

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**LOCAL 1667, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**VERNON COUNTY (VERNON MANOR)**

Case 2  
No. 55443  
ME-900

**Decision No. 6203-B**

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Appearances:

**Mr. Daniel R. Pfeifer**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Local 1667, AFSCME, AFL-CIO.

Klos, Flynn & Papenfuss, by **Attorney Jerome Klos**, 800 Lynne Tower Building, 318 Main Street, P.O. Box 487, LaCrosse, Wisconsin 54602-0487, and **Ms. Beth Hemmersbach**, Personnel Coordinator, Vernon County Courthouse Annex, Room 209, Viroqua, Wisconsin 54665, appearing on behalf of Vernon County.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On August 11, 1997, Local 1667, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting that it clarify an existing bargaining unit of Vernon County (Vernon Manor) employees by including the position of Telephone Operator (which it subsequently amended to the position of Desk Clerk) on the basis that the two individuals in that position are employees of Vernon County employed at Vernon Manor. The County opposed the petition on the basis that those individuals in the Desk Clerk position are part of a school-to-work program, and are not municipal employees.

No. 6203-B

Hearing was held on May 7, 1998 in Viroqua, Wisconsin before Examiner David E. Shaw, a member of the Commission's staff. A stenographic transcript was made of the hearing and the parties presented oral closing arguments in lieu of submitting post-hearing briefs. The transcript was received May 12, 1998. The Commission, having considered the record, and being fully advised in the premises, makes and issues the following

### **FINDINGS OF FACT**

1. Vernon County, hereinafter the County, is a municipal employer with its principal offices located at 400 Courthouse Square Street, Viroqua, Wisconsin. At all times material herein, the County has maintained and operated a resident health care facility, Vernon Manor. At all times material herein, James Mueller was the Administrator for Vernon Manor and Merna Fremstad has been the Director of Nursing, and Beth Hemmersbach has been the County's Personnel Director.

2. Local 1667, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization and is affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, a labor organization with its principal offices located at 8033 Excelsior Drive, Suite B, Madison, Wisconsin. At all times material herein, Daniel Pfeifer has been the Staff Representative from Council 40 assigned to represent the Union in collective bargaining and contract administration, and Judy Clark has been the Union's President and an employe in the bargaining unit at the Manor.

The Union is the recognized exclusive collective bargaining representative of "all employees of the Manor except the supervisory employees, Administrator's Secretary, and Registered Nurses. . ."

3. The Union and the County are party to a 1996-1998 Collective Bargaining Agreement which contains, in relevant part, the following provisions:

#### **ARTICLE I Recognition**

1.01 The County hereby recognizes the Union as the exclusive bargaining agent for all employees of the Manor except the supervisory employees, Administrator's Secretary, and Registered Nurses for the purposes of bargaining on all matters pertaining to wages, hours and all conditions of employment.

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ARTICLE XI  
Seniority, Probation, Layoff  
Rehire and Job Posting

11.01 Definition of Employee:

- A. A full-time employee is one posted and normally scheduled to work 40 hours per week.
- B. A regular part-time employee is one normally scheduled to work 20 to 40 hours per week.
- C. A part-time employee is one scheduled to work less than 20 hours per week.

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4. In May of 1996 the County created the position of Health Unit Coordinator – Certified at Vernon Manor. The individual in the position performs clerical and recordkeeping tasks, as well as answering the telephone and monitoring the door alarms for unauthorized exit of residents. That individual, Sally Jacobson, was scheduled to work every other weekend and had a day off during the week. Shortly after creating the certified Health Unit Coordinator (HUC) position, the County also created a part-time non-certified Health Unit Coordinator position to work when Jacobson did not.

Unlike the non-certified HUC, the certified HUC was trained and certified to enter medical information into residents' charts and could do more things with less guidance from RN Charge Nurses.

Jacobson's hours were subsequently changed to Monday through Friday and the County discontinued using the part-time non-certified HUC position on weekends. Other employees did such things as answer the telephone, respond to the door alarms, etc., in the HUC's absence. The Union's President, Judy Clark, approached management at the Manor on a number of occasions to complain about workload and the employees having to do these odd jobs.

5. The County has participated in a school-to-work program with Viroqua Area Schools for a number of years using high school students in a number of County departments, some on a paid basis and some on a non-paid basis.

Shortly after discontinuing the use of the part-time non-certified HUC on weekends, Vernon Manor Administrator Mueller decided to create a student position to cover certain of the HUC's simpler tasks that other employees had been covering in the HUC's absence, e.g., answering the telephone, monitoring the door alarms, filing, directing visitors, and helping and watching residents who were allowed to smoke in order to give the other employees more time to perform their own duties.

In May of 1997, Jessica Johnson, then a computer programming student at Western Wisconsin Technical College (WWTC) inquired of the Administrator at WWTC-Viroqua Campus, Al Hanson, as to the availability of any on-campus positions for work. Johnson was told that there were no on-campus positions available, but that Mueller had just submitted a position at Vernon Manor. Johnson went and talked to Mueller about the position. Approximately one month later, Mueller called Johnson and informed her that he had received approval to fill the position. Johnson then interviewed with Mueller for the position, was hired, and started in the position in June of 1997. Johnson did not receive a letter of intent or an employment contract indicating the duration of her employment and nothing was said to her when she was hired regarding whether she could remain in the position after she graduated from WWTC.

Mueller had not spoken to Union President Clark about the position, but the Union was aware that the position had been created and was being filled by a student and did not object at the time.

Johnson was trained in the position, referred to as "Desk Clerk", for approximately one-half day by Director of Nursing Fremstad, which involved showing her the layout of the building, how to answer the phone, what to do if a door alarm sounded and helping residents who are allowed to smoke. Johnson's worksite is the Nursing Station where she answers the phone, does filing and some secretarial work for the Nurses, monitors the alarm system which sounds if a door is opened without pressing the keypad on the door, checks on residents who set off a door alarm, greets and directs visitors, and watches and assists residents who are allowed to smoke. Johnson has no "hands on" contact with residents other than helping them with their cigarettes and pushing their wheelchairs when necessary. Johnson's work is directed by the Nurse on duty.

Johnson now works every other weekend, 10:00 A.M. to 6:00 P.M. each day, and at times fills in for Jacobson when she is absent during the week. In the latter instance, Johnson only performs her regular duties. Other than directing Johnson to the job opening, WWTC is not otherwise involved in Johnson's employment at the Manor. Subsequent to her starting in the position, Johnson changed her area of study at WWTC to the certified Health Unit Coordinator program and expected to graduate from WWTC in that program May 22, 1998. Johnson did not expect to continue in her position after she graduated, although she had not been told that she could not.

When Johnson was first hired in the position, she worked each weekend. In October of 1997, another WWTC student, Melinda Pratt, was hired to work alternating weekends in the position with Johnson. Pratt worked in the position until early January of 1998. When Johnson or Pratt was ill or needed to be off from work, they filled in for each other.

6. Jill Anderson began employment in the kitchen at the Manor in 1995 as a high school student through the School-to-Work program at Viroqua Area School District. After two years, in October of 1997, Anderson then became a "Feeder Aide", helping feed residents. When Pratt left the "Desk Clerk" position in early January of 1998, Fremstad asked Anderson if she wanted the job. Anderson was a high school senior at this time. Anderson took the position and was trained by Johnson. Anderson works opposite weekends from Johnson and performs the same duties at the same worksite as Johnson.

As of May, 1998, it was anticipated that Anderson would graduate from high school in several weeks. Anderson was not told that she would or could be replaced by another student when she graduates if she does not go on to further schooling, or that she would or would not be able to work at the Manor after she graduates. Anderson had planned to continue in the position after graduation.

Other than informing the Attendance Director and her teacher at Viroqua Area High School when she will be working during school hours, Anderson does not have any school-related responsibilities regarding working in the position as part of the school-to-work program. The School-to-Work program at Viroqua Area School District is for students with exceptional educational needs and it is intended to give them work experience and help them learn the necessary skills to hold a job.

7. Johnson, Pratt and Anderson were paid \$5.75 per hour throughout their time in the Desk Clerk position and received no fringe benefits. Under the parties' current Collective Bargaining Agreement, the lowest wage rate in the bargaining unit was the starting rate of \$7.05 per hour as of July 1, 1997 for Food Service employes, Activity Aide, Housekeeping, and Laundry employes, and that rate went to \$7.19 per hour effective January 1, 1998.

From June 21, 1997 to April 18, 1998, Johnson worked a total of 511.16 hours in the position. From October 25, 1997 to January 10, 1998, Pratt worked a total of 96 hours in the position. From January 8, 1998 to April 18, 1998, Anderson worked a total of 134 hours in the position.

8. The Desk Clerk position has set duties which do not vary appreciably and which are performed by a bargaining unit employe during the week as part of that employe's regular duties, and has regularly scheduled hours of 10:00 A.M. to 6:00 P.M., Saturday and Sunday. Both

Johnson and Anderson are regularly scheduled to work sixteen hours every other weekend plus fill-in during the week if the Certified HUC is absent, and are “part-time” employees of Vernon County (Vernon Manor) as defined by Article 11.01, C, of the parties’ Collective Bargaining Agreement.

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

**CONCLUSION OF LAW**

The occupants of the Desk Clerk position at time of hearing, Jessica Johnson and Jill Anderson, are part-time employees of Vernon County.

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

**ORDER CLARIFYING BARGAINING UNIT**

The occupants of the Desk Clerk position at time of hearing, Jessica Johnson and Jill Anderson, are hereby included in the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 14th day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**VERNON COUNTY (VERNON MANOR)**

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

**POSITIONS OF THE PARTIES**

**Union**

The Union asserts that the record clearly establishes that the County wields control over the employment relationship of the employees in the Desk Clerk position. The County establishes the rate of pay, the hours, the training and the supervision of the positions. The County's Personnel Director testified the position will continue and the record indicates the employees in the position are regularly scheduled to work sixteen hours every other weekend. Therefore, those employees meet the criteria under the law to be considered "regular part-time" employees, although under the parties' Collective Bargaining Agreement they would be "part-time" employees; in either case, they should be included in the bargaining unit. The County is simply paying the students less money to do work performed by other employees.

**County**

The County asserts that Johnson and Anderson are not "employees" as the term is used in labor law or contract; rather, they are part of a "school-to-work" program. Further, there is no "position". There is no job description for them, unlike other "employees". The Union is attempting to create new positions that do not exist and have them filled by bargaining unit employees instead of students. To find for the Union would be to discourage employers from participating in such school-to-work programs and would result in high school students having to pay union dues for a part-time job with no benefits and no continuity beyond being in the program.

While the parties' Agreement does not have a provision excluding students in a school-to-work program, that such would be necessary was not contemplated when that Agreement was drafted years ago, everyone understanding then, and now, that this was the case. In this case, the Manor's management utilized the program to meet the Union's complaint that too much of employees' time was being taken doing non-essential tasks and non-hands-on duties, but which were things that needed to be done.

This is not a traditional employment situation as the students will be there only as long as the Manor and the schools elect to participate in the program. At any time, the Manor can opt out of the program. As regards the Manor providing the scheduling and supervision, there is no other



way it could practically be done and meet the needs of the institution. The schools cannot provide on-site supervision and it would not work for the schools to schedule the students to be there when they could not be utilized.

The County concludes that there are no “positions” and the work these students perform is more in the nature of “odds and ends” and not the same as work performed by trained Nurses, LPN’s or Nursing Assistants.

### **DISCUSSION**

The record establishes that the two individuals occupying the Desk Clerk position, Johnson and Anderson, were at time of hearing students, Johnson at WWTC and Anderson a senior at Viroqua Area High School. While Anderson obtained her initial employment at Vernon Manor in a more traditional school-to-work program through her high school, it appears that with regard to Johnson, WWTC was providing a service of connecting its students who are looking for work with area employers who have work available for students. Regardless, the Commission has consistently rejected the argument that student status is a sufficient basis for excluding an individual from the definition of a “municipal employe” and the rights and protections under MERA that flow from that designation. CITY OF БЕЛОIT, DEC. NO. 15112-D (WERC, 11/94); CITY OF EDGERTON, DEC. NO. 11340 (WERC, 10/72), (and the cases cited therein at footnote 2).

We note that Johnson and Anderson have the same worksite and perform the same set of duties each time they work and have regularly-scheduled hours. The duties they perform are normally performed by a bargaining unit member during the week, the Certified Health Unit Coordinator, and prior to the hiring of the students, the work had been performed by other bargaining unit employes in the Health Unit Coordinator’s absence. They also have a common worksite and supervision with bargaining unit employes. Thus, Johnson and Anderson share a community of interest with other unit members. CITY OF БЕЛОIT, SUPRA.

The parties have agreed the bargaining unit consists of “[A]ll employees of the Manor except the supervisory employees, Administrator’s Secretary, and Registered Nurses. . .” In their Collective Bargaining Agreement, the parties define employes in Article 11.01 as “full-time” (posted and normally scheduled to work 40 hours per week), “regular part-time” (normally scheduled to work 20 to 40 hours per week) and “part-time” (scheduled to work less than 20 hours per week). “Part-time” employes are in the bargaining unit and covered by the parties’ Agreement. Johnson (who had held the position for approximately 11 months), and Anderson (who had held the position for several months), are each normally scheduled to work 16 hours every other weekend as employes of the Vernon County Manor. Thus, they meet the definition of “part-time” employe in the parties’ Agreement.

As we held in CITY OF APPLETON PARKING AND TRANSIT COMMISSION, DEC. NO. 16090-A (WERC, 9/78), where the parties have agreed to include “all employees” in a bargaining unit, we find no reason to refuse to honor that agreement. Johnson and Anderson are municipal employees. Therefore, we have concluded that the occupants of the Desk Clerk position, Johnson and Anderson, are properly included in the bargaining unit of “all employees of the Manor. . .” represented by this Union, and have so ordered.

Dated at Madison, Wisconsin this 14th day of August, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner