

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
GREEN COUNTY (DEPARTMENT OF
HUMAN SERVICES)
Involving Certain Employees of
GREEN COUNTY (DEPARTMENT OF
HUMAN SERVICES)

Case LXXV
No. 32314 ME-2287
Decision No. 21453

Appearances:

Melli, Shiels, Walker & Pease, S.C., by Mr. Jack D. Walker, Suite 600,
Insurance Building, 119 Monona Avenue, P.O. Box 1664, Madison,
WI 53701, appearing on behalf of Green County.
Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., by Ms.
Marianne Goldstein Robbins, 788 North Jefferson Street, P.O. Box 92099,
Milwaukee, WI 53202, appearing on behalf of the Teamsters.
Mr. David Ahrens, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of
Council 40.

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

Green County having on October 19, 1983, petitioned the Wisconsin Employment Relations Commission to conduct an election of all regular full-time and regular part-time employees employed by the Green County Department of Human Services, but excluding confidential employees, craft employees, supervisory employees, managerial employees and all other employees, or in the alternative, to conduct an election of all regular full-time and regular part-time professional employees employed by the Green County Department of Human Services, but excluding confidential employees, craft employees, supervisory employees, managerial employees, and all other employees and an election of all regular full-time and regular part-time non-professional employees employed by the Green County Department of Human Services, but excluding professional employees, confidential employees, craft employees, supervisory employees, managerial employees and all other employees to determine whether a majority of employees in those bargaining units desired to be represented by an exclusive bargaining representative; and a hearing having been held on November 16, 1983, in Monroe, Wisconsin before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and General Drivers, Dairy Employees and Helpers, Local Union No. 579 and Wisconsin Council 40, AFSCME, AFL-CIO being present; and a stenographic transcript of the proceedings having been prepared; and the County and the Teamsters having submitted written arguments to the Examiner by January 17, 1984, with Council 40 informing the Commission on January 23, 1984, they would not be submitting a brief; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

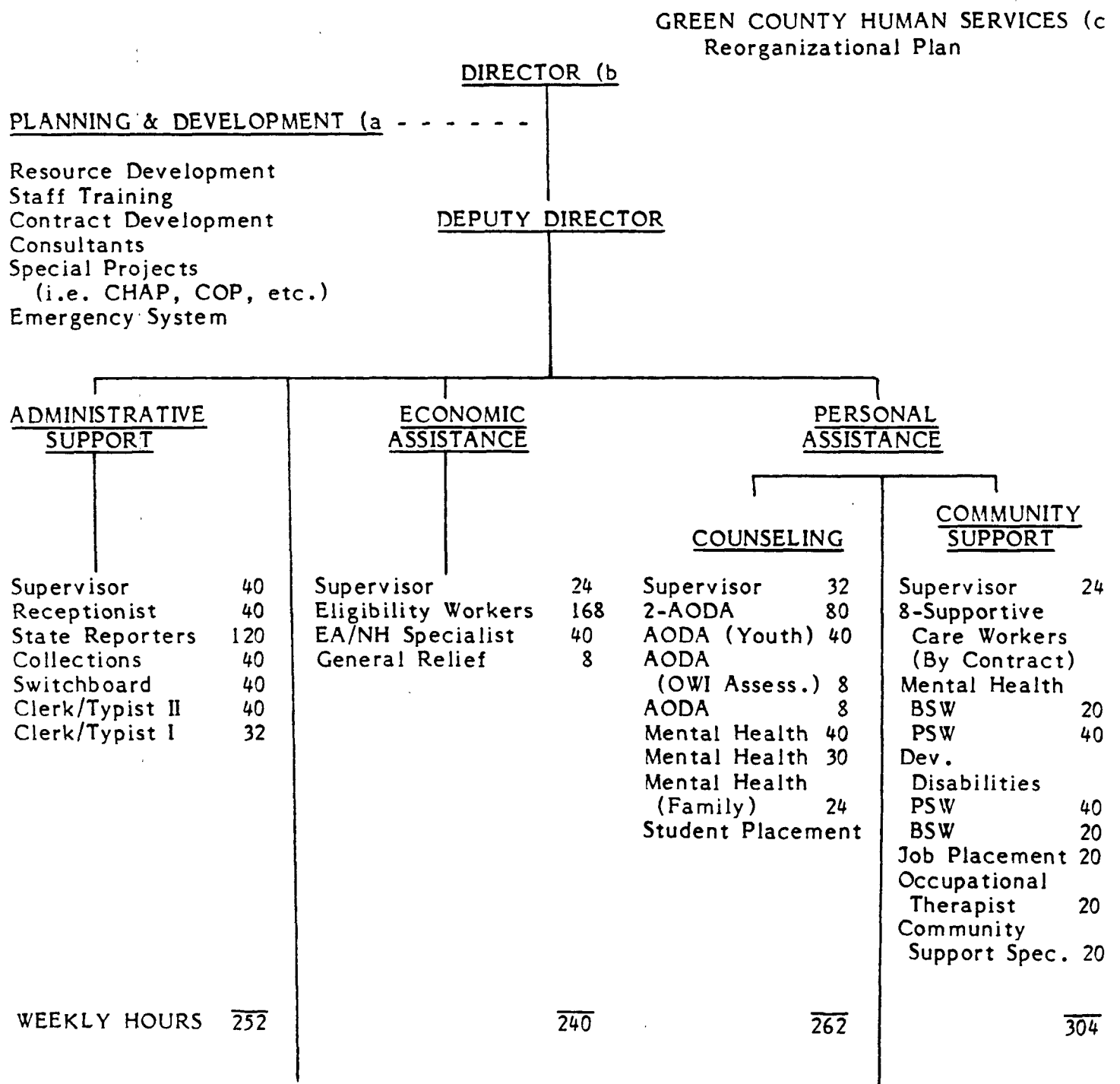
1. That Green County, hereinafter referred to as the County, is a municipal employer maintaining its principal offices at the Green County Courthouse, Monroe, Wisconsin; and, that among its various governmental functions the County operates a Department of Human Services.

2. That General Drivers, Dairy Employees, and Helpers, Local Union No. 579, hereinafter referred to as the Teamsters, is a labor organization having its principal offices located at 2214 Center Avenue, Janesville, Wisconsin; and, that the Teamsters is the certified bargaining representative of all employees of the Green County Department of Social Services, including all Social Workers, Income

Maintenance Workers and Assistants, Social Service Aides (including Homemakers) and Clerical employees and excluding the Director, Supervisors and Administrative Assistants.

3. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as Council 40, is a labor organization maintaining its principal offices at 5 Odana Court, Madison, Wisconsin; that Council 40 claims that it represents employees in the bargaining unit in which the County seeks an election herein; that Council 40 supported that claim with a timely and sufficient showing of interest; that Council 40 has been permitted to intervene in the instant matter; and, that Council 40 currently represents employees of the County's Pleasant View Nursing Home.

4. That in calendar year 1980 the County, after a one year study and pursuant to Section 46.23, Wis. Stats., approved a plan to consolidate the County's Commission on Aging, Unified Services Board, and Social Services Department into a single Department of Human Services; that in April, 1981, the County hired Bruce Willett as Director of Human Services and directed him to implement said consolidation plan; that in 1981 the employees working for the Commission on Aging and for the Unified Services Board were moved to a single location, the Pleasant View Annex; that in November, 1983, the staff of the Department of Social Services began moving into said location; that all movement into said location was scheduled to be completed by December 25, 1983, at which time all employees of the Human Services Department will be in one location; and, that the organizational structure of the newly created Department of Human Services is as follows:



		(Green House 80)	
<u>AGING</u>		<u>ALTERNATE</u>	<u>CHILDREN, YOUTH</u>
<u>ADMINISTRATION</u>		<u>SERVICES</u>	<u>& FAMILIES</u>
Director 40		Supervisor 20	Supervisor 32
Benefit Counselor 40		Nutrition	3-Child Welfare
		Director 24	Workers 120
		Asst. Dir. 16	Youth & Family
		5 Site Mgrs. 80	(YA) 40
		Home Services	Family 8
		Homemaker 20	CYF Aide 40
		Adult SW 40	Foster Parents
		Aging Spec. 40	Student Placement
		Alternate Living	
		Manager 20	
		Volunteer & Trans.	
		Coordinator 18	
WEEKLY HOURS 80		278	240
		(Lincoln Park 80)	

INITIAL INTAKE will be the responsibility of the Administrative Support and the Economic Assistance Units.

- Selected Staff members may assist Administration for a limited time on specific projects.
- Supervisors are directly responsible to the Director, but in his absence to the Deputy Director.
- An additional table of organization for the Board and its "standing" and "advisory" committees is also available.

The hours of employment in this plan are 6 hours more than in the agency before reorganization.

5. That during the course of the hearing the parties stipulated that the following positions were managerial and/or supervisory:

<u>Position</u>	<u>Incumbent</u>
Director of Department of Human Services	Bruce Willett
Counseling Center Supervisor	Audrey Dana
Deputy Director	Richard Deeringer
Economic Assistance Supervisor	David Losey
Aging Director	Fred Mensik
Business Manager/Administrative Support Supervisor	Rhonda Niffenegger
Community Support Supervisor	Patricia Rutkowski
Alternate Services Supervisor	Mary Trupke
Children, Youth and Families Supervisor	Vacant

6. That the County has engaged the services of the following personnel under Purchase of Service contracts:

Charles Fisher	Alternate Living Manager/Green House
Tom Griffin	Lincoln Park Group Home Manager
Jerelyn O'Brien-Charles	Green House Counselor
Patricia Swanson	MH Psychiatric Social Worker - CSP
Steve Zwickel	Youth & Family (YA)
Isabelle O'Brien	Assistant Manager Lincoln Park G.H.
Jeff Oimoen	Associate Manager Green House
Thea Shea	Relief - Lincoln Park G.H.

that on December 16, 1983, the County informed the Commission in writing that the Green County Board had voted to make said eight (8) Purchase of Service personnel regular employees; that the parties have stipulated the following employees

occupying the following positions are professional employees:

<u>Name</u>	<u>Title</u>
Bandi, Bernadette	MH/DD Social Worker - CSP
Braun, Catherine (24 hrs/wk)	Nutrition Director
Christoffel, John	AODA Counselor
Duerst, Lisa	Child Welfare Worker
Fisher, Charles (POS)	Alternate Living Mgr/Green House
Fowle, Wilson III (24 hrs/wk)	Psychiatric Social Worker
Gonwa, Ruth	Child Welfare Worker
Griffin, Tom (POS)	Lincoln Park Group Home Manager
Hansen, John	AODA Counselor
Leadingham, Sheila	DD Psychiatric Social Worker - CSP
Lerman, Sharon	AODA (Youth) Counselor
Munger, Martha	Psychiatric Social Worker
O'Brien-Charles, Jerelyn (POS)	Green House Counselor
Shorrocks, Nancy (30 hrs/wk)	Psychiatric Social Worker
Swanson, Patricia (POS)	MH Psychiatric Social Worker - CSP
Tuescher, Kristi	Adult Social Worker
Turner, Kathleen	Child Welfare Worker
Zwickel, Steve (POS)	Youth & Family (YA)
Vacant	Community Support Specialist - MH

and, that the parties have stipulated the following employees occupying the following positions are non-professional employees:

<u>Name</u>	<u>Title</u>
Blumer, Audrey (Jeannie)	Eligibility Worker
Brooks, Nancy	Assistant Nutrition Director
Burkhard, Ellen	Clerk/Typist II
Cromwell, Rose	State Reporter
Ellingson, Roberta	Receptionist
Flannery, Ruthella	Benefit Counselor
Gavand, Shirley	Aging Specialist
Gempler, Kathy	EA/NH Specialist
Grimm, Joann	Collections
Hunt, Marian	Homemaker
Jaggi, Christy	State Reporter
Joranlien, Alan	Child Welfare Aide
Leutenegger, Anita	Eligibility Worker
Martin, Sandra	State Reporter
Marty, Evelyn	Eligibility Worker
Schwitz, Karen	Switchboard
Trumpy, Linda	Eligibility Worker
Wiesenberg, Tamara	Clerk/Typist I
Vacant	Volunteer/Transportation Coordinator
O'Brien, Isabelle (POS)	Asst. Manager Lincoln Park G.H.
Oimoen, Jeff (POS)	Associate Manager Green House
Shea, Thea (POS)	Relief - Lincoln Park G.H.

7. That the Teamsters are currently the bargaining representative for the following professional and non-professional employees:

<u>Professional</u>	<u>Non-professional</u>
Lisa Duerst	Audrey Blumer
Ruth Gronwa	Ellen Burkhard
Kristi Tuescher	Kathy Gempler
Kathleen Turner	Marian Hunt
	Alan Joranlien
	Anita Leutenegger
	Evelyn Marty
	Karen Schwitz
	Linda Trumpy

that Teamsters also claim to be the bargaining representative for non-professional employee Rose Cromwell; and, that effective December 25, 1983, the members of the Teamsters bargaining unit will no longer have separate supervision from that of other County employees not currently represented by Teamsters; and

that, specifically, employees Duerst, Gonwa, Turner, and Joranlien will be located in the Children Youth and Families Division, employees Hunt and Tuescher will be located in the Alternate Services Division, employees Blumer, Leutenegger, Gempler, Marty and Trumpy will be located in the Economic Assistance Division, and employees Burkhard and Cromwell will be located in the Administrative Support Division; and that in each of those Divisions, the Teamster bargaining unit members will be intermingled with other employees under common supervision.

8. That, at all times material herein, employees formerly working in the Commission on Aging and the Unified Services Board and presently working in the Department of Human Services have not been represented by any labor organization for the purposes of collective bargaining on wages, hours and conditions of employment.

9. That on October 19, 1983, the County filed the instant petition alleging that a question of representation had arisen and that the following constitute appropriate bargaining units:

1. Proposed combined professional - nonprofessional unit

All regular full-time and regular part-time employees employed by the Green County Department of Human Services, but excluding confidential employees, craft employees, supervisory employees, managerial employees, and all other employees.

2. In the alternative, separate units consisting of

A. All regular full-time and regular part-time professional employees employed by the Green County Department of Human Services, but excluding confidential employees, craft employees, supervisory employees, managerial employees, and all other employees.

B. All regular full-time and regular part-time nonprofessional employees employed by the Green County Department of Human Services, but excluding professional employees, confidential employees, craft employees, supervisory employees, managerial employees, and all other employees.

10. That Council 40 stipulated that the bargaining units described in 2. A. and B. paragraphs, Findings of Fact 9 constitute appropriate bargaining units, and that Council 40 did not expressly object to the voting procedure proposed by the County whereby a combined unit would result if favored by a majority of the professional employees.

11. That the Teamsters would have the Commission dismiss the petition; that the Teamsters argue that the Social Services employees function separately, have a separate bargaining history, and have been treated differently by the County from employees of the former Unified Services Board and of the Commission on Aging resulting in a lack of community of interest; that the Teamsters assert a bona fide merger of divisions had not occurred prior to the hearing and that the County's petition is therefore premature; that the Teamsters assert that the Social Services Department bargaining unit identified in Finding of Fact 2 remains an appropriate bargaining unit; and, that the Teamsters contend if there is evidence that a question of representation exists among Unified Service and Commission on Aging employees, then an election among those employees only should be ordered whereby they would select a representative and be merged into an existing unit represented by that labor organization.

12. That the County argues: that only a department wide unit is appropriate; that the former Social Services Department employees no longer exhibit unique interests and have been disbursed throughout the Human Services Department such that they no longer constitute an appropriate unit for bargaining; that the former bargaining history supports the appropriateness of a department wide unit; and, that, inasmuch as the former Social Services employees totaled thirteen (13) and the newly merged Human Services Department employees are a total of forty-one (41) employees, an accretion election is inappropriate.

13. That the professional employees in the Human Services Department perform duties relating to the provision of economic or personal assistance to residents

of the County or administrative support of the provision of said assistance; that said employees employed in the various divisions of said department possess professional skills necessary to the performance of the above noted functions, and while there may be educational and functional differences in some of said professions, the occupants of said professional positions perform their duties in the furtherance of common programs relating to economic and personal assistance to residents of the County.

14. That the non-professional employees in the Human Services Department all perform duties relating to economic or personal assistance to residents of the County or administrative support to provide said assistance.

15. That the inclusion of the Human Services Department employees not currently represented by Teamsters in the Teamsters unit without a vote would draw into question the continuing majority status of the Teamsters as regards the thereby expanded unit.

16. That it would be inconsistent with the anti-fragmentation policy in MERA for the Commission to limit the election vote in this case to employees not currently represented by Teamsters.

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

CONCLUSIONS OF LAW

1. That in light of the County's above-noted reorganization, that a continuance of a separate unit consisting of all the employees of the Green County Department of Social Services, including all Social Workers, Income Maintenance Workers, Social Service Aides (including Homemakers) and clerical employees and excluding the Director, Supervisors and Administrative Assistants would be inappropriate because it would involve potential undue fragmentation of bargaining units of County employees within the meaning of Section 111.70(4)(d)2.a., of the Municipal Employment Relations Act (MERA).

2. That a question of representation has arisen within the meaning of Section 111.70(4)(d), Stats., among the employees in a collective bargaining unit consisting of all regular full-time and regular part-time employees employed by the Green County Department of Human Services, but excluding confidential, supervisory, managerial, executive and craft employees.

3. That the bargaining unit described in Conclusion of Law 1, above, is an appropriate bargaining unit within the meaning of Section 111.70(4)(d)2.a., Stats.

4. That separate bargaining units consisting of the professional employees and the non-professional employees in said bargaining unit would constitute separate appropriate bargaining units in the event that a majority of the professionals do not vote to be combined with the non-professionals.

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

DIRECTION OF ELECTIONS

IT IS DIRECTED that the elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive among certain employees of Green County in the following voting groups for the following stated purposes:

Voting Group No. 1

All regular full-time and regular part-time non-professional employees of the Green County Human Services Department, excluding confidential, supervisory, managerial, executive and craft employees and conditionally excluding professional employees who were employed on February 29, 1984, except those employees as may prior to the election quit their employment or be discharged for cause for the purpose of determining whether a majority of such employees voting desire to be represented by General Drivers, Dairy Employees, and Helpers, Local Union No. 579, or by Wisconsin Council 40, AFSCME, AFL-CIO, or by no representative, for the purposes of collective bargaining with Green County on matters relating to wages, hours and conditions of employment.

Voting Group No. 2

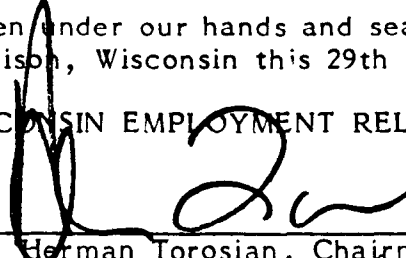
All regular full-time and regular part-time professional employees of the Green County Human Services Department, excluding confidential, supervisory, managerial, executive, craft and all other employees of said Department who were employed on February 29, 1984, except those employees as may prior to the election quit their employment or be discharged for cause for the purposes of determining:

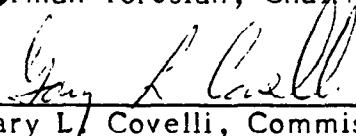
1. whether a majority of employees desire to be included in the bargaining unit described as Voting Group No. 1; and
2. whether a majority of such employees voting desire to be represented by General Drivers, Dairy Employees and Helpers, Local Union No. 579, or by Wisconsin Council 40, AFSCME, AFL-CIO, or by no representative, for the purposes of collective bargaining with Green County on matters relating to wages, hours and conditions of employment.


Given under our hands and seal at the City of
Madison, Wisconsin this 29th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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

The County seeks an election in units consisting of all regular full-time and regular part-time professional employees of the Human Services Department and all regular full-time and regular part-time non-professional employees of the Human Services Department. The County would also have the professionals vote to determine whether they desire to be included in a unit of non-professionals. During the course of the proceedings the parties stipulated to a list of eligible professional and non-professional employees. The Teamsters, who represent employees of the former Social Services Department, oppose the County's petition and request that it be dismissed, or in the alternative that if the Commission finds a question of representation exists, an election be directed among the non-represented employees of the former Commission on Aging and Unified Services Board and if said employees select a Union representative, they be merged into an existing unit represented by that Union. Council 40 stipulated to the appropriateness of the bifurcated Human Services Department units set forth on the petition and took no position on an overall unit.

In seeking a dismissal of the County's petition the Teamsters raise the following arguments: (1) Social Services employees function separately from the Commission on Aging and Unified Service employees, (2) there is a separate bargaining history resulting in divergent treatment of the employees in these groups resulting in a lack of community of interest, (3) that a merged Human Services unit is not the only appropriate unit and there is not a question of representation with respect to Social Services employees, (4) that a bona fide merger has not occurred, as demonstrated by the County's failure to treat employees of the new Department uniformly, by the fact that relocation of employees had not been completed at the time of the hearing, and, by the Social Services employees remaining under supervision distinct from other employees at the time of the hearing, and, (6) that at most the County's petition is premature resulting in no basis for the petition. In the alternative, if the Commission finds a question of representation exists, the Teamsters would have the Commission resolve the matter by directing accretion elections whereby the employees are merged into existing units represented by the Union they select.

Premature Petition Issue:

The record demonstrates that at the time of the hearing the County's Board of Supervisors had approved the merger of the former Social Services Department, the Commission on Aging and the Unified Services Board into the Human Services Department. The reorganization plan for the Human Services Department had been approved by the new Department's Director. Former employees of the Commission on Aging and of the Unified Services Board had already moved into the facilities for Human Services. Employees of the former Social Services Department had begun moving into those facilities and said move was scheduled to be completed by December 25, 1983. Further, there was no evidence presented at the hearing to establish that the merger would fail to be completed. Nor has any party sought to reopen the record for the purpose of showing that after December 25, 1983, the merger had not been completed. Nor after the completion of the merger will former Social Services Department employees have distinct supervision and functions. Therefore, the Commission concludes that the petition submitted by the County was not premature.

Appropriate Unit Issue:

The following factors are taken into consideration by the Commission in the establishment of appropriate collective bargaining units under MERA:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees;
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees;

3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees;
4. Whether the employees in the unit sought have separate or common supervision with all other employees;
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees;
6. Whether the unit sought will result in undue fragmentation of bargaining units; and
7. Bargaining history. 1/

Not all the criteria necessarily deserve the same weight and in some cases one or more criteria may predominate. 2/

In Portage County, 3/ we were faced with a somewhat similar situation as is presented herein. A Community Human Services Department unit was sought in the wake of a reorganization where a less inclusive Social Services Department unit of combined professional and non-professional employees existed. We ordered an election in a unit of all professionals in the Human Services Department, but we unconditionally included the non-professionals in that unit to an existing multi-department non-professional unit of County employees. In rejecting the incumbent representative's contentions that the existing Social Services Department unit should be retained or expanded by accretion votes, we noted

"...that the commonality of the professional education, training and skills characteristic of the professionals involved herein, as well as the programs in which they are involved, and apparently as recognized by the State Legislature in enacting Sec. 46.23, Stats., and the County in establishing the Department of Community Human Services, in accordance with such statutory provision, creates a community of interest among said professional employees which overrides other factors, including bargaining history...especially in view of the statutory admonition...to avoid the fragmentation of bargaining units."

The instant circumstances differ materially from Portage County only in that there is no existing multi-department non-professional unit of County employees to which unconditional inclusion of the non-professionals in the Human Services Department is sought.

For the reasons noted in that case, we find that all of the professionals in the newly created Human Services Department in Green County constitute an appropriate bargaining unit and that continuation of the less inclusive Social Services Department unit would constitute undue fragmentation of bargaining units. The potential for undue fragmentation would not be relieved by means of an accretion vote procedure since the professionals not currently represented by Teamsters could choose another organization, creating more than one unit of Human Services Department professionals.

For similar reasons, we have found that all of the non-professionals in the Human Services Department would constitute an appropriate bargaining unit in the event that a majority of the professionals in that Department do not vote for inclusion in the same unit with non-professional employees.

In sum, the reorganization and attendant relocations of employees in this County--in the context of the duties of and services provided by the employees

1/ City of Madison (Water Utility), 19584 (5/82).

2/ Shawano - Gresham School District, 21265 (12/83).

3/ Decision No. 18792 (6/81).

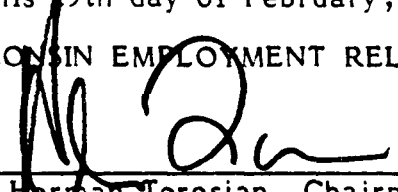
involved and given the anti-fragmentation provisions of MERA--warrant the election sought by the County.

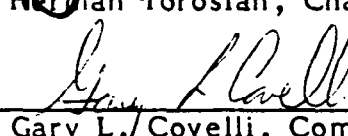
As requested by the County, we are directing an election in such a way as to result in a single unit of Human Services Department employees if a majority of the professional employees vote in favor of being included in a unit with non-professional employees, or else to result in no more than one professional and one non-professional unit of employees in that Department.

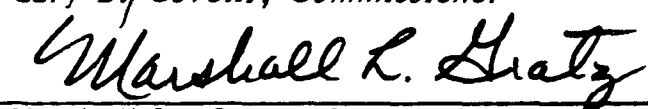
Dated at Madison, Wisconsin this 19th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner