

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

LEROY KREPLINE

Involving Certain Employees of

VILLAGE OF REEDSVILLE

Case 5
No. 65185
ME-4054

Decision No. 30313-C

Appearances:

Leroy Krepline, appearing on his own behalf.

Neil Rainford, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1311 Michigan Avenue, Manitowoc, Wisconsin 54220, appearing on behalf of the Village of Reedsville Employees, Local 731, AFSCME, AFL-CIO.

Luis Arroyo, Michael, Best & Friedrich, LLP, Attorneys at Law, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202, appearing on behalf of the Village of Reedsville.

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

On September 29, 2005, LeRoy Krepline filed a petition with the Wisconsin Employment Relations Commission seeking an election to determine whether certain employees of the Village of Reedsville wished to continue to be represented for the purposes of collective bargaining by the Village of Reedsville Employees, Local 731, AFSCME, AFL-CIO.

By letter dated October 11, 2005, the Commission advised the parties that the petition had been accompanied by a sufficient showing of interest and asked if there were issues that needed to be resolved before the election was conducted.

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By letter dated October 14, 2005, the Village advised the Commission, AFSCME and Krepline that it was prepared to proceed to an election with Krepline and Gary Pautz being the eligible voters. AFSCME thereafter advised the Commission that it believed Krepline was a supervisor and thus not eligible to vote and that a third employee Joe McMunn had worked sufficient hours to be an eligible voter.

After extensive but unsuccessful efforts to reach an agreement on the voter eligibility dispute, hearing was held in the Village of Reedsville, Wisconsin on December 30, 2005 by Commission Examiner Peter G. Davis. AFSCME subsequently agreed that Krepline was eligible to vote but a dispute remains as to McMunn's voter eligibility. Post-hearing exhibits were received until February 23, 2006.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. The Village of Reedsville, herein the Village, is a municipal employer.
2. Village of Reedsville Employees, Local 731, AFSCME, AFL-CIO, herein AFSCME, is a labor organization that serves as the collective bargaining representative of a bargaining unit of Village employees described in the parties' 2003-2005 contract as:

. . . all regular full-time and regular part-time employees of the Village of Reedsville who are regularly scheduled to work forty (40) hours or more per month . . .

During 2005, the Village employed several part-time employees including Joe McMunn. McMunn had a regular assignment of working six to eight hours on Fridays to assist in collection of garbage and two hours on Wednesdays at the Village recycling center. In addition, McMunn worked when called in by the two full-time Village employees (Krepline and Pautz) to assist with other tasks or when the full-time employees were absent due to vacation, sick leave, etc.

During 2005, McMunn worked the following numbers of hours each month:

<i>Month</i>	<i>Hours</i>	<i>Wednesdays</i>	<i>Fridays</i>
1/05	38.75	4	4
2/05	31.50	4	4
3/05	57.00	5	4
4/05	49.00	4	5
5/05	36.75	5	4

6/05	44.25	5	4
7/05	41.00	4	5
8/05	49.00	5	4
9/05	58.50	4	5
10/05	29.25	4	4
11/05	39.75	5	4
12/05	32.00	4	5

On October 30, 2005, AFSCME filed a grievance asserting that McMunn was now working enough hours to become part of the bargaining unit and that the Village had violated the 2003-2005 contract by failing to extend contractual rights/bargaining unit status to McMunn.

On November 11, 2005, the Village advised Krepline and Pautz that they should not call in McMunn without prior authorization.

On January 3, 2006, the Village hired an additional part-time employee to be utilized on a call-in basis.

4. Joe McMunn is not regularly scheduled to work more than forty (40) hours or more per month.

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

CONCLUSIONS OF LAW

1. A question concerning representation within the meaning of Sec. 111.70(4)(d), Stats. exists within the collective bargaining unit described in Finding of Fact 2.

2. Because Joe McMunn is not regularly scheduled to work more than forty (40) hours or more per month, he is not eligible to vote in an election to determine whether AFSCME should continue to represent the employees in the bargaining unit described in Finding of Fact 2.

Based on 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 shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Direction in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the Village of Reedsville who are regularly scheduled to work forty (40) hours or

more per month, excluding seasonal, casual, temporary, supervisory, confidential, managerial and executive employees who were employed on March 2, 2006, 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 those employees voting wish to continue to be represented by Village of Reedsville Employees, Local 731, AFSCME, AFL-CIO for the purposes of collective bargaining with the Village of Reedsville.

Given under our hands and seal at the City of Madison, Wisconsin, this 2nd day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

VILLAGE OF REEDSVILLE

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

As reflected in the preface to our decision, the issue before us is now limited to whether McMunn, a part-time Village employee, is eligible to vote in the election sought by Krepline to determine whether AFSCME should continue to represent a bargaining unit described in the parties' 2003-2005 contract as:

. . . all regular full-time and regular part-time employees of the Village of Reedsville who are regularly scheduled to work forty (40) hours or more per month . .

If McMunn falls within the scope of that bargaining unit description, he is eligible to vote in the election.

The Village asserts that Mr. McMunn is not presently "regularly scheduled" to work 40 hours per month and thus is not eligible to vote. AFSCME takes no position but questions how McMunn's eligibility can be resolved when his status on a future date (when the Commission directs an election) cannot now be known. Krepline takes no position on the eligibility issue.

As to the issue AFSCME raises regarding the difficulty of resolving McMunn's current eligibility based on anything other than current information, we note that absent agreement by the parties to a different eligibility date, it is the date on which we direct an election which establishes the date on which voter eligibility is determined. Thus, as a general matter, our resolution of all voter eligibility issues is always and inevitably subject to the concern that AFSCME raises. Therefore, where evidence is needed to resolve eligibility issues, there is always a time lag between the date the evidence is presented at hearing and the date we decide the matter after considering that evidence and the parties' post-hearing argument. Given the foregoing, while our eligibility decisions are always subject to the potential of change in circumstances between the date of hearing and the date of our decision, that uncertainty is an inherent and unavoidable part of the process.

Beyond raising this issue in a general matter, AFSCME has not asserted that any specific change has occurred since the December 30, 2005 hearing. However, the record does establish that there has been and could be some ebb and flow as to the hours McMunn is "regularly scheduled" to work. Thus, although as discussed below we find on the evidence before us that McMunn is not "regularly scheduled" to work 40 or more hours per month and thus is not eligible to vote, if McMunn believes that his "regularly scheduled" status on March 2, 2006 meets the 40 hour requirement, he can ask for a ballot. If we receive such a request, McMunn will be provided with a ballot and allowed to vote. However, any ballot he casts will be counted only if necessary to reach an election result and only if the evidence as to his status on March 2, 2006 persuades us that he did indeed meet the 40 hour requirement.

As reflected in the parties' 2003-2005 agreement, the eligibility issue turns not on how many hours McMunn worked but on how many hours he is "regularly scheduled" to work. Based on the evidence before us, McMunn is "regularly scheduled" to work six to eight hours on Fridays on garbage pick up and two hours on Wednesdays on recycling. His call-in hours when helping out full-time employees or covering for full-time employee absences are irregular and thus not counted toward the eligibility issue.

Assuming that he worked a constant 2 hours recycling on each Wednesday, McMunn's eligibility is dependent on how often he worked a six or seven or eight hour day on Fridays picking up garbage. We note that an average of 7.23 hours of Friday garbage work is needed to be worked to reach the 40 hour threshold¹

As reflected in Finding of Fact 3, McMunn worked fewer than 40 hours in six of the twelve months in 2005 (including four months that preceded the November 2005 restriction on employee ability to call him in for work). Those six months included his "regular schedule" and from that we can generally infer that his "regularly scheduled" work required less than 40 hours to complete. However, because the number of Wednesdays and Fridays can vary month to month, further scrutiny of this inference is warranted. Those six months included 26 Wednesdays and 25 Fridays. Assuming that two hours were worked every Wednesday in those six months, McMunn worked an average of 6.2 hours on Fridays.² Because this is one

¹ Assuming the maximum number of eight hours worked every Friday and a constant 2 hours recycling on each Wednesday, McMunn would work 520 "regularly scheduled" hours in a year (8 hours garbage plus 2 hours recycling x 52 weeks) which is average of 43.3 "regularly scheduled" hours per month.

Assuming seven hours of work each Friday and a constant 2 hours recycling on each Wednesday, McMunn would work 468 "regularly scheduled" hours in a year which is 39 "regularly scheduled" hours per month.

Assuming six hours of work each Friday and a constant 2 hours recycling each Wednesday, McMunn would work 416 "regularly scheduled" hours in a year which is 34.7 "regularly scheduled" hours per month

² The accuracy of this inference is generally confirmed by McMunn's 2005 time cards.

hour per Friday short of the Friday hours needed to reach the 40 hours of “regularly scheduled” work, we conclude that McMunn is not eligible to vote in the election.³

Dated at Madison, Wisconsin, this 2nd day of March, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

³ We will conduct the election by mail ballot. Ballots will go in the mail on March 10, 2006 and be counted March 30, 2006 in the Commission’s offices (or earlier if all ballots have been returned prior to March 30, 2006).