

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of : Case VIII
ADAMS COUNTY : No. 16779 ME-933
 : Decision No. 11937-A
 :
Involving Certain Employees of : Case XXXVII
ADAMS COUNTY : No. 32413 ME-2298
 : Decision No. 21657
 :

Appearances:

Hollman & Pollex, Attorneys at Law, by Mr. Charles A. Pollex, 313 Main Street, P. O. Box 98, Friendship, Wisconsin 53934, appearing on behalf of the County.
Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Union.

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

Adams County having, on November 4, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its employees, represented by Wisconsin Council 40, AFSCME, AFL-CIO, by determining whether the positions of Adult Activity Center Worker 1/ and Adult Activity Center Bus Driver should be excluded from said unit; and the matter having been held in abeyance pending the parties' attempts to resolve the matter; and hearing having been held in Friendship, Wisconsin, on March 2, 1984, before Examiner Jane B. Buffett, a member of the Commission's staff; and a transcript of the proceedings having been received on March 23, 1984; and the parties having chosen to not file post-hearing briefs; and the Commission having considered the evidence and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Adams County, hereinafter referred to as the County, is a municipal employer with offices at the Adams County Courthouse, Friendship, Wisconsin 53934.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin 53719.
3. That on August 9, 1973, following an election, the Commission certified the Union as the exclusive bargaining representative of County employees in the following bargaining unit:

All employees of Adams County employed in the Courthouse and Courthouse Annex (including non-professional employees in the Social Services Department), Highway Department Office, but excluding elected officials, professional employees, supervisors, as defined in the Act, law enforcement personnel in the Sheriff's Department, and all other County employees. 2/

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- 1/ Although the petition identified one position as the "Adult Activity Center Worker," at the hearing the position was identified as "Developmental Disability Aide," which title is used herein.
 - 2/ Decision No. 11937 (8/73); clarified 12866 (7/74) and 15133 (12/76); and Petition for Unit Clarification dismissed, 19585 (5/82).

4. That on November 4, 1983, the County petitioned the Commission for an Order clarifying the above-noted certified unit by declaring that the positions of Developmental Disability Aide and Adult Activity Center Bus Driver are not included in said unit; and that the Union opposed the petition, contending that the existing unit includes said positions or that, in any event, the Commission should issue an Order clarifying the unit to effect their inclusion.

5. That the above-noted positions at issue are both employed at the Adams County Adult Activity Center, which is physically separate from both the County's Courthouse and its Courthouse Annex.

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

CONCLUSION OF LAW

That since the occupants of the Developmental Disability Aide and Adult Activity Center Bus Driver positions employed by the County at its Adult Activity Center are not employed at either the County's Courthouse, Courthouse Annex or Highway Office, those positions are not presently included within the bargaining unit for which the Union is currently the certified collective bargaining representative.

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

ORDER CLARIFYING BARGAINING UNIT 3/

1. That since the occupants of the Developmental Disability Aide and Adult Activity Center Bus Driver positions employed by the County at its Adult Activity Center are not employed at either the County's Courthouse, Courthouse Annex or Highway Office, those positions are not presently included within the bargaining unit (quoted in Finding of Fact 3, above) for which the Union is currently the certified collective bargaining representative.

3/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

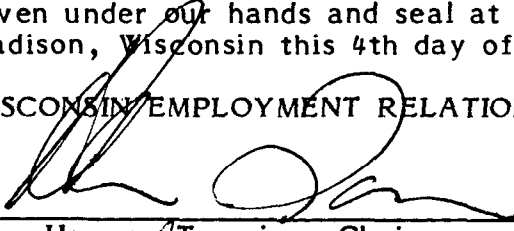
(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for (Continued on page three)

2. That this decision is not intended to be construed as a determination of whether and under what conditions it would be appropriate for the Commission to issue an Order amending the certified unit to include said positions.

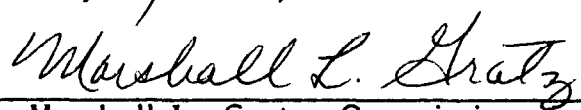
Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

3/ (Continued)

rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

The County initiated the instant proceeding by petitioning the Commission to issue an Order Clarifying Bargaining Unit which would confirm that the classifications of Developmental Disability Aide and Adult Activity Center Bus Driver are not presently included in the existing certified unit represented by the Union. At the hearing, the County stipulated that the occupants of the positions in question were municipal employees (i.e., not supervisory, confidential, or managerial) and the County further stated that it was not basing its petition on a claim that the instant positions lacked a community of interest with the employees whose positions fall within the express terms of the certified unit.

The Union opposed the County's petition. In that regard, the Union asserted that although the employees in question do not work at the Courthouse or Courthouse Annex, they are organizationally included within the same Department as certain other employees who do work at those locations and who are undisputedly included in the certified unit description. The Union further asserted that the unit description in the certification should be viewed by the Commission as sufficiently broad to cover the positions in question. The Union further asserted that the employees in question share a community of interest with the personnel employed at the Courthouse and Courthouse Annex who are in the certified unit.

We are satisfied that the unit description for which the Union is currently certified as representative is presently limited to employees of the County "employed in the Courthouse and Courthouse Annex . . . and Highway Department Office . . .". While the description makes parenthetical reference to "(including non-professional employees in the Social Services Department)", that parenthetical applies only to "Courthouse and Courthouse Annex" personnel within that department, and not Social Services Department personnel employed at other County facilities.

While it may be that the Commission would find it proper to issue an Order amending the certification that would include the instant position, we do not find it appropriate to do so in this proceeding. For, the Union neither filed a petition to that end nor did it request at the hearing that the Union be deemed to have petitioned for such a modification. Had the Union taken either of those steps, the Commission's processing of the case would have included gathering information concerning community of interest, other unrepresented non-professionals, etc., sufficient to constitute a basis for a factual finding concerning the appropriateness of Commission issuance of such an order. As it stands, however, the record is not sufficient for that purpose.

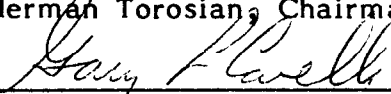
Accordingly, we have issued an Order declaring that the positions at issue are not presently within the certified bargaining unit. We have further noted, however, that our Conclusion and Order in that regard are not intended and are not to be understood as determining whether and under what conditions it would be appropriate for the Commission to issue an Order amending the certification in such a way as would cause the positions at issue to be included in the unit as amended.

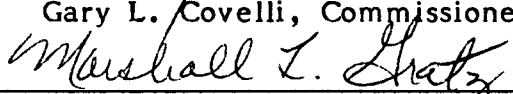
Dated at Madison, Wisconsin this 4th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner