

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :

WISCONSIN'S ENVIRONMENTAL :
DECADE UNION :

Involving Certain Employees of :

WISCONSIN'S ENVIRONMENTAL DECADE :

Case II
No. 30143 E-3000
Decision No. 21530

Appearances:

Mr. Michael Scheiwe, Representative, 1620 West Pershing Street, Appleton, WI 54911, and Mr. Lee Richter, Representative, Box 159B, Route 2, Black Creek, WI 54106, appearing on behalf of the Union.
Mr. Peter Anderson, Co-Director, 114 North Carroll Street, Suite 208, Madison, WI 53703, appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Wisconsin Environmental Decade Union having, on July 14 and 15, 1982, filed petitions requesting the Wisconsin Employment Relations Commission to conduct an election among certain employees of the Wisconsin Environmental Decade to determine whether said employees desire to be represented by said Union for the purposes of collective bargaining; and hearing in the matters having been delayed by the filing of an unfair labor practice complaint by certain employees who were Union activists, against the Wisconsin Environmental Decade; and hearing in the matters having been scheduled for October 22, 1982 and postponed at the Union's request; and hearing in the matters having been conducted on December 13, 1982 at Madison, Wisconsin before Robert M. McCormick, a member of the Commission's staff; and the Union having chosen to not file a post-hearing brief and a post-hearing brief having been received from the Employer on April 12, 1983; and the Commission having considered the entire record and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. The Wisconsin Environmental Decade, hereinafter referred to as the Employer, is an employer with its main offices at 114 North Carroll Street, Suite 208, Madison, Wisconsin 53703 and other offices at 230 West Wells Street, Suite 307, Milwaukee, Wisconsin 53203; that the Employer's Education Division has a primary purpose of raising money by canvassing for contributions; that such work is conducted out of three offices, which are Milwaukee on a year-round basis, and, Madison and Appleton offices on a seasonal basis for four to six months a year; and that a canvass consists of a door-to-door solicitation of residences conducted by field representatives.

2. That Wisconsin Environmental Decade Union, hereinafter referred to as the Union, is a labor organization with offices at 1620 West Pershing Street, Appleton, Wisconsin 54911.

3. That the instant proceeding was initiated by two petitions, the last an amended petition, filed by the Union, seeking an election to determine whether the field representatives employed by the Employer in all three locations desire to be represented by the Union, in one bargaining unit, for the purpose of collective bargaining.

4. That during the hearing the parties agreed that the following would describe an appropriate collective bargaining unit: All regular field representatives employed by Wisconsin Environmental Decade in its statewide, regional and Madison offices, excluding co-directors, controller, program division employees, drive coordinator, drive associate, administrative assistant and field managers.

5. That, contrary to the Union, the Employer believes the field representatives in the Madison and Appleton offices are temporary employees who should be excluded from the bargaining unit, and further, that of the field representatives in the Milwaukee office only those who have been employed a minimum of four to six months should be eligible to vote in an election.

6. That the Employer opened its Milwaukee office on March 16, 1981; that for the period of time between March 16, 1981 and October 15, 1982, 283 individuals had worked as field representatives with an average employment duration of 5.3 weeks; that of the 283 field representatives, 94 (33%) worked for one month or more; that 37 of the 283 (13%) field representatives worked for at least three months; that 15 of the 283 (5.3%) field representatives worked for at least six months; that of the nineteen (19) field representatives employed for the Madison office as of December 10, 1982, only one had worked in the previous year's canvass; that the Employer informs the Appleton and Madison field representatives that they are eligible for rehire for the next year's canvass if they are in good standing when laid off; that the Madison canvass covers a time period in duration between three to five months, while the Appleton canvass covers a time period in duration between four to six months.

7. That those field representatives employed at Employer's Milwaukee office on the date of the instant Direction of Election are eligible to vote in said election, without regard to the length of their employment unless discharged for cause prior to the election.

8. That the field representatives employed at the Employer's Madison and Appleton regional offices are employees who are employed on a temporary basis without a reasonable expectancy of reemployment.

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

CONCLUSIONS OF LAW

1. That all regular field representatives employed by Wisconsin Environmental Decade in its statewide, regional and Madison offices, excluding co-directors, controller, program division employees, drive coordinator, drive associate, administrative assistant and field managers, constitute an appropriate collective bargaining unit within the meaning of Section 111.02(6) of the Wisconsin Employment Peace Act.

2. That the field representatives employed in the Appleton and Madison offices of Wisconsin Environmental Decade are temporary employees who are included in the bargaining unit but are not eligible to vote in the election directed herein.

3. That a question of representation within the meaning of Section 111.05 of the Wisconsin Employment Peace Act has arisen among the employees in the collective bargaining unit set forth in Conclusion of Law 1.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular field representatives employed by Wisconsin Environmental Decade in its statewide, regional and Madison offices, excluding co-directors, controller, program division employees, drive coordinator, drive associate, administrative assistant and field managers who were employed by Wisconsin Environmental Decade on March 23, 1984.

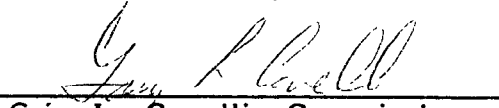
except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees voting desire to be represented by Wisconsin Environmental Decade Union for the purpose of collective bargaining with Wisconsin Environmental Decade on wages, hours and conditions of employment.

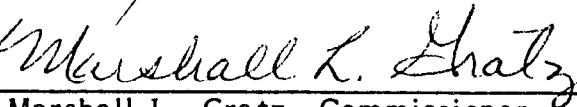
Given under our hands and seal at the City of
Madison, Wisconsin this 23rd day of March, 1984.

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 ELECTION

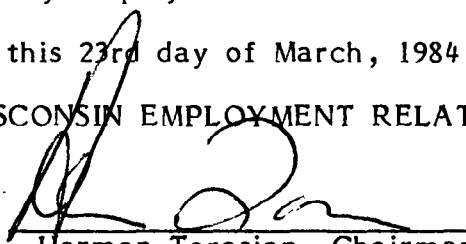
It is clear from the record that there is a very high turnover rate among occupants of the position of field representatives. However, such a fact fails to persuade the Commission to abandon its long-standing policy of allowing probationary employees to vote in a representation election. 1/ Therefore, said probationers employed in the Milwaukee office shall be eligible to vote in the representation election. However, because the Appleton and Madison canvasses are seasonal operations as opposed to the year-round Milwaukee canvass, and, because so few field representatives return for a second canvass at the Appleton and Madison offices, the field representatives at said two offices are found to be temporary employees without a reasonable expectation of reemployment, rather than regular part-time employees. Accordingly, said individuals are held not eligible to vote in the election.

However, temporary employees are employees with the meaning of the Wisconsin Employment Peace Act and where, as in this case, they perform work which is basically the same as the work of the regular employees in the bargaining unit, they appropriately are included in such bargaining unit 2/, for purposes of prospective collective bargaining, if any, over matters involving wages, hours and working conditions for said temporary employees.

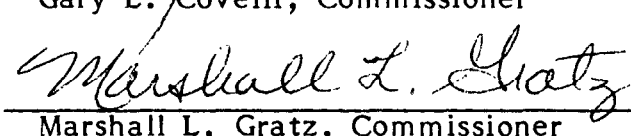
Dated at Madison, Wisconsin this 23rd day of March, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

-
- 1/ St. Francis Hospital, (4340) 8/56; Badger Die Casting Corp., (6536) 11/63;
Winnebago County (Department of Social Services, (10305-A and 10304-A) 9/79.
- 2/ Ibid, Winnebago County.