

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
BRUCE KRIEMELMEYER
Involving Certain Employees of
MARATHON COUNTY (PRIVATE
INDUSTRY COUNCIL)

Case 105
No. 35346 ME-2478
Decision No. 23106

Appearances:

Mulcahy & Wherry, S.C., Attorneys at Law, 408 Third Street, P. O. Box 1004, Wausau, Wisconsin 54401-1004, by Mr. Dean R. Dietrich, appearing on behalf of Marathon County (Private Industry Council).
Mr. Daniel J. Barrington, District Representative, Wisconsin Council of County & Municipal Employees #40, AFSCME, AFL-CIO, 4115 Briarwood Avenue, Wausau, Wisconsin 54401, appearing on behalf of the Marathon County CETA Program Employees Union Local 2492.
Mr. Bruce Kriemelmeyer, 326 River Drive, Wausau, Wisconsin 54401, appearing as the Petitioner.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND DIRECTION OF ELECTION

Bruce Kriemelmeyer, an employee of Marathon County (Private Industry Council), having on July 11, 1985, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election among the employees of the Marathon County (Private Industry Council) to determine whether said employees desire to continue to be represented for purposes of collective bargaining by the Marathon County CETA Program Employees Union Local 2492, AFSCME, AFL-CIO; and the Marathon County CETA Program Employees Union Local 2492, AFSCME, AFL-CIO, having been permitted to intervene on the basis of its current status as representative of the employees covered by the petition; and hearing in the matter having been scheduled for September 4, 1985 at Wausau, Wisconsin by Douglas V. Knudson, an Examiner on the Commission's staff, and the hearing having subsequently been postponed at the request of the parties while they attempted to stipulate to the relevant facts and to file briefs in lieu of a hearing; and the executed stipulation of facts in lieu of a hearing having been received on September 6, 1985; and briefs having been filed by the parties, the last of which was received on November 4, 1985; 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

1. That Bruce Kriemelmeyer is an employee of Marathon County (Private Industry Council).
2. That Marathon County (Private Industry Council), hereinafter referred to as the County, is a municipal employer and has its offices at the Marathon County Courthouse, 500 Forest Street, Wausau, Wisconsin.
3. That the Marathon County CETA Program Employees Union Local 2492, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 4115 Briarwood Avenue, Wausau, Wisconsin.
4. That in Marathon County (CETA), Dec. Nos. 18226 and 18227 (WERC, 11/80), the Commission conducted elections among the employees of the County in the following voting groups:

Voting Group No. 1

All regular full-time and regular part-time employees of the Marathon County CETA Program Department.

Voting Group No. 2

All regular full-time and regular part-time professional employees of the Marathon County CETA Program Department.

that a majority of the employees in Voting Group No. 2 voted to be included with the employees in Voting Group No. 1; that the representation ballots cast by employees in Voting Group No. 2 were then commingled with the representation ballots cast by the employees in Voting Group No. 1 prior to being counted; that the total number of employees in both voting groups eligible to vote was 21; that the required number of eligible employees voted for representation by the Union; and, that on January 9, 1981, the Commission certified the Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as the exclusive collective bargaining representative of the employees in the appropriate bargaining unit consisting of all regular full-time and regular part-time employees, including all regular full-time and regular part-time professional employees, of the Marathon County CETA Program Department.

5. That during the course of calendar year 1981, approximately 16 employees of the total 21 Union represented employees employed in the Marathon County CETA Program Department were laid off as a result of a reduction in funding for the programs sponsored by the Marathon County CETA Program Department; that such layoffs were made pursuant to the terms of the negotiated agreement between Marathon County and the Union and as a result of additional negotiations between the parties as to the proper procedures and benefits to be applied to the laid off employees; that on February 16, 1981, representatives of the County entered into negotiations with representatives of the Union for the purpose of negotiating the initial collective bargaining agreement for the CETA Program employees; that the initial agreement reached by the parties covered calendar year 1981; that representatives of the County and Union negotiated a successor collective bargaining agreement covering calendar year 1982; that during calendar year 1982, two additional employees were laid off from the Marathon County CETA Program Department as a result of the further phasing out of certain funded programs within the County; and that the County and the Union negotiated a successor collective bargaining agreement with a duration of January 1, 1983, through December 31, 1984.

6. That on or about October, 1983 the CETA program was official terminated by the federal government and the Job Partnership Training Act was instituted as a replacement for the CETA program, resulting in the creation of a private industry council (herein PIC) which PIC entered into an agreement with the County for the purpose of providing certain job training programs within the County; that the Marathon County CETA Program Department is now known as the Private Industry Council Office of Marathon County; that during the course of the changeover of the former CETA Program Department to the PIC program under the Job Partnership Training Act, and the subsequent operation of the PIC program, the collective bargaining agreement between the County and the Union remained in existence and was not modified by either party; that the County was, and continues to be, the employer of the PIC employees as a result of the written agreement between the County and the Private Industry Council; that from October, 1983 to the present the employees of the former CETA Program Department, now known as the Private Industry Council, who were covered by the terms of the collective bargaining agreement were and are Bruce Kriemelmeyer, in the position of Private Industry Council Program Coordinator, Lucille Hoerter, in the position of Private Industry Council Accountant, and Karen Downey, in the position of Private Industry Council Income Maintenance Worker; and that on July 15, 1985, a second position of Private Industry Council Program Coordinator was created and Sandra Tranberg was hired to fill said position.

7. That following an election conducted by the Commission in Marathon County, Dec. Nos. 19129-D and 19130-D (WERC, 12/81), the Union was certified as the exclusive bargaining representative of all regular full-time and regular part-time professional employees in the employ of Marathon County, excluding professional employees employed in the Handicapped Children's Education Board, the Health Department, the Department of Social Services, and the CETA Program Office, and also excluding confidential, supervisory and managerial employees; and that the Union and the County are parties to a collective bargaining agreement covering the employees in said bargaining unit for the period of January 1, 1985, through December 31, 1986.

8. That following an election conducted by the Commission in Marathon County, Dec. No. 20999 (WERC, 10/83), the Union was certified as the exclusive bargaining representative of the employees in the unit consisting of all regular full-time and regular part-time employees in the employ of Marathon County, excluding blue-collar employees employed in the Highway and Parks Departments, employees employed in the Handicapped Children's Education Board, professional employees employed in the Health Department, and employees employed in the Department of Social Services, all employees in the CETA Program Office, law enforcement personnel in the sheriff's department, the investigator in the Office of the District Attorney and also excluding other professional employees, confidential, supervisory and managerial employees; and that the County and the Union were parties to a collective bargaining agreement covering the employees in said bargaining unit for the period of January 1, 1984, through December 31, 1984.

9. That in September, 1984, the Union submitted to the County both a notice of commencement of negotiations for a successor collective bargaining agreement covering the PIC employees described in Finding of Fact 6, above, and a list of the proposed changes to be included in such agreement; and that the negotiations were postponed by the parties pending the outcome of the negotiations over successor contracts between the County and other bargaining units represented by the Union.

10. That the Union, contrary to the County and Petitioner, argues that because the size of the unit has skrunken from 21 to 4 since the original certification election, the petition (described in the preface, above) should be dismissed as relating to an inappropriate unit and the employees in the existing unit of PIC Department employees should be included, without a vote, in the existing residual professional and non-professional units of County employees; that the Union argues in the alternative that the Commission should permit the professionals to self-determine whether they continue to be willing to be included in the same unit with non-professional PIC employees before commingling the representation ballots of the two groups; and that the County and Petitioner argue that a single ballot election should be conducted among the employees in the existing PIC unit to determine if the combined group continues to favor representation by the Union.

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

CONCLUSIONS OF LAW

1. That the instant petition gives rise to a question of representation among the employees in a single voting group consisting of the employees in the bargaining unit described in the last clause of Finding of Fact 4, above, i.e., in a single voting group consisting of professional and non-professional PIC Department employees.

2. That, in the instant circumstances, it would be inconsistent with the underlying purposes of MERA to include the PIC employees, without a representation vote, in the respective residual professional and residual non-professional units of County employees represented by the Union or in any other existing unit of County employees.

3. That the factual stipulations and arguments submitted by the parties in this matter are not a sufficient basis upon which to determine whether the consequence of a vote for continued Union representation by the employees should result in representation in a separate unit of PIC employees or in the respective residual units of professional and non-professional County employees represented by the Union.

4. That the underlying purposes of MERA will be best served in the instant circumstances by the conduct of a vote forthwith in the voting group described in Conclusion of Law 1, with the question of separate unit vs. merger with the respective residual bargaining units subject to further hearing and argument in the event that the required number of eligibles in the voting group vote in favor of continued representation by the Union.

5. That, because a vote was taken among the professional employees in the voting group in 1980 wherein that group voted to be included in the same unit with non-professional employees of the then CETA Program Department now Private Industry Council, it is not necessary to have the professional employees again vote on such inclusion prior to commingling their representational ballots with those of the non-professionals.

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

DIRECTION OF ELECTION

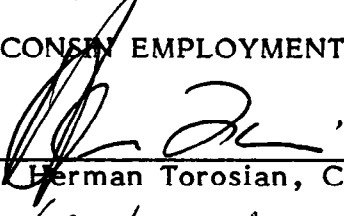
1. That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this direction in the voting group consisting of all regular full-time and regular part-time employees, including all regular full-time and regular part-time professional employees, of the Private Industry Council Office of Marathon County who were employed on December 10, 1985 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 the employees who vote desire to continue to be represented by the Marathon County CETA Program Employees Union Local 2492, AFSCME, AFL-CIO, for the purpose of collective bargaining with Marathon County on questions of wages, hours and conditions of employment.

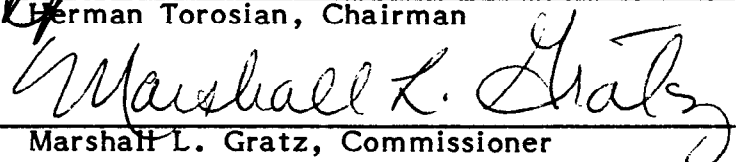
2. As noted in Conclusion of Law 4, above, if a majority of the employees who vote desire to continue to be represented by said labor organization, the Commission will reopen the hearing in this matter for the purpose of determining whether such representation shall be in a separate unit or by merger of the employees into the respective existing residual units of professional and non-professional employees represented by said labor organization.

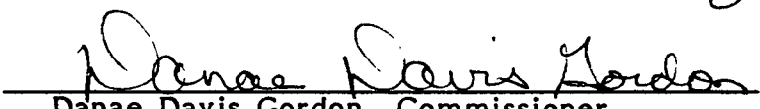
Given under our hands and seal at the City of
Madison, Wisconsin this 10th day of December, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

MARATHON COUNTY

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

POSITIONS OF THE PARTIES

The Union contends that the existing unit of PIC employees was viable when formed, but because of the decreased size, i.e., from 21 to 4 employees, the unit is no longer an appropriate unit. Further, the continued existence of the PIC unit is not reasonable in light of the other existing bargaining units of County employees already represented by the Union, particularly the more recently established overall, or residual, units of both professional and non-professional employees. The Union argues that it would be appropriate to place the professional and non-professional PIC employees in those respective existing units, rather than permitting those employees to vote on the question of continued representation by the Union as a separate unit. Moreover, the professional PIC employees can't vote on representation until they have voted on the question of whether they wish to be included in the same bargaining unit as the non-professional PIC employees.

The Petitioner is opposed to the accretion of PIC employees to the other existing bargaining units represented by the Union.

The County also opposes the Union's request for the accretion of the PIC employees into the existing bargaining units. The County contends that there has been no reorganization of its structure which would make accretion a possible appropriate action. Rather, the PIC program remains a separate operating entity, just as was its predecessor, the CETA program. The County believes that there is no legal basis for the accretion which the Union is seeking. The Commission has denied accretion in previous situations where the contested positions were in existence at the time the residual units were certified and where those positions were specifically excluded from those residual units, which is the situation herein. Further, accretion would deny the employees an opportunity to decide whether they desire to continue to be represented by the Union. Thus, the County contends that the appropriate action by the Commission would be to allow the employees to vote on whether they wish to continue to be represented by the Union.

DISCUSSION

This case was initiated by an employee petition for an election in which to test the Union's continued majority status among the employees in an existing certified unit. The Union's proposal that the Commission respond to said petition by merging these employees into other existing units without a vote would defeat the employees' right to decide whether to be represented by the Union without serving any significant countervailing policy interest.

Assuming that the existing unit's reduction from 21 to 4 employees has made it too small to remain a viable grouping in which to require the parties to bargain now that a question of representation has arisen in the existing unit, that is not a sufficient reason in the instant circumstances to deny the employees in the unit a right to vote on whether to continue to be represented by the Union. For, the anti-fragmentation objectives stressed by the Union could be equally achieved by merging the PIC employees into the Union's respective residual units if the employees in the existing PIC unit vote in favor of continued representation by the Union. Accordingly, we have rejected the Union's request for inclusions of the employees in the existing residual units without a representation vote.

However, because the parties' factual stipulations and written arguments have not fully developed the issue of whether a separate unit should remain in existence in the event that a majority of the eligibles voting vote in favor of continued representation by the Union, we have left the separate-unit-vs.-merger-into-residual-units question unresolved in order to provide the employees with an opportunity to vote on the representation question without further delay. If the majority favor continued representation by the Union, then we will reopen the hearing in this matter for the purpose of determining whether such representation shall be in a separate unit or by merger into the respective existing residual units of professional and non-professional employees represented by the Union.

Because a vote was taken among the professional employees in the voting group in 1980 wherein that group voted to be included in the same unit with non-professional employees, we find no merit in the Union's alternative contention that the professionals group must be accorded another vote on that question in the election we are directing herein. Accordingly, we have directed a single ballot election in a voting group of combined professional and non-professional PIC Department employees.

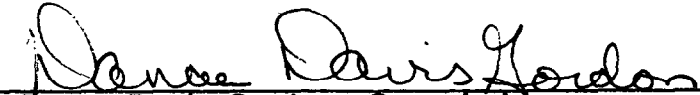
Dated at Madison, Wisconsin this 10th day of December, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner