

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WALWORTH COUNTY

Case XLIX
No. 27696 ME-1987
Decision No. 18846

Mr. Eugene J. Hayman, Lindner, Honzik, Marsack, Hayman and Walsh
S.C., Attorneys at Law, 700 North Water Street, Milwaukee,
Wisconsin 53202, appearing on behalf of the Employer.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a petition on March 24, 1981 requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of professional and non-professional personnel in the employ of the Social Services Department of Walworth County, and determine whether the position of Fraud Investigator which currently is not included in said unit should be included; and hearing in the matter having been conducted on May 12, 1981 at Elkhorn, Wisconsin before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and a transcript of the proceedings having been mailed to the parties on June 5, 1981 and post-hearing briefs having been received on June 26, 1981; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law, and Order Clarifying Bargaining Unit.

4. That in 1979 the County established the position of Fraud Investigator in the Social Services Department; that on December 3, 1979 Helmuth Hollwedel was employed by the County as the Fraud

Investigator and that said position was not included in the bargaining unit described above; that the Fraud Investigator reports to the Income Maintenance Manager, Lois Fairchild; that 70% of the duties of said position are to investigate complaints of alleged or suspected fraud in AFDC, Medical or Food Stamp cases, gathering information and securing admissible evidence for court, researching and coordinating information with Income Maintenance Workers, Social Workers, District Attorney's office and other law enforcement officials, and appearing in court to submit evidence; that 25% of the duties of said position involve writing reports, correspondence, and maintaining a record system of cases investigated; that approximately 80% of the cases investigated by the Fraud Investigator are the direct result of referrals from co-workers and the remaining 20% are the result of anonymous calls; that during the course of his investigations the Fraud Investigator determines whether Social Services Department employees have complied with applicable rules and regulations concerning the provision of food stamps or other types of assistance provided by the Social Services Department, that in at least two cases Hollwedel has informed his supervisor that a department employee has not properly completed a case; that Hollwedel has never had to investigate an alleged case of fraud involving a Social Services Department employee; that Hollwedel is the only Fraud Investigator employed by the County and that he sets his own hours of work and methods by which he investigates cases; that the reports of the results of Hollwedel's investigations may lead to some form of discipline if, in fact, a Social Services Department employee has not properly completed a case or if the employee was involved in a fraudulent activity; and that in the performance of his duties Hollwedel does not supervise other employees.

5. That the duties of the position of Fraud Investigator occupied by Hollwedel which require the investigation of Social Services Department employees are confidential in nature.

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

CONCLUSION OF LAW

1. That since the position of Fraud Investigator in the employ of the Social Services Department of Walworth County is a confidential position, the occupant thereof, Helmuth Hollwedel, is not a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT

That the individual employed as Fraud Investigator is a confidential employee and therefore is excluded from the above described bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin this 24th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT

The Union's petition requests an order that the position of Fraud Investigator be included in the voluntarily recognized bargaining unit described in Finding of Fact No. 3. Said position was not in existence at the time of voluntary recognition. The Union contends that the position is neither confidential nor supervisory and thus should be included in the bargaining unit. The County contends that the duties of the Fraud Investigator sets it apart from all other employees in the bargaining unit and that the Fraud Investigator may be called upon to investigate employees in the bargaining unit with respect to their competency, whether or not they have followed rules and regulations concerning services provided by the Social Services Department, and whether or not any possible irregularities in conduct or fraud may have been committed by an employee.

The Commission has consistently held that under the Municipal Employment Relations Act an employee is excluded from a unit as a confidential employee when that employee participates in the municipal employer's labor relations function, or where the employee has access to sensitive labor relations information. Any other sense of the term "confidentiality", in either the role of the employee or to materials which the employee has access, is immaterial to the question of the employee's status as a confidential employee. 1/ In order for information to be considered confidential it must be of the type that deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters relating to labor relations between the bargaining representative and the employer, and must not be available to the bargaining representative or its agent. 2/ The Commission has further held that where the duties of an employee are closely related to activity which could lead to disciplinary action, that such duties are confidential, and as such an employee shall be excluded from a bargaining unit because of confidential status. 3/

In the instant matter the Fraud Investigator's duties include investigating employees to determine if they are following appropriate rules and regulations, as well as the responsibility for investigating any allegations of fraud concerning Social Services Department employees, which could result in disciplinary action against bargaining unit employees. Therefore we conclude that said duties are confidential

1/ Kenosha County Assistant Attorney's Association, (15371), 3/77, Waukesha Joint School District No. 1, (10823-A), 3/81.

2/ Cooperative Education Association Agency No. 4, (14177-A), 7/80; Wisconsin Heights School District, (17182), 8/79; Juneau County, (12814-A), 8/78; City of Menasha, (14523), 4/76. Waukesha Joint School District No. 1, (10823-A), 3/81.


3/ City of Milwaukee (Dept. of Public Works), (16987), 4/79.

and that the Fraud Investigator is excluded from the unit on a confidential basis. The Commission deems it unnecessary to determine the supervisory status of the position.

Dated at Madison, Wisconsin this 24th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

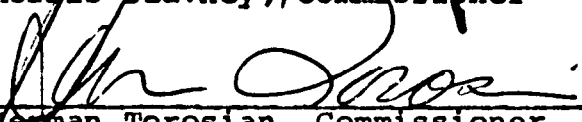
By



Gary L. Covelli, Chairman



Morris Slavney, Commissioner



Herman Torosian, Commissioner