

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
GENERAL DRIVERS AND DAIRY :  
EMPLOYEES UNION, LOCAL 563 : Case I  
Involving Certain Employes of : No. 32582 E-3023  
COMMUNITY ALCOHOLISM : Decision No. 21695  
SERVICES, INC. :  
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Appearances:

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Mr. Timothy G. Costello, 788 N. Jefferson Street, P. O. Box 92099, Milwaukee, Wisconsin 53202, appearing on behalf of Union  
Gill & Gill, Attorneys at Law, by Mr. Gregory Gill, 128 North Durkee Street, Appleton, Wisconsin 54911, appearing on behalf of Employer

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

General Drivers' and Dairy Employees' Union, Local 563 having filed a petition with the Wisconsin Employment Relations Commission requesting that an election be conducted pursuant to Section 111.05 of the Wisconsin Employment Peace Act (hereinafter WEPA) among certain employees of Community Alcoholism Services, Inc., at its Appleton, Wisconsin location; hearing in the matter having been conducted at Appleton, Wisconsin, on February 20, 1984, before Examiner Coleen A. Burns, a member of the Commission's staff; a transcript of said proceedings having been prepared and received on February 23, 1984, and briefs having been simultaneously exchanged by the parties through the Hearing Examiner on March 21, 1984; 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, Conclusions of Law, and Direction of Election.

FINDINGS OF FACT

1. That Community Alcoholism Services, Inc., hereinafter referred to as the Employer is an "employer" within the meaning of Sec. 111.02(2), Stats., maintaining and operating an alcohol and drug abuse counseling center and offices at 104 E. Wisconsin Avenue, Appleton, Wisconsin 54911.

2. That General Drivers' and Dairy Employees' Union, Local 563, hereinafter referred to as the Union, is a labor organization representing employees for the purpose of collective bargaining and maintains its offices at P. O. Box 174, Appleton, Wisconsin 54912.

3. That on December 16, 1983 the Union filed a petition requesting the Commission to conduct an election among the Employer's employees in the following unit:

"Included: All employees of the Employer in Appleton, Wisconsin which encompasses Community Alcoholism Services, Inc. & Community Services. Excluded: Independent Contracting Consultants, Executive Director, Associate Director, Administrative Assistant, E.A.P. (employee assistant programs) Director, Adolescent & Family Treatment Director."

4. That the parties stipulated at the hearing that the following employees (members of the Employer's "professional counseling staff") occupying the following positions are professional employees within the meaning of WEPA:

<u>Title</u>	<u>Incumbent(s)</u>
General Counselor	Merlin Bellis
General Counselor	Greg Biese
General Counselor	Charles Bremer
General Counselor	Peggy Fitzgerald
General Counselor	Carrie Jury
General Counselor	Darlene Leary
General Counselor	Bonnie Richard
General Counselor	Robert Rund
General Counselor	Frank Schreiter
General Counselor	Susan Shettle
General Counselor	Don Van Nuland
General Counselor	Patrick Wiley
IDP Assessor	Mike Eversen
EAP Consultant	Tom Huiting
Prevention Specialist	Sharon Salm

5. That the parties stipulated that the following employees, (members of the Employer's "clerical staff") occupying the following positions are non-professional employees within the meaning of the WEPA:

<u>Title</u>	<u>Incumbent</u>
Secretary	Mary Bann
Secretary	Doris Beach
Secretary	Sherry Kirk
Secretary	Vicki Koehler
Secretary	Julie Ratsch
Secretary	Eyvonne Robinson

6. That the parties stipulated that the following positions comprise its "supervisory staff" and that the incumbents occupying those positions are supervisory employees within the meaning of WEPA and therefore are excluded from any appropriate unit:

<u>Title</u>	<u>Incumbent</u>
Executive Director	Edward Hammen
Adult Treatment Director	Janet Check
Youth Family Treatment Director	Orv Koepke
Office Manager	Meg Casey
Administrative Assistant	Dale Kathleen Weber

7. That the parties stipulated at hearing that the professional employees should have an opportunity to vote whether they wish to be included in a combined professional and non-professional unit or in a separate unit of professional employees; and that the outcome of the above described balloting of the professional employees should determine the composition of unit(s) herein.

8. That at the hearing, the parties stipulated that the sole dispute herein is whether Peg Bremer, a general counselor, should be included or excluded from the professional unit; that Bremer is a "general counselor" working on a regularly scheduled basis; that the parties stipulated that Bremer performs professional duties; that Bremer is a volunteer worker and receives no monetary compensation for her services; that except for the lack of compensation, Bremer is under the same supervision and same general working conditions as the other "general counselors" on the professional counseling staff; and that the only difference between Bremer and the other professional counseling staff employees is that she is not paid monetary compensation for her services.

9. That Peg Bremer is a regularly scheduled general counselor who works as a volunteer and receives no monetary compensation for her services; that Bremer is otherwise under the same supervision and the same general working conditions as the other general counselors.

10. The Union argues that the Commission should exclude Bremer from the unit because she receives no monetary compensation for her work and therefore is not an "employee" "working . . . for hire" within the meaning of Sec. 111.02(3), Stats.

11. The Employer argues that the Commission should include Bremer in the unit herein because she does the same work, is regularly scheduled, and is under the same supervision and general working conditions as other general counselors who are eligible to vote.

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

#### CONCLUSIONS OF LAW

1. That a question of representation has arisen within the meaning of Sec. 111.05(1), Stats., among the employees in the collective bargaining unit consisting of all employees employed by the Employer at its Appleton, Wisconsin facility but excluding all supervisory employees.

2. That the bargaining unit described in Conclusion of Law 1, above, is an appropriate bargaining unit within the meaning of Section 111.02(6), Stats.

3. That separate bargaining units consisting of the Employer's professional employees and of its non-professional employees, respectively, would constitute appropriate separate bargaining units in the event that a majority of the professionals vote to constitute a separate bargaining unit.

4. That Peg Bremer is not an employee within the meaning of Section 111.02(3), Stats., and therefore is not included in said bargaining unit and is not eligible to vote in the election directed herein.

#### DIRECTION

That elections 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 among certain employees of Community Alcoholism Services, Inc. in the following voting groups for the stated purpose:

##### Voting Group No. 1

All employees of Community Alcoholism Services, Inc., employed at its Appleton, Wisconsin facility, excluding all supervisory employees and conditionally including all professional employees who were employed on May 18, 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' and Dairy Employees' Union, Local 563 or by no representative for the purposes of collective bargaining with Community Alcoholism Services, Inc. on matters relating to wages, hours and conditions of employment.

##### Voting Group No. 2

All professional employees of Community Alcoholism Services, Inc. employed at its Appleton, Wisconsin facility, excluding all non-professional employees, volunteer workers, supervisory employees and all other employees of said employer who were employed on May 18, 1984, except those employees as may prior to the election quit their employment or be discharged for cause for the purposes of determining:

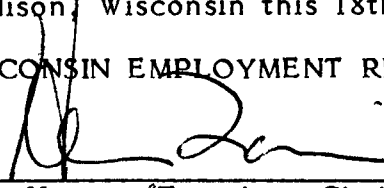
1. whether a majority of the professional employees eligible to vote desire to establish themselves as a separate bargaining unit; and
2. whether a majority of such employees voting desire to be represented by General Drivers' and Dairy Employees' Union, Local 563 or by no representative, for the purposes of collective bargaining with Community Alcoholism Services, Inc. on matters relating to wages, hours and conditions of employment.

The ballots cast by the professional employees with respect to the separate unit determination will be counted first. Should the results of the unit vote by the professional employees establish a separate unit, their representation ballots will be counted separately. Should the unit determination vote by the professional employees result in the rejection of a separate unit for them, then their representation ballots will be comingled with the representation ballots cast by the remaining employees in voting Group No. 1 to determine if a majority of voting employees (professional and non-professional combined) desire to be represented by the Union.


Given under our hands and seal at the City of  
Madison, Wisconsin this 18th day of May, 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

At the hearing, the parties essentially stipulated to professional and non-professional unit descriptions and to all other necessary matters including the details of the election and balloting. The sole issue before the Commission as stipulated by the parties is the unit placement of Peg Bremer. The parties stipulated that Bremer is a regularly scheduled volunteer general counselor who is not monetarily compensated but is otherwise under the same supervision and the same general working conditions as the other general counselors who are admittedly in the professional unit.

The Employer contends that since Bremer otherwise enjoys a community of interest with general counselors who are eligible to vote, she should be allowed to vote regardless of the fact that she receives no monetary compensation for her services. In support of its position the Employer cites the following cases arising under the National Labor Relations Act. Niagara University, 227 NLRB 313 (1976) (held, nuns and one priest who were paid salaries for teaching had a community of interest with lay faculty despite their vows of poverty and election to contribute the major portion of their salaries to the charitable activities of their orders); and Caravelle Wood Products, Inc., 504 F.2d 118, 87 LRRM 2479 (7th Cir., 1974) (sons and wives of substantial stockholders of employer were individuals employed by their parent or spouse within meaning of Sec. 2(3) of the NLRA and therefore ineligible to vote in election; fact that they were paid wages was not controlling as to their eligibility).

The Union urges us to apply Wisconsin precedent arising under the Worker's Compensation Act definition of "employee" in Section 102.07(4): ". . . every person in the service of another under any contract of hire . . .". The Union specifically cites Klusendorf Chevrolet-Buick, Inc. v. LIRC, 110 Wis. 2d 328 (1982); and Kress Packing Co. v. Kottwitz 61 Wis. 2d 175 (1973). The Union contends that under these precedents, the employer's right to control the details of work is the primary test and the method of compensation is one of four secondary tests to consider in determining whether an employment relationship exists and that wages are a "necessary" factor in finding an employer-employee relationship although wages need not be money. The Union asserts that although Bremer meets the primary test and three of the four secondary employment relationship tests she fails to meet the compensation test. Therefore, the Union asserts, Bremer should not be included in any bargaining unit.

Discussion:

The issue in the instant case is the threshold question of whether Bremer is an "employee" within the meaning of Section 111.02(3), of the Wisconsin Employment Peace Act (WEPA). If Bremer is not an "employee," then she would be ineligible to vote.

Section 111.02(3) Stats., which defines "employee" for purposes of this case:

"The term "employee" shall include any person, other than an independent contractor, working for another for hire in the state of Wisconsin in a nonexecutive or nonsupervisory capacity . . ."

There are no cases under WEPA directly interpreting "for hire" as used therein. It appears that "for hire" is generally understood to mean for compensation. The Klusendorf and Kress cases, though in the context of Workers' Compensation legislation, support that conclusion. In the context of the Motor Vehicle Code, Section 194.01(15), Wis. Stats., specifically defines "for hire" as "for compensation . . .". Black's Law Dictionary states:

HIRE, n. Compensation for the use of a thing, or for labor or services. State v. Kenyon, Inc., Tex.Civ.App., 153 S.W.2d 195, 197.

A bailment in which compensation is to be given for the use of a thing, or for labor and services about it. 2 Kent 456; Story, Bailm. Para. 359. The divisions of this species of contract are denoted by Latin names.

**HIRING.** A contract by which one person grants to another either the enjoyment of a thing or the use of the labor and industry, either of himself or his servant, during a certain time, for a stipulated compensation, or by which one contracts for the labor or services of another about a thing bailed to him for a specified purpose.

A contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.

#### Synonyms

"Hiring" and "borrowing" are both contracts by which a qualified property may be transferred to the hirer or borrower, and they differ only in this, that hiring is always for a price, stipend, or recompense, while borrowing is merely gratuitous. 2 Bl.Comm. 453; Neel v. State, 33 Tex. Cr.R. 408, 26 S.W. 726.

Thus, some form of compensation is generally understood to be a necessary element in "for hire" relationships.

Applying that requirement in the instant case results in the conclusion that Bremer, as an uncompensated volunteer, is not an "employee" under WEPA. That outcome is consistent with Commission cases in the public sector. In St. Croix County, Dec. No. 11179 (7/72) at p. 5, City of Manitowoc, Dec. No. 12403 (1/74) at p. 5, and Wood County, Dec. No. 13760 (6/75) at p. 2 the Commission stated, albeit without elaboration, that volunteers are not employees under MERA.

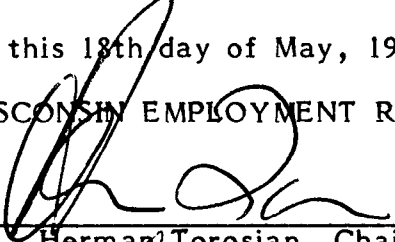
Since Bremer is not an "employee" under the Wisconsin Employment Peace Act, she is ineligible to vote.

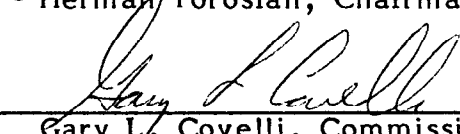
As stipulated and requested by the parties, we are directing an election in such a way as to result in a single unit of employees, unless a majority of the professional employees vote to constitute a separate bargaining unit.


Dated at Madison, Wisconsin this 18th day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner