

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WISCONSIN COUNCIL 40, AFSCME, AFL-CIO :
  
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Involving Certain Employes of : Case 49
  
: No. 43782 ME-2990
  
: Decision No. 26462-A
  
JEFFERSON COUNTY :
  
(HUMAN SERVICES DEPARTMENT) :
  
:
  
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Appearances:

Mr. Jack Bernfeld, Staff Representative, 5 Odana Court, Madison,  
Wisconsin 53719, appearing on behalf of Wisconsin Council 40,  
AFSCME, AFL-CIO.  
Mr. Victor Moyer, Corporation Counsel, 320 South Main Street, Jefferson,  
Mr. Frank DeStefano, Jefferson County Employee, 320 South Main Street,  
Jefferson, Wisconsin 53549-1799, appearing on his own behalf.

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FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Direction of Election, the Wisconsin Employment Relations Commission conducted an election on June 4, 1990 to determine whether certain employes of Jefferson County wished to be represented for the purposes of collective bargaining by Wisconsin Council 40, AFSCME, AFL-CIO. During the election, a dispute arose between the County and AFSCME as to the eligibility of an employe to vote. Following the election, separate objections to the conduct of the election were filed by AFSCME and by certain County employes. Hearing as to the eligibility dispute and the objections was conducted on September 4, and September 27, 1990 before Commission Examiner Peter G. Davis in Jefferson, Wisconsin. Following hearing, written argument was filed, the last of which was received on December 10, 1990. Having considered the record and argument and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Jefferson County, herein the County, is a municipal employer having its principal offices at 320 South Main Street, Jefferson, Wisconsin.
2. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization having its principal offices at 5 Odana Court, Madison, Wisconsin 53719.
3. During the recent years, certain employes of the County's Human Services Department have from time to time discussed their interest in being represented by a labor organization for the purposes of collective bargaining with the County. The County has been aware of these periodic discussions by employes. In October 1989, certain non-professional employes of the County met to discuss the potential for union representation. Certain professional employes of the Human Services Department were invited to and did attend this employe meeting but subsequently determined that they did not have an interest in pursuing union representation in conjunction with the non-professional employes. The County was aware that Human Services Department employes were present at the October meeting. In November or December of 1989, a group of Human Service Department employes began to meet to discuss union representation of Human Service Department professional employes. On or about January 22, 1990, all professional employes of the Human Services Department received a packet of information from the employes who were interested in pursuing union representation. After employes received the information, County Human Services Director Tom Schleitwiler began to receive questions from employes regarding the

information and arguments contained therein as to how collective bargaining would address certain employment issues. On March 12, 1990, the County received the following letter from AFSCME representative Bernfeld:

March 9, 1990

Mr. Thomas Schleitwiler, Director  
Jefferson County Human Services Department  
N3995 Annex Road  
Jefferson, WI 53549

Re: Notification of Union organizational effort  
involving professional Human Services Department  
employees

Dear Mr. Schleitwiler:

Pleased (sic) be advised that the Council #40 of the American Federation of State, County and Municipal Employees (AFSCME) is presently engaged in effort (sic) to organize unrepresented professional employees in your department. We have filed a petition with the Wisconsin Employment Relations Commission, a copy is enclosed, requesting that a secret ballot election be conducted to determine the question of representation.

We hope that the County will help created (sic) an environment in which its employees can objectively decide whether or not they desire representation by our union. Employees must be allowed to exercise their statutory right to organize free from interference and coercion by the County. Any County activity which would discourage membership in a labor organization by discrimination in regard to hiring, tenure or other terms and conditions of employment is proscribed by law.

Should our organizing campaign be successful, we look forward to establishing a meaningful and constructive working relationship.

If you have any questions about this matter or should you desire to discuss same, please feel free to contact me.

On March 12, 1990, the Commission received the election petition referred to in Bernfeld's letter. The petition sought an election in a bargaining unit of certain County employes described therein as:

All regular full-time and regular part-time professional employees of the Jefferson County Human Services Department, excluding managerial, supervisory and confidential employees and all other employees.

On April 19, 1990, the Commission received a Stipulation for Election whereby the County and AFSCME agreed that it was appropriate for the Commission to conduct an election in the bargaining unit quoted above. Attachments to the Stipulation advised the Commission that the County and AFSCME had agreed to the voting eligibility of 37 employes but could not agree about the eligibility of employes Barbara Lemanski and Maryanne Weiland. The County and AFSCME further advised the Commission that they had agreed that these two employes could vote by challenged ballot. On or about April 20, 1990, Director Schleitwiler distributed the following memo:

TO: STAFF ELIGIBLE FOR UNION VOTE

FROM: T. S.

DATE: APRIL 20, 1990

In the very near future a day will be scheduled for you to case (sic) your vote as to unionization. This will be scheduled by the Coordinator of Elections of the Wisconsin Employment Relations Commission and will be conducted by secret ballot. The outcome of the election will be based on the majority position of those who vote.

I encourage all of you to inform yourselves fully, and to engage in open discussion about the issues involved for you as a group.

Most importantly VOTE

I am available if needed to answer questions or to

listen.

Pursuant to the Stipulation of the County and AFSCME, the Commission issued a Direction of Election on May 1, 1990. On or before May 7, 1990, AFSCME and the County agreed to delete an employe from the eligibility list who they had concluded was not a professional employe. On or about May 8, 1990, Director Schleitwiler distributed the following memo:

TO: PERSONAL ASSISTANCE STAFF ELIGIBLE FOR UNION  
VOTE

FROM: T. S.

DATE: MAY 8, 1990

The Wisconsin Employment Relations Commission has set Monday, June 4, 1990 as the date for you to vote to decide whether to unionize. The vote will be held by secret ballot between the hours of 8:00 - 10:00 a.m. in the basement level Conference Room. Representatives from the Union and Human Services will register and verify eligible persons.

As I said to you earlier, it is important that you will exercise your right to vote. There is a process available for absentee balloting. I will post up this information, as well as the formal vote notice as soon as I get it.

In mid-May 1990, AFSCME and the County agreed to add two recently hired employes to the eligibility list. Subsequent to the issuance of the Direction of Election, the election was scheduled to be conducted on June 4, 1990, from 8:00 a.m. to 10:00 a.m. in the New Conference Room of the Human Services Building.

4. Since approximately 1975, some employes of the County's Human Services Department had a work schedule which allowed them to take four day weekends. However, such employes were required to work during such weekends if client needs required same. In late December 1989, Director Schleitwiler drafted a memo to certain Human Services Department staff regarding reorganization of the Personal Assistance unit. Prior to drafting the memo, Schleitwiler had discussed its content with Department supervisors. The memo was distributed on or about January 15, 1990 and stated in pertinent part:

TO: PERSONAL ASSISTANCE STAFF

FROM: T. S. and Personal Assistance Supervisors

RE: RE-ORGANIZATION

DATE: January, 1990

The following information is the basic structure for re-organization of the Personal Assistance Unit. A good deal of teamwork, excuse the pun, is still needed as people get used to the new system, working with some different people, and working out any bugs that are discovered. Please be aware that everything will not work perfectly right away. There will be problems that will need honest discussion and cooperation to solve. Our past experiences with change have been largely positive but have always required faith in each other and extending helpfulness to each other.

A. TEAMS

. . .

B. PRIMARY SUPERVISOR LIST

Primary Supervisors will continue to be a basic resource for their particular staff. Case discussion, problem-solving, EAP needs, and preparation of evaluations can continue as has been.

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C. SEATING ARRANGEMENTS

. . .

D. TEAM MEETING SCHEDULE

MONDAY

TUESDAY

8:30-10:00	Developmen Dis Physically Dis	9:00-10:00	Sexual Abuse
10:30-12:00	Intake	11:00-12:00	Custody/ Mediation
1:00-2:00	Domestic Abuse	1:00-2:00	AODA
	<u>WEDNESDAY</u>		<u>THURSDAY</u>
9:00-11:00	Delinquency	9:00-11:00	Abuse/Neglect
3:30-4:30	Long-Term Sup	1:00-3:00	Mental Illness/ CMI
	<u>FRIDAY</u>		
8:30-10:00	Sexual Abuse		

There are several items that we want to discuss and plan for regarding work schedules. These are items that we feel we need but don't want to overload the system with change either. Mondays should be scheduled as a day when everybody is here. This would change the system of regular rotating 4-day weekends to regular rotating 3-day weekends. Some four days could of course be planned and arranged but as a regular system we are seeing it has a great difficulty built into it in that it makes too many long periods of time when clients go unattended. This are will be discussed further for clarification before a change is made.

The change in work schedule referred to in the memo was implemented May 7, 1990. The County Personnel Policy in force at the time stated the following:

6.21. HOURS OF WORK AND OVERTIME. (a) Regular hours of work for clerical, fiscal and administrative classes of employees and for professional employees and department heads shall be 8:00 am. - 12:00 noon; 12:30 p.m. - 4:30 p.m. Monday through Friday. If circumstances require, a department head may modify the regular hours of work for an employee.

5. On May 9, 1990, the Commission sent the following letter and Notice to the County with a copy being mailed to AFSCME.

May 9, 1990

Mr. Victor Moyer  
Corporation Counsel  
Jefferson County  
Jefferson County Courthouse  
320 South Main Street  
Jefferson, WI 53549

Re: Jefferson County (Human  
Services Department)  
Case 49 No. 43782 ME-2990

Dear Mr. Moyer:

Enclosed are several Notices, which include sample(s) of the ballot(s) relating to the vote which this Commission will conduct among certain of your employes. We are also enclosing copies of the Commission's Policy on Absentee Ballots.

We request that copies of the Notice and Policy be posted at time clocks, on bulletin boards, or at other conspicuous places, no less than fifteen (15) days prior to the date of the vote, in order that all eligible employes may be fully advised regarding the details of the balloting and the nature of the ballot(s) to be used.

We request that the Employer and Labor Organization(s) involved each designate persons to act as observers, who should appear at the polling place fifteen (15) minutes prior to the opening of the polls, in order to receive their instructions with respect to their duties and responsibilities as observers.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NOTICE OF ELECTION

EMPLOYER: JEFFERSON COUNTY (HUMAN SERVICES DEPARTMENT) JEFFERSON, WISCONSIN

UNION: WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

DATE: MONDAY, JUNE 4, 1990

TIME: 8:00 A.M. TO 10:00 A.M.

PLACE: HUMAN SERVICES BUILDING - NEW CONFERENCE ROOM ANNEX ROAD

This Commission will conduct an election by secret ballot on the above date among certain employees of the above Municipal Employer, who were employed in the collective bargaining unit consisting of:

All regular full-time and regular part-time professional employees of the Jefferson County Human Services Department, excluding supervisory, managerial and confidential employees, who were employed on May 1, 1990, except such employees as may prior to the election quit their employment or be discharged for cause.

This election is to determine whether a majority of such employees voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of collective bargaining with Jefferson County on questions of wages, hours and conditions of employment, or whether such employees desire not to be so represented by said labor organization.

VOTING WILL BE BY SECRET BALLOT

SAMPLE BALLOT--(Do not place any marks upon this ballot)--SAMPLE BALLOT

STATE OF WISCONSIN WISCONSIN EMPLOYMENT RELATIONS COMMISSION OFFICIAL ELECTION BALLOT INVOLVING CERTAIN EMPLOYEES OF JEFFERSON COUNTY (HUMAN SERVICES DEPARTMENT)

(MARK "X" IN ONE SQUARE ONLY)

for the purposes of collective bargaining by WISCONSIN COUNCIL 40, AFSCME, AFL-CIO. SAMPLE : SAMPLE I desire to be represented : I desire NO REPRESENTATION.

FOLD YOUR BALLOT TO CONCEAL THE "X" YOU HAVE DONE

The County posted copies of the Notice and Policy on Absentee Ballots. On May 22, 1990, the Commission received a request from employe Beverly A. Marten for an absentee ballot. Marten subsequently received an absentee ballot from the Commission and timely returned same to the Commission.

6. On May 30, 1990, Tony Mennenga, a Human Services Department employe who was eligible to vote in the election, distributed the following three page document to all Human Services Department employes he believed to be eligible to vote. The first page was a cover memo and the last two pages commenced with the heading DRAFT CONTRACT PROPOSALS.

TO: All Employees Eligible for Union Vote

FROM: Tony Mennenga

DATE: May 30, 1990

Attached is the contract proposal that the County has

given to the Courthouse employees' newly formed union. Several things should be noted from this. First, management rights continue to be a major issue as evidenced by page 1 of the proposal. It continues to be my impression that several of the areas of concern here would not benefit by unionization due to the management rights clause, and the county maintains that these rights are not negotiable. For example, since unionization, a courthouse employee has lost her flex time schedule. A grievance was filed on this and the county won, due to management rights and developmental needs.

In addition, the second page has several areas of concern. It should be noted that this is only the first proposal of a long bargaining process, however it deals with changes in insurance, retirement and the addition of a time clock. Although bargaining will take place in these areas, we currently pay nothing towards our insurance plan, with the county paying \$3,903 per family plan and \$1,507 per individual plan per year. In addition, the retirement would be equal to 6% of your annual income, or \$1,600 per year on the average.

I spoke with a member of the union bargaining team at the courthouse, and it is her opinion that it would have been much easier and possibly more successful to work out their concerns on their own without unionization.

It is my opinion that we could potentially lose a lot, both financially and in regards to flexibility, if we are to unionize. However, I also recognize and respect that some people have other issues that they feel need to be dealt with. My concern is whether or not a union can realistically address those issues without us having to bargain away some of what we already have.

DRAFT

#### CONTRACT PROPOSALS

Jefferson County proposes to retain the right to manage and direct the governmental unit by reserving to Management the following rights. This listing is for informational purposes only and the County's negotiators do not propose to bargain these subjects.

#### MANAGEMENT RIGHTS:

The County possesses the sole right to operate the County and all management rights repose in it. These rights include, but are not limited to, the following:

- A. To direct all operations of the County;
- B. To establish reasonable work rules and schedules of work;
- C. To create, combine, modify and eliminate positions within the County;
- D. To hire, promote, transfer, schedule and assign employees in positions within the County;
- E. To suspend, demote, discharge and take other disciplinary action against employees;
- F. To relieve employees from their duties;
- G. To maintain efficiency of County operations;
- H. To take whatever action is necessary to comply with state or federal law;
- I. To introduce new or improved methods or facilities;
- J. To change existing methods or facilities;
- K. To determine the kinds and amounts of

services to be performed as pertains to County operations; and the number and kind of classifications to perform such services;

L. To contract out for goods or services;

M. To determine the methods, means and personnel by which County operations are to be conducted;

N. To take whatever action is necessary to carry out the functions of the County in situations of emergency.

The County's bargaining proposals are based upon the existing Personnel Ordinance with certain modifications. A copy of the Personnel Ordinance is enclosed. Proposed modifications of that ordinance are as follows:

1. The term of the contract shall begin when ratified by both parties and continue until December 31, 1991. Any improvements in wages or benefits which may be agreed upon shall be effective January 1, 1991.

2. Bargaining unit employees shall be required to clock in at the start of the work day, clock out at the start of the lunch period, clock in at the start of the after lunch period, and to clock out at the end of the day.

3. Bargaining unit employees may purchase hospital and surgical-medical insurance under the County's plan.

4. Bargaining unit employees shall pay the employee's contribution to the Wisconsin Retirement Fund.

5. The reasons listed for employee discipline are not exclusive and there may be other reasons for discipline.

6. The Union shall be responsible for collection of its own dues and the County shall take no part in such collection.

7. This Agreement constitutes the entire Agreement between the parties and no verbal statements shall supersede any of its provisions. Any amendment supplemental hereto shall not be binding upon either party unless executed in writing by the parties hereto.

The parties further acknowledge that, during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the areas of collective bargaining and that the understandings and agreement arrived at by the parties after the exercise of that right and the opportunity are set forth in the Agreement. Therefore, the County and Union for the life of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject may not have been within the knowledge and contemplation of either or both of the parties at the time that they negotiated or signed this Agreement. Waiver or any breach of this Agreement by either party shall not constitute a waiver or any future breach of this Agreement.

Mennenga obtained the portion of the document entitled DRAFT CONTRACT PROPOSALS from the County Administrator's office. The County Administrator advised Mennenga that this portion of the document was the County's initial proposal in a bargaining process. The County played no role in the drafting of the cover memo Mennenga attached to the DRAFT CONTRACT PROPOSALS.

7. On June 4, 1990, commencing at 8:00 a.m., Commission Examiner Karen J. Mawhinney began to conduct the election in the New Conference Room at the Human Services Building. Jack Bernfeld served as an observer on behalf of AFSCME and Beverly Mueller served as an observer for the County. Mark Mixdorf was eligible to vote in the election. At approximately 9:45 a.m., fifteen minutes prior to the scheduled conclusion of the voting period, Mixdorf was present in the Human Services Building to gather materials he needed for a

10:00 a.m. hearing in the County Courthouse. Erroneously believing that the election was being conducted at the Courthouse, Mixdorf proceeded to the Courthouse at approximately 9:45 a.m. intending to vote prior to his 10:00 a.m. hearing. Unable to find the location of the election, Mixdorf called a Human Services Department receptionist at approximately 9:50 a.m. and was advised that the election was being conducted in the Human Services Building. Pursuant to Mixdorf's request, the receptionist proceeded to the site of the vote within the Human Services Building and advised Examiner Mawhinney that an employe who was presently at the Courthouse, approximately a five minute drive away, was requesting that the voting period be extended to allow him to vote. The receptionist did not identify Mixdorf as the employe making the request. Mawhinney discussed the request with the Union and County observers and agreement was reached that the voting period would be extended until 10:15 a.m. The receptionist telephonically advised Mixdorf that a fifteen minute extension had been granted. Mixdorf did not advise the receptionist that a fifteen minute extension would not be sufficient to allow him to vote because of his 10:00 a.m. hearing. Mixdorf's hearing did not conclude until 10:40 a.m. and Mixdorf did not vote.

8. Dan Ferguson was an employe eligible to vote in the election. At approximately 9:40 a.m. on June 4, 1990, a co-worker called Ferguson at his home to ask if he intended to vote. Ferguson responded by indicating that he had forgotten the election was being conducted that day. Ferguson further indicated that because both of his cars were not operating that day, he would be unable to vote. Ferguson did not vote in the election.

9. Gerald Mallach was a County employe eligible to vote in the election on June 4, 1990. Mallach was present in the Human Services Building at approximately 8:00 a.m. but decided not to vote at that time believing his work responsibilities that morning would allow him to vote near the end of the voting period. Mallach's job responsibilities that morning did not allow him to cast a ballot prior to 10:00 a.m. At approximately 10:15 a.m. Mallach completed an assessment of a client and proceeded to the election site in the New Conference Room, Mawhinney had closed the voting because the fifteen minute extension referenced in Finding of Fact 7 had expired. When Mallach entered the New Conference Room, Mawhinney advised him the polls were closed and that he would not be allowed to vote. Mallach did not vote in the election.

10. Maryanne Weiland voted during the June 4, 1990 election and her ballot was challenged by the County based upon the County's belief that Weiland was a supervisor and thus ineligible to vote. After the voting period had ended, Mawhinney proceeded to count the ballots cast in the election and she then executed a tally sheet which reflected the following result.

1.	ELIGIBLE TO VOTE	<u>38</u>
2.	BALLOTS CAST (includes <u>all</u> ballots)	<u>33</u>
3.	BALLOTS CHALLENGED	<u>1</u>
4.	BALLOTS VOID	<u>1</u>
5.	BALLOTS BLANK	—
6.	VALID BALLOT COUNTED (Total ballots cast minus challenged ballots, void ballots, and blank ballots)	<u>31</u>



7.	BALLOTS CAST FOR WI COUNCIL 40,	
	AFSCME, AFL-CIO	16
	BALLOTS CAST FOR NO REPRESENTATION	<u>15</u>

Bernfeld and Mueller signed the tally sheet and received a copy of same. Bernfeld advised Mawhinney that AFSCME concurred with the County's challenge of Weiland's ballot. On June 6, 1990 the County advised the Commission by letter dated June 5, 1990 that the County was withdrawing its challenge to Weiland's ballot. On June 11, 1990, the Commission received a letter from Bernfeld on behalf of AFSCME which was notarized and stated in pertinent part:

I have received Victor Moyer's letter dated June 5, 1990 and Peter Davis' dated June 7, regarding the matter cited above.

We do not concur with Jefferson County's request that Ms. Weiland's ballot be counted.

It is the Union's position that the County cannot withdraw its challenge to the Weiland ballot. The County vigorously objected to the eligibility of Ms. Weiland at and prior to the election. The Union objected to her eligibility at the conclusion of the election. We believe that said ballot should not be counted and that the Union should be promptly certified as the collective bargaining representative for the bargaining unit involved in this matter.

If the Commission should allow the County to withdraw its challenge, please be advised that the Union continues to maintain its challenge to the Weiland ballot. It is our position that Ms. Weiland was ineligible to vote in the election for a variety of statutory reasons and that her vote should not be counted.

Finally, if the Commission allows the County to withdraw its challenge to Ms. Weiland's ballot and if the Commission determines that Ms. Weiland is eligible to vote and if Ms. Weiland cast a valid ballot against representation, please consider this letter to be our objection to the election pursuant to the Wisconsin Administrative Code, Rules of Employment Relations Commission, Chapter ERB 11. It is our position that certain improper election related activity affected the election results. Such activity included, but was not limited to:

1. During the pendency of the representation election, the County altered the status quo by unilaterally changing the longstanding work schedule of employees who were eligible to vote in the representation election.

2. A letter, which included material prepared by Jefferson County, was circulated to eligible voters on or about May 30, 1990 by an employee, Tony Mennenga, who was also eligible to vote in the representation election. Said letter threatened the loss of benefits if employees chose to be represented, implied that negotiations with the County would be a futile process, and was otherwise improper.

It is our position that these factors served to intimidate, interfere with, and coerce employees in the exercise of their rights and, as such, improperly affected the outcome of the election.

Bernfeld mailed a copy of this letter to the County.

11. On June 11, 1990, the Commission received the following document which was signed by 16 County employes who were eligible to vote in the election. The document was notarized and one of the signatories mailed a copy to AFSCME on June 12, 1990 which copy was received by AFSCME on June 13, 1990.

June 7, 1990

TO WHOM IT MAY CONCERN:

There are many employees of Jefferson County Human Services that have concerns about the recent move to unionize. This letter is to officially file an objection to the conduct of the election. This objection is based on the following:

- Eligibility of potential voting employes has remained uncertain throughout the process, preventing all potential voters being provided information as to their options.
- Informational mailings throughout the process were inconsistent and at times selective including those regarding union meeting times and places, information sharing and most significantly voting time, date and place.
- The vote is not representative of the employees because no allowance was made for illness, court hearings, extended appointments or other unavoidable conflicts, possibly due to limited voting time.

In light of the above we respectfully request the opportunity for all pre-determined eligible employees to participate in a re-vote. Thank you for your timely consideration.

By letter dated June 11, 1990, the Commission served AFSCME and the County with a copy of the document.

12. On June 11, 1990, the Commission received the following document from employe Dan Ferguson. The document was not notarized nor did Ferguson mail a copy to AFSCME.

Wisconsin Employment Relations Commission  
P.O. Box 7870  
Madison, WI 53707-7870

June 10, 1990

TO WHOM IT MAY CONCERN

Because of car problems I was unable to vote on the vote to unionize.

I work nights and weekends and needed to make a separate trip to vote, one of our cars was out of commission and the wife needed the other to get to work.

I understand several other employees had problems voting. If at all possible I would like to see a new vote.

I have not made up my mind 100% either way but would like to vote on this important issue.

Ferguson was also a signatory to the document set forth in Finding of Fact 11.

By a letter dated June 11, 1990, the Commission served AFSCME and the County with a copy of the document received from Mr. Ferguson.

13. On June 13, 1990, the Commission received the following document from employe Beverly Marten, who had voted by absentee ballot in the June 4, 1990 election:

June 11, 1990

Wisconsin Employment Relations Commission  
P.O. Box 7870  
Madison, WI 53707-7870

To whom it may concern:

As a Jefferson County Human Services employee; I am in favor of a revote regarding unionization at Jefferson County Human Services.

I believe there needs to be clarification regarding the eligibility to vote before voting occurs. There were several people unable to vote due to work obligations or illness that should also have the right to cast a vote. I (sic) seems there needs to be (sic) provision made for all eligible voters to be heard.

I hope this will be taken into consideration.

Thank you.

14. By letter dated July 13, 1990, the Commission advised the County and AFSCME that it would proceed to determine whether Maryanne Weiland was eligible to vote in the election and thus whether her ballot should be opened and counted. By letter dated August 2, 1990, the Commission confirmed to the County and AFSCME that hearing would also be conducted as to the objections filed by AFSCME and County employees.

15. The Head Start Program operated by the County at the time of the instant election was organized as indicated on the chart attached hereto as Appendix A. At the time of the election, Maryanne Weiland was employed by the County Human Services Department in the Head Start Program as the Parent Involvement/Social Services Coordinator and her immediate supervisor was Head Start Director Ristow. The job description for Weiland's position, which she has held for the past five years, is as follows:

PARENT INVOLVEMENT/SOCIAL SERVICES COORDINATOR

QUALIFICATIONS:

Bachelor's degree in Social Work and one year experience working with low income families preferred.

Or background in Social Services work, or familiarity with Community Agencies and their staff as well as a familiarity with the Community in which Head Start families reside. Or sufficient work experience to become familiar with the Community's service providers in a short period of time.

Experience as a group facilitator for parent or support groups.

Valid Wisconsin driver's license, and access to a vehicle.

Red Cross First Aid Certification or willingness to obtain such certification within the first six months of employment.

An initial health examination including a tuberculin test or chest x-ray certifying person is free of communicable diseases must be completed in the first month of employment.

Have no prior convictions of child abuse or crimes against sexual morality involving children.

RESPONSIBILITIES:

1. Coordinates staff in implementation of appropriate parent participation in Head Start Program as outlined by the 70.2 Mandate. Effective parent participation is defined as the following:

1. Encouraging parents to participate in the process of of (sic) making decisions about the nature and operation of the program.
2. Encouraging participation in the classroom by the parents as paid employees, volunteers, or observers.
3. Encourages activities for which the parents have helped to develop.
4. Encouraging parents to work with their children in cooperation with the staff of the Center.

2. Manages Agency Recruitment Program to recruit both handicapped and non-handicapped children to include appearances on local talk shows, writing newspaper articles, and meeting with other community agencies to inform them about Head Start.

3. Is in charge of seeing that monthly center committee meetings take place. Works to develop an agenda for the monthly meetings. Facilitates parent participation in the meetings.

4. Makes parents aware of community resources by providing a social services directory which is updated as needed.

5. Presents a parenting curriculum to groups of parents at least once per school year.
6. Coordinates the completion of enrollment information and family assessments.
7. Adheres to the laws for the reporting of child abuse and neglect.
8. Responsible for supervision of the documentation and maintenance of up-to-date family records within the Parent Involvement and Social Service Components.
9. Identifies social services needs of families and provides referrals for appropriate counseling if necessary.
10. Is responsible for setting goals for families in the individual service plan based on information gathered from the family needs assessment.
11. Provides follow-up to assure delivery of needed assistance to families of the Head Start Program.
12. Meets with teaching staff as needed to inform teachers of home environment factors that may have an impact on the classroom behavior of children enrolled in the program.
13. Coordinates parent volunteers, and plans training sessions to orient parents to the Head Start Program.
14. Arranges training for parents and staff in the Social Services and Parent Involvement Component. Schedules workshops that parents have requested.
15. Revises component plans for Parent Involvement and Social Services components annually, with the participation of parents.
16. Serves as a technical assistant to Policy Council in performing annual self-assessment.
17. Arranges transportation and support when parent requests, to use community resources.
18. Belongs to the Jefferson County Coordinating Council of Human Services.
19. Submits articles to the monthly Head Start newspaper.
20. Implements improvements of items addressed from annual self-assessment.
21. Assists in assignment of children to teachers as well as preparation of bus routes.
22. Attends and contributes to weekly staff meetings.
23. Meets weekly with Director, and Education/Special Needs Coordinator. Submits a monthly report to the director of component activities and status reports to the Regional Office as requested by the Director.
24. Is responsible for being aware of personal policies, job descriptions, and program plans, and observing them.
25. Will take problems and concerns to relevant supervisor; i.e. Director in a timely fashion.
26. Will perform other duties as assigned by the Director.

Weiland has a bachelor's degree in criminal justice. When fulfilling her responsibilities regarding the recruitment and enrollment of families in the Head Start Program, Weiland reviews a family's application, meets with the

family, evaluates the family's needs against federal eligibility guidelines, and determines whether the family will be allowed to enroll in the program. When fulfilling her responsibilities to organize the transportation of Head Start students, Weiland organizes eight bus routes and directs the work of the four Head Start bus drivers who drive the routes each day. Weiland's independent authority to discipline is limited to the issuance of verbal warnings which are not recorded in the employe's personnel file. In 1988, Weiland played a role in the dismissal of a probationary bus driver who was terminated based upon parental complaints, some of which were expressed directly to Ristow and others of which Weiland relayed to Ristow. After reviewing the complaints, Ristow advised Weiland that she intended to terminate the driver's employment. Weiland concurred with Ristow's decision and Ristow proceeded to terminate the employe. When another Head Start employe received a written reprimand, Ristow consulted with Weiland before Ristow drafted the written reprimand and met with the employe. Weiland has the authority to send a driver home if the driver were not in a condition to work but would normally consult with Ristow before taking such action. Bus drivers who are unable to work due to illness call Ristow to advise her of their absence and Ristow arranges for substitute drivers to be available. When Ristow evaluates bus drivers, she meets with Weiland to discuss the content of the written evaluation. Ristow then drafts the evaluation and Ristow and Weiland then meet with the employe to review the evaluation. Ristow also involves Weiland in the evaluation of the two clerical employes in the same manner as with the bus drivers. Ristow is the day-to-day supervisor of the clerical employes, although if Weiland observed or became aware of a problem with the work performance of a clerical employe she would relay that concern to Ristow. In October, 1989, Weiland participated in the interview process which ultimately produced the hiring of the incumbent Education/Special Needs Coordinator. As with the hiring of bus drivers, Weiland was one of four members of the interview panel and had the opportunity to ask questions of the applicants. The applicant that Weiland recommended be hired was not ultimately offered the position by the County.

16. County participation in the Head Start Program is approved on a year-to-year basis. The County has operated a Head Start Program on a continuous basis since 1976. During the summer of 1989, the County became aware that Head Start staff were eligible for unemployment benefits during the summer. Federal funding of the Head Start Program did not include monies sufficient to pay unemployment benefits to the Head Start staff. In September, 1989, the County Board of Supervisors defeated a resolution which authorized expenditure of County funds to pay unemployment benefits during the upcoming summer. Following the County Board action, the County Human Services Board began exploring the possibility of having the Head Start Program operated by a different entity who would not be obligated to pay unemployment compensation benefits and therefore could maintain the Head Start Program at its existing level of services from the existing federal funding level. In April, 1990, the County Human Services Board advised the federal government that the County would no longer operate the Head Start Program unless additional federal funds were provided to cover unemployment compensation liability. On or about May 3, 1990, the federal government advised the County that it would not increase funding to cover unemployment compensation liability and further, that if the County wished to end its role as the grantee of the Head Start Program, the County should so advise the federal government. On May 31, 1990, the County Human Services Board met and voted that the County would not continue to administer the Head Start Program without a permanent increase in the federal funding to cover unemployment compensation liability, but that the County should continue to administer the program until a new grantee agency is selected. On June 4, 1990, the instant election was conducted. On June 12, 1990 the entire County board accepted the decision of the Human Services Board. County operation of the Head Start Program was scheduled to cease on or about November 1, 1990.

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

CONCLUSIONS OF LAW

1. As of June 4, 1990, Maryanne Weiland was a temporary employe and thus ineligible to vote in this election.
2. No valid basis exists upon which to conclude that a new election should be conducted herein.

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

CERTIFICATION OF REPRESENTATIVE

1/

By virtue of and pursuant to the power vested in the Wisconsin Employment Relations Commission by Sec. 111.70(4)(d)3, Stats., it is hereby certified that the required number of eligible employes of Jefferson County who cast their ballots have selected Wisconsin Council 40, AFSCME, AFL-CIO as their collective bargaining representative; and Wisconsin Council 40, AFSCME, AFL-CIO is now the exclusive collective bargaining representative of all employes in the

collective

(See Footnote 1/ on Page 16)

1/ 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 therefore 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 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.

bargaining unit consisting of all regular full-time and regular part-time professional employes of the Jefferson County Human Services Department, excluding supervisory, managerial and confidential employes.

Given under our hands and seal at the City of  
Madison, Wisconsin this 5th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner



MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND CERTIFICATION OF REPRESENTATIVE

POSITIONS OF THE PARTIES

AFSCME

AFSCME summarizes its position in this matter as follows:

Statement of Position

This case maintains of (sic) myriad of issues. It is the Union's position that the County cannot withdraw its challenge to the Weiland ballot. The Union joined with the County's challenge at the conclusion of the election. Given the parties' agreement that Weiland was not eligible to vote, the Commission should finalize the results of the election by certifying the Union as the bargaining representative.

If the Commission allows the County to withdraw its challenge, it remains the Union's position that Ms. Weiland was not eligible to vote in the election. We assert that she did not have an expectation of continued employment with the County. Prior to the election the County clearly enunciated that it would not continue its Head Start operation and it was actively preparing to transfer the Program to another grantee agency.

Even if the Commission were to find that the imminent end of the Program should not prevent the Weiland vote, it is our view that she was ineligible to vote on other grounds. We believe that the record demonstrates that the position held by Weiland is supervisory and is not professional in nature. The record also establishes that although the Program was operated by the County's Human Services Department, it maintained an independent identity. In our view, Weiland did not have a community of interest with the professional employees of the Department.

The Commission received several documents from County employes relating to the conduct of the election. It appears that additional objections to the election were raised during the course of the hearing in this matter. It is the Union's position that said employees are not a party in this proceeding. They have no standing in this matter. Their objections should not be considered by the Commission. They should not have been permitted to appear and participate in any aspect of this proceeding.

However, even if the Commission considers their sundry objections, it is our view that they are without merit. Moreover, these objections, if considered by the Commission, were not properly served upon the Union. Indeed, the letter from Ferguson, was not served upon any party. They should all be dismissed.

The County did not file any objections to the conduct of the election or conduct affecting the results of the election. The Union filed certain conditional objections to the election. These objections contest certain conduct that may have affected the outcome of the election. However, we only wish to proceed with these objections, if, and only if, the Commission allows the County to withdraw it (sic) challenge to the Weiland ballot and if the Commission determines that Ms. Weiland was eligible to vote and if Weiland cast a valid ballot against representation. If such conditions are fully met we then request that the Commission order a new election on the basis of such improper conduct.

More specifically, AFSCME argues that the Commission should immediately certify AFSCME as the collective bargaining representative because AFSCME concurred in the County's challenge of Weiland's ballot on the date of the election. AFSCME asserts that the County should not be allowed to withdraw its

challenge for what AFSCME describes as "obvious opportunistic reasons".

If the County is permitted to withdraw its challenge to the Weiland ballot, AFSCME asserts that Weiland was not eligible to vote in the election because it was apparent as of May 3, 1990, that the County would no longer operate the Head Start Program. Thus, in AFSCME's view, as of the June 4, 1990 election, Weiland lacked a reasonable expectation of continued County employment and therefore was a temporary employe ineligible to vote in the election.

Should it be concluded that Weiland was not a temporary employe, AFSCME argues that she was ineligible to vote because she was a supervisory employe. AFSCME asserts that Weiland was the direct supervisor of four bus drivers and also exercised certain supervisory authority over two clerical employes. AFSCME contends that Weiland did not act as a leadworker but was primarily engaged in supervision of these employes. AFSCME argues that Weiland had the authority to effectively recommend the hiring and discipline of employes and was also actively participating in annual evaluations of certain employes. Given the foregoing, AFSCME asserts that Weiland was a supervisory employe ineligible to vote in the election.

AFSCME next argues that Weiland was not a professional employe within the meaning of Sec. 111.70(1)(L), Stats. and thus was ineligible to vote in the election. In this regard, AFSCME asserts that Weiland's function involved the routine administrative application of federal guidelines and thus did not involve a consistent exercise of independent judgment. It notes that a college degree is not required for the position and that Weiland has a bachelor's degree in the unrelated field of criminal justice. Lastly, AFSCME notes that Weiland was paid substantially less than the other employes the parties agreed to be eligible to vote in the election. Given the foregoing, AFSCME argues that Weiland was not a professional employe and thus was not eligible to vote.

In addition, AFSCME argues that even if Weiland is a professional employe, she lacked the requisite community of interest with other Human Services Department employes to be included in the unit. AFSCME asserts that there is infrequent contact between Weiland and other departmental employes and notes that Head Start Program employes work different hours and have different work schedules and fringe benefits than other Human Service Department employes. Given the independent functioning of the Head Start Program, and the other foregoing factors, AFSCME contends that Weiland's position was not appropriately included in the collective bargaining unit herein.

As to the objections filed by 16 employes, AFSCME asserts that the employes are not a "party" who would have standing to file objections under ERB 11.10 and thus that the objections filed by these employes should be dismissed. In support of its argument, AFSCME cites Commission decisions in United Community Services, Dec. Nos. 11281-C and 11282-C (WERC, 10/73) and IAFF, Local 247, Dec. No. 14553-C (Yaeger, 1/77; aff'd by operation of law, (WERC, 1/77). AFSCME also cites decisions of the NLRB which it asserts establish that the Board does not consider individual employes to be "parties" to representation proceedings. AFSCME notes that at present the Commission does not allow individual employes to file unit clarification petitions. AFSCME questions what policy would produce a different result in an election proceedings. If employes have "party" status, AFSCME notes that many questions are raised as to the employe's role in Commission election proceedings. AFSCME asks whether employes would have an independent right to participate in the election process as observers or in the resolution of eligibility disputes. Indeed, AFSCME questions whether non-employe citizens might not legitimately assert an interest in the election proceedings equal to those of employes and thus also become a "party". AFSCME contends that "The possibilities, and the calamities, are endless" if the Commission were to grant "party" status to the employes herein. AFSCME asserts that the only sensible approach is to define the parties to this dispute as the labor organization and municipal employer. AFSCME contends that the objecting employes make no claim that the County favored the Union or that AFSCME is a "Company Union." AFSCME argues that the spokesperson for the objecting employes is using the objection proceeding "solely to further his campaign to defeat the Union - to engage in 'Union bashing'."

AFSCME next contends that the objections were not timely filed. It argues that neither document received by the Commission on June 11, 1990 was timely served upon AFSCME or the County.

AFSCME further contends that the objections filed by the employes lack merit. As to the claim that:

Eligibility of potential voting employes has remained uncertain throughout the process, preventing all potential voters being provided information as to their options.

AFSCME asserts that the identity of the eligible employes was established pursuant to standard Commission procedure and that any employe or any member of the public could have access to said information. AFSCME contends that it is

also clear that employees were aware of the election because the County posted the Commission's official Notices and because both AFSCME and the County advised the employees independently of the election. AFSCME notes that no employee testified at hearing that they were unaware of the election or their right to vote, and further that no employee asserted they were unaware of the date, time and place of the election.

As to the objection that:

Informational mailings throughout the process were inconsistent and a time selective including those regarding union meetings, union meeting times and places, information sharing and mostly significantly voting time, date, and place.

AFSCME characterizes this contention as "frankly absurd." AFSCME argues that neither it nor the County has any obligation to distribute information to any one or everyone. AFSCME asserts that it may in its own discretion target information literature to any one it chooses. In any event, AFSCME argues that the objectors failed to demonstrate any evidence of inconsistency.

As to the objectors' claim that:

the vote is not representative of the employees because no allowance was made for illness, court hearings, extended appointments or other unavoidable conflicts, possibly due to limited voting time.

AFSCME contends that the election result clearly was "representative of the employees." AFSCME notes that more than 80% of the eligible employees voted and contends the date and time of the election were chosen to maximize the opportunity for employees to vote. AFSCME argues that allowance was made for "unavoidable conflicts." AFSCME points out that employee Marten voted by absentee ballot; that employee Mixdorf was unable to vote because of his own misunderstanding as to the voting site; that employee Mallach was unable to vote because he miscalculated his work schedule; and that employee Ferguson did not vote because he did not remember that the election was being conducted on the date in question.

As to the "contingent" objections which it has filed, AFSCME contends the record amply supports its contention that the County changed employees' work schedules during the pendency of the election and that said change operated to "intimidate and coerce employees".

As to the second AFSCME objection, it asserts that the distribution of the Tony Mennenga letter, even if the County played no role therein, tainted the laboratory conditions necessary for a free election. AFSCME asserts that the letter's content created a coercive atmosphere and notes that the County made no attempt to disavow Mennenga's prophecy. AFSCME further argues that the NLRB has found similar conduct to have interfered with the exercise of employee free choice.

Given the foregoing, AFSCME asserts that its objections are meritorious and warrant direction of a new election should the Commission reject AFSCME's various arguments for certifying the result based on Weiland's ineligibility.

#### The County

The County contends that there are two broad issues presented in this proceeding: (1) should the vote of Weiland be counted; and (2), should the contingent complaints of AFSCME considered, and if considered, do these complaints have merit? The County asserts that these questions should be answered yes and no in the order stated.

As to the issue of Weiland's supervisory status, the County asserts that while Weiland has limited authority over bus driver and clerical employees, Weiland does not exercise her authority and responsibility in a sufficiently independent manner to be deemed a supervisory employee. The County contends that Weiland's role in the evaluation, hiring, and discipline of employees occurs in conjunction with the involvement of Ristow, Weiland's supervisor. The County notes that there would be five levels of supervision over the employees in question if Weiland is found to be a supervisory employee. Thus, the County contends that Weiland's position is not supervisory.

As to AFSCME's assertion that Weiland should not be included in the bargaining unit because she lacks a community of interest with other employees, the County argues that Weiland's function provides her with duties similar to those of other Human Services employees and further notes that Weiland had regular professional contacts with other Human Services employees when performing her duties. Thus, the County asserts that Weiland clearly possesses sufficient community of interest to be included with other Human Services Department employees.

As to the AFSCME argument that Weiland is not a professional employee, the

County notes that requiring a college degree is not a precondition for professional status and further argues that a degree is not required for many if not most of the County social worker positions included in the bargaining unit.

As to the AFSCME argument that Weiland did not possess an expectation of continued employment, the County argues that it was not until June 12, 1990 that the County determined that it would not operate the Head Start Program beyond November 1, 1990. Citing Muscoda Solid Waste Commission, Dec. No. 26664 (WERC, 10/90), the County argues that the uncertainty which existed as of the date of election as to whether funding for the Head Start Program would continue to be provided by the County is insufficient to support a conclusion that Weiland then lacked a reasonable expectation of continued employment. Given the foregoing, the County argues that Weiland was a regular full-time professional employe who possessed a continuing expectation of employment at the time of the election.

As to AFSCME's contention that a change in work schedule would warrant a new election, the County asserts that management had long reserved the right to require employes to work during a "four-day weekend" and had also reserved the right to change work schedules should the need arise. The County argues that in this instance, the change in question was first contemplated in November, 1989 and that the memo to employes referencing the possible change was prepared prior to Christmas 1989. The County contends that the first time it had certain knowledge of the organizational activity was upon receipt of Bernfeld's March 9, 1990 letter. The County thus asserts that the change in hours was under consideration prior to any certain knowledge by the County that organizational efforts were occurring and further, that the change cannot be viewed as retaliatory inasmuch as the County had no knowledge as to whether the employes affected were supportive of union organization.

As to the Mennenga letter, the County notes that it had no role in the distribution of same. Thus, the County asserts that distribution of the memo does not provide a basis for a new election.

Lastly, as to the question of the objections filed by employes, the County argues that pursuant to Sec. 227.44(2)(m) Stats., the individual employes acquired party status because the questions raised in their objection clearly affect "substantial interests" of the employes. Thus, the County argues that it was proper to allow these employes to present evidence and argument at hearing.

Given the foregoing, the County asserts that the Commission should proceed to open Weiland's ballot and certify the election results.

#### Objecting Employes

The employes represented at hearing by Mr. Frank DeStefano urge the Commission to direct another election in this matter. They argue that a new election will provide the most accurate representative determination by the employes as to the question of union representation. They contend that the eligibility of all voters should be determined prior to the new election. The employes note that should Weiland be determined eligible to vote, and her ballot counted, the identity of her choice will not be protected as it would be in a new election.

Given the foregoing, the objecting employes ask that a new election be conducted.

#### DISCUSSION

We commence our consideration of this case with the question of what disposition should be made of Weiland's challenged ballot. Because we conclude that Weiland had become a temporary employe by the June 4 election date, we have determined that she was therefore ineligible to vote and her ballot will not be counted.

Temporary employes lack a reasonable expectation of continued employment. 2/ Their tentative employment status deprives them of the requisite interest possessed by regular full-time and regular part-time employes as to the question of whether regular employes should be represented by a union. 3/ Here, as detailed in Finding of Fact 16, by June 4, 1990, the County's Human Services Board had in effect determined that the County would

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2/ Manitowoc County, Dec. No. 15250-B, (WERC, 9/77).

3/ Pittsville School District, Dec. No. 21806 (WERC, 6/84).

cease to operate the Head Start Program as of approximately November 1, 1990. Given the County Board's refusal in September 1989 to operate the Program without permanent additional federal funding and the federal government's May 1990 refusal to provide such funding, the possibility that the full County Board might change its mind and continue the Program did not provide Weiland with a reasonable expectation of continued employment as of the June 4 election.

The County correctly cites Muscoda Solid Waste Commission for the proposition that uncertainty as to the continued operation of a program or facility does not deprive employees of a reasonable expectation of continued employment. However, here, the facts demonstrate that there was more than uncertainty as to the continued operation of the Head Start Program. By June 4, 1990, it was quite likely that the Program would end. Thus, Muscoda is not inconsistent with our result herein.

Having concluded that Weiland's ballot will not be counted, Finding of Fact 10 reflects that AFSCME received a majority of valid ballots cast. Thus, AFSCME is entitled to be certified as the bargaining representative unless the concerns raised by individual County employees warrant conduct of a new election. We turn to a consideration of that question.

AFSCME has argued that an individual employee(s) is not a "party" who can file objections under ERB 11.10. 4/ AFSCME also argues that the objections timely received by the Commission were not properly filed because the employees did not comply with the provision of ERB 11.10(2). We need not dispose of these AFSCME arguments because even assuming the employees in question had standing to file those objections which we timely received, and further assuming that in other respects there was material compliance with ERB 11.10, the objections would not warrant the conduct of a new election.

As to the alleged uncertainty regarding the eligibility of employees to vote, the record establishes that on April 19, 1990, the Commission received an eligibility list consisting of 37 employees and an agreement that two additional employees, Lemanski and Weiland, could vote subject to the right of AFSCME or the County to challenge whether their ballots should be counted. On or before May 7, 1990, AFSCME and the County agreed to modify the eligibility list by deleting one employee. The list was refined again in mid-May to add two newly hired employees. Thirty-three of the forty employees who it had been agreed could vote did so. Under these circumstances, we fail to see any uncertainty as to eligibility which would warrant a new election.

As to the concern that all employees did not have the same access to the same campaign information, we initially note that in a representation election, it is first and foremost the individual employee's decision as to whether and how he or she will become informed as to choices to be made. Neither union nor employer have an obligation under the law to educate employees as to the advantages and/or disadvantages of union representation. Where unions chose to campaign, they are not obligated to provide employees with equal access to information. The record herein demonstrates that through the efforts of AFSCME and individual employees, employees had ample and roughly equal access to campaign information. However, even if that were not the case, we would nonetheless reject this objection as being the basis for a new election.

As to the issue of employee notice of the time, date and location of the

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4/ ERB 11.10 provides:

ERB 11.10 Objections to election. (1) FILING; FORM; COPIES. Within 5 days after the tally of ballots has been furnished, any party may file with the commission objections to the conduct of the election or conduct affecting the results of the election. Such objections shall be in writing and shall contain a brief statement of facts upon which the objections are based. An original and 5 copies of such objections shall be signed and filed with the commission, the original being sworn to.

(2) SERVICE ON OTHER PARTIES. The party filing such objections shall at the same time serve a copy upon each of the other parties.

Under ERB 3.05, which is applicable to elections conducted by the Commission under the Wisconsin Employment Peace Act and similar in pertinent part to its Municipal Employment Relations Act counterpart ERB 11.10, we concluded in United Community Services, Dec. No. 11281-C (WERC, 10/73) that there are circumstances in which individual employees have party status to file objections.

election, it is clear that our Notices which contained that information were posted by the County. Thirty-three of forty employes voted. Thus we are satisfied that the employes were provided with sufficient opportunity to inform themselves as to the time, date and location of the election.

Equally unpersuasive is the contention that the vote was not representative because voting procedures did not accommodate voter conflicts. Again, thirty-three of forty employes voted. As detailed in the Findings of Fact, employes Mixdorf, Ferguson and Mallach all had the opportunity to vote but made decisions which prevented them from taking advantage of that opportunity. Mixdorf was confused about the voting site, sought and received an extension of the voting period and failed to advise anyone that the extension would not be sufficient to allow him to vote. Ferguson forgot. Mallach chose to wait until the end of the voting period instead of voting when the polls opened. Thus, we reject this contention as well.

Given the foregoing, we have certified AFSCME as the collective bargaining representative.

Dated at Madison, Wisconsin this 5th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

\_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner