

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
MANITOWOC COUNTY INSTITUTIONAL :
EMPLOYEES, LOCAL 1288, AFSCME, : Case 2
AFL-CIO : No. 39607 ME-226
Involving Certain Employees of : Decision No. 7116-A
MANITOWOC COUNTY (HEALTH :
CARE CENTER) :

Appearances:

Mr. Mark Hazelbaker, Corporation Counsel, appearing on behalf of Manitowoc County Health Care Center, Manitowoc County Courthouse, 1010 South Eighth Street, Manitowoc, WI 54220.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, WI 54220-0370, appearing on behalf of the Union.

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

Manitowoc County Institutional Employees, Local 1288, AFSCME, AFL-CIO, having on October 26, 1987, filed a petition requesting the Wisconsin Employment Relations Commission to determine whether the position of Activity Therapy/Volunteer Coordinator should be included in the existing collective bargaining unit represented by the Union; and hearing in the matter having been conducted on December 3, 1987, in Manitowoc, Wisconsin, by Karen J. Mawhinney, a member of the Commission's staff; and a stenographic transcript having been prepared and received on January 27, 1988; and the parties having filed briefs by February 25, 1988; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Manitowoc County, referred to as the County, is a municipal employer and has its offices at the Manitowoc County Courthouse, 1010 South Eighth Street, Manitowoc, Wisconsin; and that among its functions it maintains and operates the Manitowoc Health Care Center.

2. That Manitowoc County Institutional Employees, Local 1288, AFSCME, AFL-CIO, referred to as the Union, is a labor organization and has its offices at P.O. Box 370, Manitowoc, Wisconsin; and that the Union is currently the exclusive collective bargaining representative for a bargaining unit described in the parties' 1987 contract as: "employees of the Employer engaged in the operation of the Manitowoc Health Care Center and maintenance of the Park Lawn Home/Shady Lane complex, excluding the Administrator, Assistant Administrator, Supervisor and supervisory held (sic), medical personnel, Business Manager, Registered Nurses, confidential office employees, temporary employees, Food Service Supervisor, Head Housekeeping Supervisor and the Maintenance Supervisor."

3. That the County in 1986 abolished two existing part-time bargaining unit positions, namely a volunteer coordinator and an activity aide, and created a new position of Activity Therapy/Volunteer Coordinator; that the first Coordinator hired worked approximately six months; that the position is currently occupied by Ruth Nielsen, who was hired on April 20, 1987; and that the County, contrary to the Union, contends that the position of Activity Therapy/Volunteer Coordinator is a supervisory position and therefore excluded from the bargaining unit.

4. That the Activity Therapy/Volunteer Coordinator's position, hereinafter the Coordinator, has the following written job description:

QUALIFICATIONS: (1) This person should possess the following qualities; friendliness, empathetic, good listener, self-confident, and flexible. (2) Professional documentation skills and knowledge of a variety of activity medias is primary. (3) Supervisory experience preferred with motivating attitude a must.

RESPONSIBILITIES: Under the direction of the OT/Activity Director, the activity/volunteer supervisor will be responsible to:

1. Schedule regular activities in-house and outside the facility and providing volunteers to enhance program needs.
2. Assist with development of new activity programs to meet the needs of the residents therapeutically.
3. Monitoring activity staff documentation to include timeliness and appropriateness of format according to activity policy and procedure and according to HSS 132 codes. Utilize staff's abilities to implement programs.
4. Supervision of activity staff with additional responsibilities to education inservice staff on a departmental and interdisciplinary lever. Cover for periods when director is unavailable.
5. Assist with job performance evaluation of activity staff.
6. Assist in coordination of activity meetings.
7. Assist in establishing lines of communication to enhance level of resident care, department and interdepartment interaction.
8. Provide on-going role model to MHCC staff and volunteers per the therapeutics of activities.
9. Inform OT/Activity director of necessary changes with staff, resident care plans, programs and policies/procedures.
10. Be familiar with all regular activities and fill in when staff is unable to be present.
11. Assess activity care plans and attendance records to insure appropriateness of goals and frequency of visits/treatments. Conduct chart audits to insure satisfaction of code requirements.
12. Implement an active volunteer program to suit the needs and interests of residents.
13. Select, train and monitor volunteers for activities and other areas in the facility. Document attendance.
14. Plan, direct and sponsor volunteer banquet.
15. Develop programming using community resources and organizations.
16. Write press releases.
17. Assist with ordering appropriate and necessary supplies.
18. Schedule usage of vehicle for outings.
19. Write thank you notes for all donations, performances from outside groups etc.
20. Request donations from organizations for Christmas presents for our residents and coordinate its distribution, wrapping and storage. Write thank yous.
21. Provide public presentations representing the MHCC and request volunteers etc.
22. Perform other assigned duties as assigned by director;

and that the above list of responsibilities is a complete list of the actual duties currently performed by the Coordinator.

5. That the Coordinator does not hire personnel; that hiring decisions are made by the Coordinator's supervisor, who is the Director of Occupational Therapy, hereinafter the Director, and by the Administrator of the facility; that the Coordinator's only involvement in the hiring process was to greet job applicants when the Director was not available and get information about the applicant's educational background and to explain the health care facility and its needs to

them; that the Coordinator has no authority to either lay off employees or recall employees from lay offs; that the Coordinator has no authority to promote or reward employees; that the Coordinator has no authority to transfer employees from one department to another; that the Coordinator has not acted as a grievance representative for management; that the Coordinator does no formal evaluations of employees but does tell the Director her opinion of how employees are performing; that the Coordinator and the Director meet for about one-half hour each day to go over matters which may include employee performance; that the Director has the authority to review job performance and make recommendations to the Administrator about possible discipline; that the Coordinator had one occasion to verbally reprimand an employee when the Coordinator overheard that employee speaking sharply to a difficult resident; that the Coordinator told that employee that her behavior was not appropriate, wrote up a report about the incident, and gave the written report to the Director; that the Coordinator does not have the authority to suspend, demote, or discharge employees or the effectively recommend same; and that the Administrator has the authority to discipline employees, subject to view by a personnel committee and the personnel department.

6. That four activity aides are directly underneath the Coordinator; that the Coordinator makes up a monthly calendar listing the activities and showing which staff members and which volunteers are assigned to those activities; that such assignments are made in conjunction with the Director; that the activities staff has a standard schedule and a standard rotation, and the Coordinator schedules the staff within that rotation without changing their basic schedules; that the Coordinator would not make a change in assignments without approval from the Director; that the Coordinator does not grant employee requests for time off, vacations or holidays; that the Coordinator assigns work and directs the activity staff in such projects as setting up a banquet for volunteers, a county fair, and wrapping Christmas presents for residents; that the Administrator and Director expect the Coordinator to give directions to the staff in a manner that the staff would perceive the directions as coming directly from the Coordinator rather than as orders from above the Coordinator; that the Coordinator's probationary period was extended for an additional six months because of the Administrator's dissatisfaction with her ability to be more assertive in directing the staff, to assume all of the professional clinical responsibilities connected with the position, and to spend more time with the activity staff during the open activities period.

7. That the Coordinator is paid \$19,200 per year or \$9.25 per hour; that the Coordinator's salary was determined based on an evaluation of the college credentials required for the job and an evaluation of the job duties; that activity aides under the Coordinator are paid \$7.05 per hour; and that the Coordinator works Monday through Friday, 8:30 a.m. to 4:30 p.m., and would receive compensatory time if she worked overtime.

8. That the Coordinator supervises afternoon activities either by being present herself or seeing that other staff members are present and that activities are being run smoothly; and that the Coordinator is responsible for seeing that staff members greet residents and interact with them during activities and that the staff members transport residents back to their units when necessary; that the amount of independent judgment exercised by the Coordinator when directing the work of the activity aides is limited by pre-established guidelines; that the Coordinator may decide that a particular volunteer will either be reassigned or not continue to work on volunteer programs; and that the Coordinator may decide that a particular activity for a resident needs to be changed.

9. That the Coordinator does not possess and/or exercise supervisory duties and responsibilities in sufficient combination and degree to be deemed a

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Activity Therapy/Volunteer Coordinator is included in the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of
Madison, Wisconsin this 7th day of April, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

- 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

(Footnote one continued on page five)

(Footnote one continued from page four)

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.

MANITOWOC COUNTY
(HEALTH CARE CENTER)

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

BACKGROUND

The only question before the Commission is whether the position of Activity Therapy/Volunteer Coordinator is supervisory or not. The position was created by the County in 1986 when the County abolished two part-time bargaining unit positions and created the new full-time Coordinator's position. The position has been occupied by Ruth Nielsen since April 20, 1987.

Positions of the Parties

The Union contends that the Coordinator's position does not include a sufficient degree of supervisory responsibility to support a finding that the position should be excluded from the bargaining unit. It states that the job performance of the incumbent in the position is not the issue, and that the Commission should judge the record as it exists rather on conjecture as to future changes in responsibility or performance. The Union argues that the Coordinator supervises activities but not employees, and that the Coordinator has none of the traditional supervisory authority, such as the authority to hire, transfer, layoff, promote, reward, discipline or discharge other employees.

The County states that it acted in good faith to create a new supervisory position, and would ask the Commission to look at its intentions rather than the incumbent's performance of her duties. The County notes that it attempted to correct the incumbent's deficiencies in the area of supervising employees by telling her to give more direction to the staff and to concentrate more on spending time with the staff. The County asserts that it has imbued the Coordinator's position with sufficient supervisory authority as evidenced in its written job description.

DISCUSSION

Although the County argues that it expects the Coordinator to assume more supervisory responsibilities in the future, the Commission must look at the current situation. Potential supervisory authority and duties do not warrant the conclusion that the employee involved is a supervisor. 2/ The County further argues that where experience with a position is limited, the Commission should look at the stated intentions of the employer. However, in the case noted by the County, Madison Area Vocational, Technical and Adult Education, District No. 4, 3/ we looked at the published position description which contained explicit examples of significant supervisory authority which were not challenged by the union involved therein. Here, the job description makes only a general reference to supervision and evaluation and the Union obviously is contesting the precise contours of even those generically stated responsibilities. Accordingly, the Commission will look at the incumbent Coordinator's existing duties rather than the County's stated intentions for the position.

In determining whether a position is supervisory in nature, the Commission has consistently considered the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;

2/ Wood County, Dec. No. 13760 (WERC, 6/75); Oneida County, Dec. No. 12247 (WERC, 11/73).

3/ Dec. No. 16456-E (WERC, 11/87).

3. The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 4/

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, it will find an employee to be a supervisor. 5/

It is clear from the record that Nielsen lacks any authority to effectively recommend the hiring of employees, since those are matters left to her supervisors, the Director of Occupational Therapy and the Administrator of the facility. Nielsen also testified without equivocation or contradiction that she had no present authority to promote, reward, transfer employees to another department, or layoff employees. While the Administrator stated that Nielsen would have the authority to transfer employees if she were a more assertive supervisor, that authority would be limited to reassigning activity aides from one resident to another. Although Nielsen does not currently participate in formal evaluations of employees, she does give her opinion of how someone is performing in her regular meetings with the Director.

The only time Nielsen was involved in what could be called a disciplinary incident was when she overheard an employee speaking sharply to a resident of the health care center, and told that employee that such behavior was inappropriate. Nielsen later wrote up the incident and gave the report to the Director. The Union accurately characterizes the written report of that incident as an "incident report" rather than a written reprimand. While the County argues that Nielsen's limited disciplinary involvement is a function of having "good employees", we are satisfied from this record that the Director and Administrator have retained effective disciplinary authority over any significant employee misconduct and that Nielsen would play no effective role in the disciplinary decision making process. We note that in Shawano County (Maple Lane Health Care Facility), 6/ we held that charge nurses who issued oral reprimands and may have had some input in various supervisory functions were leadworkers without a sufficient combination or degree of supervisory duties to be deemed supervisory employees.

The Coordinator does have some authority to direct and assign the four activity aides and volunteers under her. Since Sec. 111.70(1)(o) defines supervisory authority in terms of authority over employees and volunteers are not employees, 7/ we are concerned here only with the Coordinator's authority over the activity aides. Nielsen has the authority to assign duties and direct the activity aides in setting up special activities such as a volunteer banquet, a

4/ Town of Conover, Dec. No. 24371-A (WERC, 7/87); Ozaukee County, Dec. No. 23464 (WERC, 3/86).

5/ City of Wisconsin Rapids (Police Department), Dec. No. 20799-B (WERC, 8/87).

6/ Dec. No. 20996-A (WERC, 1/84).

7/ St. Croix County (Hospital), Dec. No. 11179 (WERC, 7/72).

county fair, and wrapping Christmas presents for residents. Nielsen also gives directions to the staff during the afternoon activities, when she is responsible for seeing that the staff members interact with residents, transport residents back to their units when necessary, and is generally responsible for seeing that the activities are being run smoothly. Nielsen also makes up a monthly calendar listing the activities and showing which staff members and which volunteers are assigned to those activities. However, Nielsen makes assignments with the approval of the Director, and does not change the basic standard rotation of the staff without approval from the Director. Furthermore, Nielsen does not have authority to grant employee requests for time off, vacations or holidays or to authorize overtime.

Turning to the level of pay, the Coordinator is paid \$9.25 per hour, or \$19,200 per year, and the employees under her are paid \$7.05 per hour. The Coordinator does not work overtime, but would receive compensatory time off if she did. The record establishes that the salary was determined by evaluating the work load and professional credentials required for the position, and then looking at its relative worth vis-a-vis other non-unit positions. Thus the substantial difference in the level of pay between the Coordinator and the activity staff is not primarily attributable to supervisory duties and responsibilities.

In summary, the record establishes that the focus of the the Coordinator position is supervising activities rather than supervising employees. Even if the Coordinator were to begin to exercise greater independent judgement in the direction of the activity aides, the absence of any significant authority in the hiring or disciplining of employees, the absence of any grievance responsibilities, and the absence of any ability to approve vacation request or to authorize overtime would continue to preclude a finding that the Coordinator is a supervisor. We are persuaded that these gaps of supervisory authority have far more to do with the job parameters established by the County than any alleged lack of assertiveness by the employee.

Based on all the factors, we conclude that the position of Activity Therapy/ Volunteer Coordinator neither has nor exercises a sufficient amount of supervisory duties and responsibilities to be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 7th day of April, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Henpe
A. Henry Henpe, Commissioner