issues presented by the motion to reconsider were previously extensively argued and that there is no indication that the Commission's decision failed to take such arguments into account. In response to the stated grounds contained within the motion, AFSCME points out that the recent merger of three County departments into the new Department of Community Human Services is an intervening event which justifies the Commission's action of not continuing to accept the parties' voluntary stipulation in 1973 as to the appropriate bargaining unit. In particular AFSCME points out that since the merger 10 of the 17 non-professional employees in question are now working in the same classification and in the same department and under the same supervision as employees in the overall County bargaining unit represented by AFSCME. According to AFSCME, the situation with the non-representation of the part-time employees was not affected by the merger.

DISCUSSION

In essence Teamsters asks the Commission to reverse its earlier determination that the appropriate bargaining unit under the circumstances presented by this case consists of all non-professional employees employed by the County in its Courthouse and Home and in the Department of Community Human Services. We believe that it would be inappropriate to do so for the reasons stated in our earlier decision.

It should be noted that at the time AFSCME and the County agreed to the unit of Courthouse and Home non-professional employees, Section 111.70 permitted employees in separate departments, or a combination thereof, to constitute an appropriate unit. After November 11, 1971, the effective date of MERA, the Commission was granted the discretion to establish units without requiring that employees in separate departments be given the opportunity to determine for themselves their desire as to units. The Commission's policy with regard to accretion to bargaining units was adopted long after the establishment of the original AFSCME unit.

Teamsters' reliance on the Wisconsin Rapids case is misplaced. Teamsters relies primarily on one statement contained within that decision wherein the Commission said:

"Because of, among other things, the claim of representation by the Association, the Commission will not order an accretion of the employees herein to the existing AFSCME unit. Instead, the Commission finds that all non-clerical employees, excluding professionals, in the Plan-Design Division of the Department of Engineering in the City of Wisconsin Rapids may constitute a separate appropriate unit. In order to satisfy the statutory direction to avoid the fragmentation of units, the Commission has today directed a representation election among the eligible employees employed in the Plan-Design Division of the Engineering Department to determine their choice as to their collective bargaining representative. The ballot involved will afford the employees an opportunity to select either the Association, or AFSCME, or no organization, as their bargaining representative, with the specific understanding that should a majority of the employees voting select AFSCME as their

bargaining representative, such result will be deemed an intention that the employees desire to be included in the "overall" unit. Should the employees select the Association as the bargaining representative, or should they reject representation, said employees shall remain a separate unit." (Emphasis added)


However, Teamsters' argument fails to take into account an earlier finding contained within the same decision wherein the Commission stated that "The record further discloses that the nature of work performed by the non-clerical employees, not including the professionals, calls for the exercise of independent judgement, direction of others and combined office and field work which differs from the primarily clerical and routine duties performed by the employees of the unit presently represented by AFSCME." It was for this reason as well that the Commission found that said group was an appropriate bargaining unit. While it is true, as argued by Teamsters, that there are paraprofessional employees included among the group of 17 employees involved herein, 10 employees occupy classifications identical to those employees in the new Department of Community Human Services and other county departments all of whom are in the unit presently represented by AFSCME. Further that unit contains a broad mixture of non-professional employees including employees who would share a community of interest with the paraprofessional employees in question and the addition of the 17 employees in question would not draw into question the majority status of AFSCME.

For the above and foregoing reasons we have denied Teamsters Motion to Reconsider and Stay Proceedings Pending Disposition of Motion to Reconsider.

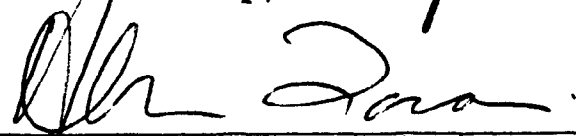
Dated at Madison, Wisconsin, this *30th* day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary I. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner