

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TOWN OF VERNON

Appearances:

Adelman & Adelman, Attorneys at Law, by Ms. Elizabeth Adelman, 828 North Broadway, Milwaukee, Wisconsin 53202, appearing on behalf of the Town of Vernon.

Wisconsin Council 40, AFSCME, AFL-CIO, having on June 2, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, in a claimed appropriate bargaining unit consisting of all regular full-time, part-time and regular seasonal white collar and blue collar employees of the Town of Vernon, excluding supervisory employees, to determine whether said employees desire to be represented for the purpose of collective bargaining by AFSCME; and a hearing in the matter having been held on July 28, 1987, in Big Bend, Wisconsin, before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and a stenographic transcript of the proceedings having been completed on August 11, 1987; and the briefing schedule having been completed on September 23, 1987; the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

5. That the parties stipulated during the hearing that the following positions are properly included in the bargaining unit: (1) Head Mechanic Thomas

Cappel; (2) road maintenance personnel Grade I Kurt Effinger; (3) road maintenance personnel Grade II Bryon Gerick; and (4) long term seasonal employe on parks and highways and Compactor Operator David Guthrie.

6. That the Union, contrary to the Town, seeks to exclude from the bargaining unit the following positions: (1) three summer park/highway employes -- James Beres, Wayne Mengel, and Mark Milligan; (2) umpire Robert Bodart; (3) Compactor Operator Walter Chrisman; and (4) Deputy Clerk Marilyn Gauger.

7. That the Town, contrary to the Union, seeks to exclude from the bargaining unit the following positions: (1) Highway Department secretary Carol Beres; and (2) Town Assessor Charlene Cappel.

8. That the Union challenges the inclusion of the three summer park/highway employes on the ground that they are casual employes; that the three positions have been in existence for four years; that the same three people have filled those positions for the last four years; that the Parks Commission requests funding for these positions each year from the Town Board; that the three employes perform work in the parks or on highway crews during the summer months; that these employes are students; that at the end of each summer, Highway Supervisor LeRoy Titze asks them if they intend to return the following year; that there is no formal rehiring of the three summer positions until approximately three weeks before the beginning of the season; that the students return before June 1st each year to let Titze know whether or not they will be working during the summer; that Titze currently expects at least one of the three employes to return during the summer of 1988; that the three employes have performed satisfactorily in the past; that the three employes worked the same hours (40 a week) as other highway department employes; that all the employes work out of the garage; that the three summer employes do not receive any fringe benefits but are covered by Workers' Compensation and have Social Security withheld from their paychecks; that the summer employes are paid between \$5.25 to \$5.50 an hour as compared to \$10.00 an hour for regular Highway Department employes; that David Guthrie - who works a longer season than the three students and operates a trash compactor for the Town on Wednesdays and who the parties stipulated to be included in the bargaining unit -- does not receive fringe benefits, has the same work schedule, performs the same type of work, and is paid similarly to the summer employes; that Guthrie starts his season before the three summer employes are out of school and closes up the parks sometime in October and will operate the compactor on a year-round basis this year for the first time; and that the three summer employes have a reasonable expectation of continued employment from year to year.

9. That the Union challenges the inclusion of umpire Robert Bodart on the grounds that he is a casual employe; that the Town contends that the umpire has a reasonable expectation of returning to employment; that Bodart has umpired adult softball games every Sunday in the summers for the last four years; that the recreation board and the adult softball league coordinator arranged to have Bodart umpire games; that the Town Board ultimately oversees the activities of the recreation board; that the adult softball league coordinator notifies the Town Clerk when to pay the umpire and tells the Town Clerk how much to pay him; that Bodart receives \$11.00 a game or about \$350.00 a year for his services; that Bodart has substantial input into the wages he receives from the Town; that Bodart is paid in two lump sums, the first when the softball season is half completed and again at the end of the summer; that Bodart receives no fringe benefits but is covered by Workers' Compensation and has Social Security deducted from his paycheck; that Bodart arranges to have a second umpire available each Sunday and tells the Town Clerk how much to pay the second umpire; that the second umpire is not always the same individual; and that the monies paid to Bodart for umpiring games has been paid out of a segregated fund of adult softball fees administered by the Town Board; that the umpire is employed on a regular and re-occurring basis with a pre-arranged schedule; and that the umpire has a reasonable expectation of continued employment from year to year.

10. That the Union, contrary to the Town, seeks to exclude from the bargaining unit the Compactor Operator, Walter Chrisman, on the ground that he is a casual employe; that Chrisman has worked regularly every Saturday, 10 hours a week, generally 50 weeks a year, for the last six or seven years; that Chrisman is paid \$5.75 an hour, is covered by Workers' Compensation and has Social Security

deducted from his paycheck but does not otherwise receive any fringe benefits; that Chrisman's duties in running the compactor are the same as David Guthrie's duties when Guthrie runs the compactor on Wednesdays; and that Chrisman and Guthrie share similar wages, benefits and working conditions in running the compactor for the Town; and that Chrisman has a reasonable expectation of continued employment from year to year.

11. That the Union seeks to exclude the Deputy Clerk, Marilyn Gauger, as a confidential employe, while the Town seeks to exclude the Highway Department secretary, Carol Beres, as a confidential employe; and that the Town does not premise its contentions that Beres should be excluded on the fact that Beres also serves as Town Treasurer, an elective office.

12. Highway Department secretary Carol Beres works 21 hours a week as a secretary for the Highway Department; that since Beres was hired approximately four years ago, there have not been any disciplinary actions taken by the Highway Department with respect to personnel; that currently only Highway Supervisor Titze and the Town Clerk, Edna Warnes, have access to any records of Town personnel; that Beres receives no fringe benefits and is paid \$6.00 an hour for her secretarial work; and that since 1981 she has been an elected official of the Town as Town Treasurer.

13. That the Deputy Clerk, Marilyn Gauger, works between 11 and 21 hours a week; that her duties include taking the minutes of Planning Commission meetings and transcribing them, typing letters for the Planning Commission, adding or deleting or correcting names on the poll list, stamping voter registration cards for elections, and taking care of mail and telephone calls for the Town Clerk when the Town Clerk is on vacation; that Gauger has on occasion typed letters for the Highway Supervisor when Beres is absent; that she has not been involved with confidential matters relating to labor relations; that she has not attended any executive sessions of the Planning Commission, as none have been held since Gauger started her employment in 1979; that the Town Clerk takes the minutes of meetings of the Town Board for both regular and executive sessions; that Gauger takes the minutes in the absence of the Town Clerk; and that both the Deputy Clerk and the Highway Department secretary possesses the necessary skills to take minutes of meetings if so required; and that Gauger does not have access to, knowledge of, nor participation in confidential matters relating to labor relations.

14. That the Town, contrary to the Union, seeks to exclude from the bargaining unit the Town Assessor, Charlene Cappel, on the grounds that she is either a managerial employe or an independent contractor; that the Union claims that the Assessor is a professional employe; that Cappel was appointed Town Assessor by the Town Board through a resolution; that Cappel is serving a two-year term to run through June 30 of 1989; that Cappel is paid a yearly salary of \$10,220 with the understanding that there could be an increase in her salary during the second year of her term should there be a large increase in the number of parcels of land that require assessing; that her duties are to assess all the properties in the Town, to fill out appropriate forms regarding assessments, to testify before a board of review to substantiate the assessments on properties when there are objections from property owners; that Cappel maintains official published hours on Tuesdays and Thursdays but otherwise maintains her own schedule; that the Town Board does not direct her to assess a particular piece of property or direct the method she uses for assessments but retains ultimate control over her work through a board of review; that Cappel does not possess the authority to commit the Town's resources and would need permission from the Town to make a purchase exceeding \$100.00; that Cappel and the Town Clerk suggested to the Town that the Town purchase computers; that the Town did purchase computers for Cappel, the Town Clerk, and others in the Town's employ to use; that Cappel does not receive health insurance but is covered by Workers' Compensation, liability insurance, and has Social Security deducted from her salary; that Cappel's work does not involve knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning; that she does not need to possess a college degree to perform her job but must pass an exam provided by the state which certifies assessors; that Cappel does not formulate, determine, or implement management policy or possess the effective authority to commit the Town's resources; that she has made no financial investment nor has she assumed any substantial financial risk as Town Assessor.

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

#### CONCLUSIONS OF LAW

1. That the occupants of three seasonal park/highway positions, James Beres, Wayne Mengel, and Mark Milligan, are regular part-time employees, and are therefore appropriately included in the bargaining unit set forth in Conclusion of Law 7.
2. That the occupant of the position of umpire, Robert Bodart, is a regular part-time employee appropriately included in the bargaining unit set forth in Conclusion of Law 7.
3. That the occupant of the position of Compactor Operator, Walter Chrisman, is a regular part-time employee appropriately included in the bargaining unit set forth in Conclusion of Law 7.
4. That the occupant of the position of Highway Department secretary, Carol Beres, is a confidential employee and not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not included in the bargaining unit set forth in Conclusion of Law 7.
5. That the occupant of the position of Deputy Clerk, Marilyn Gauger, is not a confidential employee and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., appropriately included in the bargaining unit set forth in Conclusion of Law 7.
6. That the occupant of the position of Town Assessor, Charlene Cappel, is not an independent contractor, nor a managerial employee, nor a professional employee within the meaning of Sec. 111.70(1)(L), Stats., and therefore, is a non-professional municipal employee within the meaning of Sec. 111.70(1)(i), Stats., appropriately included in the bargaining unit set forth in Conclusion of Law 7.
7. That all regular full-time and regular part-time non-professional employees of the Town of Vernon excluding supervisory, confidential, managerial, executive, and craft employees constitutes an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d), Stats.
8. That a question concerning representation presently exists as to the municipal employees in the collective bargaining unit set forth in Conclusion of Law 7.

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 45 days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Town of Vernon, excluding supervisory, confidential, managerial, executive, and craft employees, who were employed by the Town of Vernon on November 11, 1987, 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 desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, for purposes of collective bargaining with the Town of Vernon concerning wages, hours and conditions of employment, or whether such employees desire not to be represented by such labor organization.

Given under our hands and seal at the City of  
Madison, Wisconsin this 11th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman  
Herman Torosian  
Herman Torosian, Commissioner

TOWN OF VERNON

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

BACKGROUND

This proceeding involves several eligibility questions involving six different positions occupied by eight individuals. The parties have stipulated that the positions and individuals enumerated in Finding of Fact 4 shall be excluded from the bargaining unit, and that the positions and individuals enumerated in Finding of Fact 5 shall be included in the bargaining unit. The dispute centers on questions of the status of individuals as casual, confidential, managerial, or professional employees or as independent contractors.

THE PARTIES' POSITIONS:

The Union argues that the three summer park/highway employees do not have a reasonable expectation of returning to employment, as they are college students who will not return indefinitely to their summer jobs. Therefore, the Union asserts they should be excluded from the bargaining unit as casual employees. The Union also claims that the softball umpire and the Saturday Compactor Operator are casual employees without a sufficient community of interest with other employees to be included in the same unit. The Union seeks to exclude the Deputy Clerk as a confidential employee, finding her to be the more logical person than the Highway Secretary to designate as a confidential employee, because she fills in for the Town Clerk. Finally, the Union seeks to include in the unit the Highway Department secretary claiming that she is a regular part-time employee. It also maintains that the Town Assessor is a professional employee who should be given an opportunity to determine whether she wishes to be included in the unit.

The Town argues that the three summer park/highway employees have a reasonable expectation of returning to employment, based on their past record of employment, and, therefore, should be included in the unit as regular part-time employees. The Town further seeks to include in the unit the umpire, the Saturday Compactor Operator, and the Deputy Clerk, based on the regularity of their employment and to avoid undue fragmentation. The Town claims that the Highway Department secretary should be excluded as a confidential employee. Finally, the Town seeks to exclude the Town Assessor on the basis that she is either a managerial employee or an independent contractor.

REGULAR PART-TIME OR CASUAL EMPLOYEES

The Commission has held that seasonal employees who have a reasonable expectation of returning to their employment in the following season are considered regular part-time employees with a sufficient community of interest with other regular full-time and regular part-time employees to be included in the same unit with them. However, without that expectation of continued employment, such individuals are to be considered casual employees, not having a sufficient community of interest with regular employees to justify including them in the same unit. 1/

In deciding whether the three summer park/highway employees are regular part-time or casual employees, the issue centers on whether they have a reasonable expectation of continued employment. The Town contends that since the same three people have filled these jobs for the last four years, they have that expectation. The Union contends that the three employees are college students who will not return for summer work indefinitely, and that there is no formal rehiring arrangement until the spring of each year, when the students let the Highway Supervisor know whether or not they want to work during the summer.

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1/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83); City of Edgerton, Dec. No. 11340 (WERC, 10/72).

In City of Rice Lake, 11 seasonal employees who were retired people and who worked in the parks between April 15 and September 15 each year were considered to be seasonal employees who were included in a bargaining unit. In that case, the City maintained that the turnover among the seasonal employees and the annual budget review of the need for such seasonals deprived the employees of a reasonable expectation of continued employment. However, the Commission found that the fact that the rate of return varied from year to year did not indicate that the seasonals as a group did not have an expectation of returning. Also, the Commission dismissed the argument that the positions were tenuous because they were subject to annual budget review, observing that virtually all non-elected public positions are theoretically subject to being eliminated in the annual budget process. While the Union argues in the instant case that the parks commission must ask for funding for the three summer positions each year from the Town Board, the Commission has disposed of that argument in Rice Lake.

In the City of Edgerton, high school and college students employed by the Parks Department did not have a reasonable expectation of continued employment. The Commission concluded in that case that there was no evidence showing that any of the students employed during the past summer intended to apply for employment the next summer, and only 4 out of 10 people had worked during the previous summer. Therefore, the Commission found that those students were not regular part-time employees.

Here, there is evidence on the record that the same three individuals have returned for four years demonstrating more consistency than either the students in Edgerton or the retired summer workers in Rice Lake. Thus, we are satisfied that these employees have a reasonable expectation of continued employment. Accordingly, the three summer parks/highway employees are included as regular part-time employees in the bargaining unit.

Turning now to the remaining seasonal employee, umpire Robert Bodart, the record indicates that he has umpired adult softball games with great regularity, every Sunday in the summers for the last four years. While it is true that Bodart realizes a minimal amount of compensation, approximately \$300 per summer, he nevertheless experiences both a substantial degree of regularity in his employment and has a reasonable expectation of continued employment each summer. He is therefore a regular part-time employee and included in the unit.

The next question then, is whether the Saturday Compactor Operator, Walter Chrisman, is a regular part-time employee or a casual employee. The Union argues that he is a casual employee, while the Town argues that he is a regular part-time employee.

Where employees have consistently worked 10 hours or 15 hours a week on a regular and recurring basis, have a reasonable expectation of continued employment for such hours, and work on a prearranged schedule rather than only when called to come to work, such employees are generally found to be regular part-time employees appropriately included in a bargaining unit. 2/ Walter Chrisman has worked as the Compactor Operator every Saturday, 10 hours a day, 50 weeks a year, for the last six or seven years. The only argument the Union makes in seeking to exclude him is the number of hours he works, claiming his low hours show a lack of a community of interest with other employees. However, the number of hours worked does not determine whether an employee is a regular part-time or a casual employee, but it is whether the employee has consistently worked those hours on a regular basis. Clearly, Chrisman has worked on a regular and recurring basis, with great consistency, and has a prearranged schedule of working every Saturday except for a couple of weeks a year when he is on vacation. We also note that although Chrisman does not receive any fringe benefits, he is covered by Workers' Compensation and has Social Security deducted from his paycheck. He also shares similar wages, benefits and working conditions in running the compactor with David Guthrie, who runs the compactor on Wednesdays and has been stipulated to be a member of the bargaining unit. Given the foregoing, the Saturday Compactor Operator, Walter Chrisman, is a regular part-time employee properly included in the bargaining unit.

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2/ Manitowoc County, Dec. No. 8152-F (WERC, 6/83).

## CONFIDENTIAL EMPLOYEE STATUS

The Commission has consistently held that in order for an employee to be considered a confidential employee, the employee must have access to, have knowledge of, or participate in confidential matters relating to labor realtions. In order for information to be confidential for such purposes, it must be the type of information that:

- (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and
- (2) is not available to the bargaining representative or its agents. 3/

The Town wishes to exclude as a confidential employee the Highway Department secretary, Carol Beres. The Union claims that the Deputy Clerk, Marilyn Gauger, is the proper person to exclude as a confidential employee. The parties' positions are predicated upon the assumption that the Town is entitled to designate one employee as confidential to meet its needs. 4/ Neither Beres or Gauger currently perform any significant amount of confidential duties. As we currently have no basis for doubting the Town's assertions that Beres will perform significant confidential duties if the Union wins the representation election, we are satisfied that Beres should be excluded from the unit as a confidential employee. Should Beres not be given significant confidential responsibilities, the Union can file a unit clarification petition to seek her inclusion in the unit.

## TOWN ASSESSOR

The Town contends that the Town Assessor, Cappel, should be excluded from the bargaining unit as an independent contractor or a managerial employee. The Commission's standard for determining independent contractor status has been stated: 5/

The test to be applied in determining whether an individual is an employee or an independent contractor is the "right of control" test. In general, an individual is an employee if the employer for whom the services are performed has the right to control the manner and means by which the result of the services is accomplished. Conversely, where the employer has control only as to result, the individual providing the service is regarded as an independent contractor. No one factor is determinative in deciding whether an individual is an employee or an independent contractor. The determination of the relationship between the employee and the employer depends on the particular facts of each case, and requires a weighing of individual factors, such as the manner in which the employee is paid, the benefits the employee receives, if any, the hours the employee works, the degree of supervision the employer exercises over the employee, and the entrepreneurial investment the employee has in the venture, if any.

Although the Town does not retain close supervision or day-to-day control over the work of the Assessor, it retains ultimate control. Cappel must appear at a yearly meeting of a board of review where her assessments are subject to review.

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3/ Appleton Area School District, Dec. No. 22338-B (WERC, 7/87); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

4/ Town of Grand Chute, Dec. No. 22934 (WERC, 9/85); Sheboygan County Handicapped Children's Education Board, Dec. No. 20217 (WERC, 1/83).

5/ Fort Atkinson School District, Dec. No. 24942 (WERC, 10/87).

When property owners object to their assessments, Cappel testifies to substantiate her assessments and gives the board of review her recommendations. However, it is up to the board to decide whether to accept her recommendation or whether a particular assessment is proper. Cappel must maintain official published hours, which she does on Tuesdays and Thursdays. While she otherwise maintains her own schedule, at least half of her hours are controlled by the employer. Additionally, Cappel uses the Town's computer and normal office supplies, and the evidence fails to show that she has made any direct financial investment of her own.

The Town points out that the Assessor was hired by the Town Board by a resolution for a two-year term and for a yearly salary of \$10,220. However, the salary may be increased during the second year of the term if there is a large increase in the workload, and thus we conclude that Cappel has not assumed any significant financial risk. Also, Cappel is covered by Workers' Compensation and has social security deducted from her salary.

In light of the Town's ultimate control over the Assessor's work, the fact that she keeps regular published hours, uses the Town's supplies, and has payroll deductions made on her behalf, we conclude that the Assessor is not an independent contractor.

To determine whether an employee holds a managerial position, the Commission considers whether the employee participates to a significant degree in the formulation, determination and implementation of management policy, and whether the employee has the effective authority to commit the employer's resources. Moreover, the effective authority to commit the employer's resources means the ability or authority to establish an original budget or to allocate funds for differing purposes from that budget, where that authority is more than ministerial in nature. 6/

In this case, the Town Assessor is not a managerial employee. We are satisfied that the discretion exercised by the Town Assessor in the performance of her responsibilities does not rise to the level of formulation or implementation of management policy. While she and others in the Town asked for and received a computer for their use, such a request falls short of the authority to commit the employer's resources by establishing an original budget or allocating funds for purposes different from such an original budget. In this regard we note that Cappel needs the Town's permission for making a purchase that would exceed \$100.00. Thus, we conclude that Cappel, the Town Assessor, is not a managerial employee.

Having concluded that Cappel is not an independent contractor or a managerial employee, it is necessary to address the Union's argument that she is a professional employee. Section 111.70(1)(L), Stats., defines a professional employee as follows:

1. Any employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an

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6/ Nicolet College and Technical Institute, Dec. No. 23366 (WERC, 3/86); City of Whitewater, Dec. No. 24354 (WERC, 3/87).



apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employee who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

The parties, at hearing, stipulated that the Commission should take administrative notice of the state statute and administrative regulations with respect to the state's requirements to serve as an assessor. Section 73.09, Stats., and Tax 12.05 and 12.055 of the Wisconsin Administration Code establish that assessor certification does not require any type of advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher learning. Essentially an individual may be certified as an assessor after successfully completing the certification exam administered by the state. No advance degree of any kind is necessary and, in fact, Sec. 73.09, Stats., provides for temporary certification without taking an exam for not more than 100 days. Cappel's job duties as assessor do not establish that she must comply with the stringent educational requirements necessary for her to be found to be a professional employee. We have previously found that assessors were not professional employees, 7/ and nothing in this record convinces us that Cappel's job duties or requirements warrant a different conclusion. She is therefore found to be a non-professional employee appropriately included in the bargaining unit.

Dated at Madison, Wisconsin this 11th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman  
Herman Torosian  
Herman Torosian, Commissioner

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7/ City of Racine, Dec. No. 17724 (WERC, 4/80); City of Green Bay, Déc. No. 10474 (WERC, 8/71); City of Kenosha, Dec. No. 7529-A (WERC, 6/66).

In the Matter of the Petition of	:	
WISCONSIN COUNCIL 40,	:	
AFSCME, AFL-CIO	:	Case 1
Involving Certain Employees of	:	No. 38888 ME-2703
TOWN OF VERNON	:	Decision No. 24967
	:	

Mr. Richard W. Abelson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2216 Allen Lane, Waukesha, Wisconsin 53188, appearing on behalf of the Union.

Adelman & Adelman, Attorneys at Law, by Ms. Elizabeth Adelman, 308 East Juneau, Milwaukee, Wisconsin 53202, appearing on behalf of the Town of Vernon.

Pursuant to a Direction of Election previously issued by it in the above entitled matter, the Wisconsin Employment Relations Commission on January 7, 1988, conducted an election pursuant to Sec. 111.70(4)(d) of the Municipal Employment Relations Act, to determine whether employees of the above Municipal Employer, in the collective bargaining unit set forth in the Commission's Direction, desired to be represented by the above named Labor Organization for the purposes of collective bargaining with the Municipal Employer. a/

1. Total number eligible to vote	<u>11</u>
2. Total ballots cast	<u>10</u>
3. Total ballots blank	<u>1</u>
4. Total valid ballots counted	<u>9</u>
5. Ballots cast for the above named Labor Organization	<u>8</u>
6. Ballots cast for no representation	<u>1</u>

IT IS HEREBY CERTIFIED that Wisconsin Council 40, AFSCME, AFL-CIO, has been selected by the required number of eligible employees of the Town of Vernon who voted at said election in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Town of Vernon, excluding supervisory, confidential, managerial, executive, and craft employees, as their representative; and that pursuant to the provisions of Sec. 111.70 of the Municipal Employment Relations Act, said labor organization is the exclusive

No. 24967

collective bargaining representative of all such employees for the purposes of collective bargaining with the above named Municipal Employer, or its lawfully authorized representatives, on questions of wages, hours and conditions of employment. b/

Given under our hands and seal at the City of  
Madison, Wisconsin this 4th day of April, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman  
Herman Torosian  
Herman Torosian, Commissioner  
A. Henry Hempe  
A. Henry Hempe, Commissioner

- b/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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 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. 77.59(6)(b), 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  
(Continued on Page 3)

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b/ (Continued)

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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.