

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES, WISCONSIN  
COUNCIL 40, AFL-CIO

Involving Certain Employes of

WAUSHARA COUNTY

Case 23

No. 52882 ME-786

Decision No. 24047-A

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, for the Union.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. James R. Macy, 100 West Lawrence Street, P.O. Box 2728, Appleton, Wisconsin 54913-2728, for the County.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DENYING MOTION TO DISMISS

On July 18, 1995, AFSCME, WCCME, Wisconsin Council 40, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit of Waushara County Highway Department employes by including therein five Foreman positions. The parties thereafter engaged in lengthy, but unsuccessful efforts to voluntarily resolve the matter. Hearing was ultimately held on June 26, 1996, before Examiner Debra L. Wojtowski in Wautoma, Wisconsin. At the commencement of the hearing, the County moved that the petition be dismissed and the parties thereafter agreed to seek a Commission decision regarding the motion before proceeding further on the record.

The parties thereafter filed written argument in support of and in opposition to the motion, the last of which was received on August 12, 1996. Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

No. 24047-A

## FINDINGS OF FACT

1. Waushara County, herein the County, is a municipal employer having its principal offices at Wautoma, Wisconsin. The County provides certain services to its citizens through a Highway Department.

2. Waushara County Highway Department Employees Union Local 1824, AFSCME, AFL-CIO, herein the Union, is a labor organization with its principal offices at 8033 Excelsior Drive, Suite "B", Madison, Wisconsin. The Union is the current collective bargaining representative of certain employees of the Waushara County Highway Department.

3. In October of 1986, the Union and the County filed a Stipulation for Election with the Commission in a bargaining unit described by the parties as:

All regular full-time and regular part-time employees of the Waushara County Highway Department, excluding supervisory, managerial, confidential and craft employees.

At the time the Stipulation was agreed upon by the parties, the position of Foreman existed. Employees holding the position of Foreman were not included on the eligibility list which accompanied the Stipulation and those employees did not vote in the election. The Union received a majority of the votes of those employees who voted in the representation election and on December 22, 1986, the Commission issued a Certification of Representative which certified that the Union was the collective bargaining representative in the bargaining unit to which the parties had agreed in their Stipulation.

4. The first collective bargaining agreement between the parties contained a Recognition Clause which described the bargaining unit as:

"all regular full-time and regular part-time employees of the Waushara County Highway Department excluding the Highway Commissioner, Street Superintendents, foremen, temporary, supervisory, managerial, confidential, and craft employees. . ."

Each collective bargaining agreement between the parties, including the most recent 1996-97 contract, has included this same description of the bargaining unit.

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

CONCLUSION OF LAW

The Stipulation for Election and the Recognition Clause agreed upon by the parties both exclude Foreman from the bargaining unit as supervisory, managerial, and/or confidential employes.

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

ORDER

The County's Motion to Dismiss is denied.

Given under our hands and seal at the City of Madison, Wisconsin,  
this 30th day of December, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

WAUSHARA COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER DENYING MOTION TO DISMISS

The preface to our decision sets forth the procedural background relevant to the Motion. At hearing, the parties stipulated to the admission of several joint exhibits, including the Stipulation for Election, the 1987-88 contract, and the 1996-97 contract. Our decision is based upon those Joint Exhibits.

The parties agree that under existing Commission case law, if the Foreman position was and is excluded from the bargaining unit as supervisory, managerial, and/or confidential, then the Union can properly petition to have the Commission determine whether the Foremen in fact are supervisory, managerial and/or confidential employees. The parties further agree that under existing Commission case law, if the Foremen were excluded from the unit for other reasons, the Union cannot seek to gain the inclusion of the Foreman through a unit clarification proceeding. The parties disagree as to the basis for the exclusion of the Foremen from the unit.

On its face, the Stipulation for Election includes all Department employees except for "supervisory, managerial, confidential, and craft employees." The Foremen were ineligible to vote and were not included in the bargaining unit pursuant to the terms of the Stipulation. Thus, we can only conclude that the exclusion of the Foremen was because they were "supervisory, managerial, confidential, and craft employees." Because there is no assertion herein that the Foremen are "craft employees," we conclude that the initial exclusion of the Foremen was because of an agreement between the parties that they were "supervisory, managerial, and confidential."

As argued by the County, the parties' collective bargaining agreements have modified the description of the bargaining unit to which the parties stipulated. For the purposes of this proceeding, the relevant changes are the specific exclusion of "the Highway Commissioner, Street Superintendents, foremen. . . ." The County contends that because the contractual Recognition Clause continues to include the generic exclusion of "supervisory, managerial, and confidential" employees, we should conclude that the addition of the specific job titles to the unit exclusions constitutes an agreement between the parties that these named positions were excluded for reasons other than their supervisory, managerial and confidential status. We acknowledge that the addition of specific titles creates an inference that the listed positions were excluded for reasons other than "supervisory, managerial, and confidential" status. However, particularly in light of the listed exclusions of the Highway Commissioner and Street Superintendents, we do not find that inference to be the most persuasive which can be drawn from the Joint Exhibits presented to us in this proceeding. We think it highly unlikely that the Highway Commissioner and Street Superintendents were excluded from the unit for reasons unrelated to their "supervisory, managerial, and confidential" status. Rather, like the "foremen," we believe it more likely that the parties simply wished to list by job title the positions which they had agreed fell within certain of

the generic statutory exclusions also set forth in their Recognition Clause.

Thus, based upon the record presented to us, we conclude that the exclusion of the "foremen" was based upon an agreement between the parties that the employees filling those positions were "supervisory, managerial, and confidential. . . ." Thus, we have denied the Motion to Dismiss and the parties should proceed to hearing on the issue of whether the Foremen are or are not supervisory, managerial, or confidential employees who should be excluded from the bargaining unit. 1/

Dated at Madison, Wisconsin this 30th day of December, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

---

1/ In its brief, the County argued that the Union should be barred from proceeding with the instant petition because the parties entered into a 1996-97 agreement which continued the specified exclusion of "foremen" after filing of the unit clarification petition. In light of our conclusion as to the meaning of the Recognition Clause, the 1996-97 contract does no more than continue on the parties prior agreement that "foremen" are excluded from the unit as supervisory, managerial, and confidential employees. Thus, the 1996-97 contract does not provide a persuasive basis for denying the Union the opportunity to litigate whether the present duties and responsibilities of the Foremen make them "supervisory, managerial, confidential" employees.