

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

WISCONSIN COUNCIL 40,  
AFSCME, AFL-CIO

Involving Certain Employees of

BROWN COUNTY  
(MENTAL HEALTH CENTER)

Case III  
No. 11284 ME-292  
Decision No. 7954-C

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Appearances:

Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.  
Mr. Kenneth Bukowski, Corporation Counsel, Brown County, appearing on behalf of the County.

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

Wisconsin Council 40, AFSCME, AFL-CIO, having on June 1, 1984, requested the Wisconsin Employment Relations Commission to clarify an existing unit consisting of certain employees at the Brown County Mental Health Center, to determine whether the positions of Pharmacy Technician, Scheduling Secretary, and Community Support Program Coordinator should be included in said unit; and hearing in the matter having been held on July 16, 1984, before Raleigh Jones, a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared by August 16, 1984; and both sides having waived filing briefs by August 22, 1984; and the Commission, having considered the evidence and arguments, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Brown County, hereinafter referred to as the County, is a municipal employer having its principal offices at Brown County Courthouse, Green Bay, Wisconsin; and that among its governmental functions is the operation of the Brown County Mental Health Center.

2. That Brown County Employees Union, Local 1901, (Mental Health Center), AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing employees for the purpose of collective bargaining; and that its offices are at 2785 Whippoorwill Drive, Green Bay, Wisconsin.

3. That the 1983 collective bargaining agreement between the County and the Union contains the following recognition clause:

ARTICLE 2. RECOGNITION AND BARGAINING UNIT

The Employer recognizes the Union as the exclusive bargaining agent in a collective bargaining unit, consisting of all regular fulltime and all regular part-time employees, including licensed practical nurses, certified occupational therapists, radiological technologist, outreach worker, maintenance employees, barbers, beauticians, bus drivers, social worker assistant(s), nursing assistants, laundry employees, dietary personnel, volunteer coordinator(s), housekeeping employees, office clerical employees, and all other non-professional positions, but excluding superintendent, assistant superintendent, supervisors, medical technologist, recreational therapist, craft employees, registered nurses, social workers, registered occupational therapist(s), confidential secretary, and all other Brown County employees, as certified by the

Wisconsin Employment Relations Board 1/ on April 17, 1967, pursuant to an election conducted by the Board on April 6, 1967, and pursuant to subsequent W.E.R.C. rulings.

4. That at the outset of the hearing, the parties stipulated that the position of Pharmacy Technician, which is now excluded, should be included in the above bargaining unit and that the position of Scheduling Secretary, which is now excluded, should remain excluded from the above-described unit as a confidential employee.

5. That in April, 1984, the County created the contested position of Community Support Program Coordinator and developed the following position description:

Position: Community Support Program Coordinator

Department: Mental Health Center

Date: April, 1984

Position Purpose: Coordinates the Community Support Program and Family Care Program and provides direct client care under the program.

Position in Organization: Reports to Chief of Service for Adult Services; coordinates the work activities of three full-time and two part-time contract employees.

Dimensions:

1. Personnel - Responsible for coordination of services for two fulltime Community Support Workers, one call-in Community Support Worker, one Tri-Night Program Director and one part-time Tri-Night Driver.
2. Services - Oversees the Community Support Program with an approximate caseload of 100 clients and Family Care Program; provides direct service to approximately 30 clients.
3. Budget - Oversees budget for Community Support Program and Family Care Program.

Major Duties:

1. Plans and supervises the Community Support Program and Family Care Program; prepares annual work plans.
2. Initiates, defines and updates program procedures.
3. Assigns personnel, provides coordination and direction and evaluates contract performance.
4. Keeps statistics and makes periodic administrative reports on program progress and results.
5. Oversees the budget and prepares yearly budget request for Community Support Program and Family Care Program with review by Mental Health Services Chief, Adult Services.
6. Works with other agencies, including the courts and legal system, to provide comprehensive services to Community Support Program and Family Care Program clients.

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1/ Brown County (Hospital), Dec. No. 7954 (WERC, 4/67).

7. Evaluates referrals to the program and assigns cases.
8. Participates in treatment planning/discharge planning for patients returning to the community.
9. Acts as case manager for Community Support Program and Family Care Program clients and for clients residing in various halfway homes who receive medication management services from the Outpatient Services.
10. Acts as payee for eligible clients including working with Community Support Workers in determining an adequate budget and appropriate distribution of monies for the clients and making out checks for bills for clients.
11. Makes home visits to evaluate client's status in determining coordination and provision of care and makes arrangements for needed services including direct intervention, admission to inpatient services or referral to other services.
12. Provides direct services to Community Support clients (home visits, work in the community or telephone contact) including: (a) providing assistance to clients in learning and maintaining adequate activities of daily living skills; (b) provides support to clients and families in crisis or stress situations; (c) works with clients to ensure the proper use of medication (checking that there is an adequate supply, accompanying clients to pick up medications); (d) works with clients to ensure they keep scheduled appointments including providing transportation; (e) provides assistance in finding housing, and (f) provides linkage to other support systems in the community such as families, landlords or other agencies.
13. Provides public information regarding the programs to various community agencies and public groups.
14. Stays up to date on pertinent county, state and federal regulations associated with the programs.
15. Maintains records, progress notes, evaluations and other pertinent data regarding individual clients.
16. Serves on various committees regarding services for Community Support or Family Care clients.

Major Duties of Direct Subordinate Staff:

1. Community Support Worker - Provides various follow-up activities such as home visits and client

knowledge of the provisions of Federal, State and local legislation, rules and regulations pertaining to programs being coordinated; knowledge of various follow-up methods and procedures; knowledge of methods of counseling; ability to coordinate programs; ability to establish effective working relationships with clients and staff; ability to maintain emotional stability in stress situations; ability to initiate contact with others; ability to communicate orally and in writing; demonstrated skills in problem solving; good personal ADL skills including use of checkbook and budgeting.

Education and Experience:

Bachelor's degree in mental health or related field with two (2) years of experience in the mental health field; or any combination of education and experience which provides the necessary knowledge, skills and abilities. Must hold a valid Wisconsin driver's license.

6. That the position of Community Support Program Coordinator was filled by Pat Everhard in May, 1984; and that the County, contrary to the Union, contends that Everhard is a supervisory and managerial employee and should be excluded from said unit.

7. That for four (4) years prior to May, 1984, Everhard was the sole Outreach Worker for the Community Support Program and was in the bargaining unit; that as Outreach Worker, she provided services covering the basic needs of the chronically mentally ill who had been discharged from the Mental Health Center and were attempting to assimilate into society; that these services consisted of home visits, taking the clients shopping, cleaning their apartments, working with landlords and assisting them with various social agencies; that Everhard's case load as the Outreach Worker consisted of 45-50 clients; that Everhard was assisted in providing these services by three (3) full-time and two (2) part-time employees known as "contract employees"; that these contract employees are under individual contracts to the County to perform client assistance and make home visits, but they are neither County employees nor covered by County policies; that as an Outreach Worker, Everhard participated in 10-15 interviews over the last few years to fill three (3) such contract positions; that the interviewing was done by William Jones, Chief of Adult Services and Everhard's supervisor, Betsy Fultz, the Registered Nurse for the Outreach Department, and Everhard; that the decision of which candidate to hire was a joint decision made by the group after the group resolved any differences of opinion as to which candidate to hire; that as the Outreach Worker, Everhard did not evaluate or discipline the contract employees, but two (2) years ago she recommended to Jones the discharge or induced resignation of a contract employee whose work she was dissatisfied with, and that the contract employee eventually resigned; that in May, 1984, Everhard was upgraded from Outreach Worker to the sole Community Support Program coordinator; that this upgrading was due to the growth in the Community Support Program; that three (3) years ago there were 35 clients in the program, last year there were 100, and there are 85 at present; that Everhard's former position of Outreach Worker is now vacant, but that Jones hopes to fill the position; that the money formerly paid to the Outreach Worker has been transferred to pay the Community Support Program Coordinator; that Everhard makes \$1,500 a year more as Coordinator than she did as Outreach Worker; that Everhard was not required to serve a probationary period in her new position as Coordinator; that the work formerly done by the Outreach Worker is now being done by the Coordinator and the five (5) contract employees; that Everhard coordinates both the Community Support Program and the Family Care Program; that Everhard now provides direct service to about 30 clients, and schedules the remaining 55 clients with the contract employees; that about one-half of Everhard's time is spent coordinating client services and making home visits, while the remainder of her time is spent evaluating client referrals to the Community Support Program from hospitals, inpatient workshops and families, assessing client needs, assigning and scheduling contract staff to clients, scheduling in-service and training for the contract employees, reviewing client progress notes prepared by the contract employees, preparing statistics and reports on program results, serving as money manager for clients by acting as payee for their bills, and coordinating the work of the contract employees in providing client assistance and making home visits; that Everhard's decisions regarding the contract employees are not reviewed daily by her supervisor (Jones), but that she and Jones periodically discuss ongoing activities and developments; that the coordination of the Community Support Program was formerly under Jones' direction;

that Jones fills in for Everhard when she is sick or on vacation; that, although Everhard believes she has the authority as Coordinator to evaluate, discipline or discharge the contract employees, she had not done so as of the time of the hearing; that the Coordinator is more appropriately characterized as a lead worker supervising an activity rather than a supervisor in charge of subordinates; and that Everhard does not exercise supervisory duties and responsibilities in sufficient combination or degree so as to make her a supervisory employee.

8. That the budgeted total for the Community Support Program and the Family Care Program in the 1984 budget is \$98,452; that starting in 1985, Everhard will be responsible for developing a budget for the Community Support and Family Care Programs; that Jones will assist Everhard in developing the budget the first year; that, after the budget is developed, it first will be submitted to Jones for review, who in turn will submit it to Program Director Daumueller, who then will submit it to the Unified Board for the Mental Health Center; that Everhard will be responsible for overseeing the appropriate expenditures from this budget; that Everhard does not know if she can transfer money within the budget; that she has not purchased anything, because no staff member other than Program Director Daumueller can make purchases; that she has authorized payment for family care to the Mental Health Center which money came out of the "Community Support Room and Board" account of the budget; that this year, Everhard will work with Jones to develop the annual plan, which summarizes the long and short term goals, objectives and standards for the Community Support Program, and that next year she will have full responsibility for developing the annual work plan; that Everhard will also be responsible for writing a state grant requesting funds for contract employees to work with the chronically mentally ill in the community; that this grant determines the type and level of service that is to be provided, and includes the amount of wages paid to the contract employees; that the contract employees sign individual contracts with the County which are negotiated by Mental Health Coordinator Cornette, and that Everhard is responsible for implementing the terms of these individual contracts; that Everhard works on various planning committees related to the chronically mentally ill, and serves as liaison between the Community Support Program and the rest of the Mental Health Center staff by attending inpatient meetings, outpatient meetings, and Adult Service staff meetings; and that Everhard does not participate in any significant degree in the formulation, determination and implementation of management policy, nor does she have the effective authority to commit her employer's resources in sufficient manner or degree so as to render her a managerial employee.

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

#### CONCLUSION OF LAW

1. That the occupant of the position of Community Support Program Coordinator is neither a supervisory nor managerial employee and therefore is a "municipal employee" within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act.

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

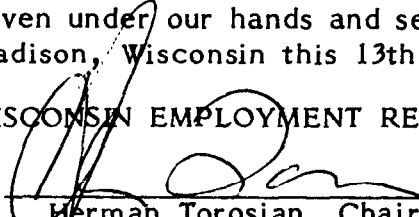
#### ORDER CLARIFYING BARGAINING UNIT 2/

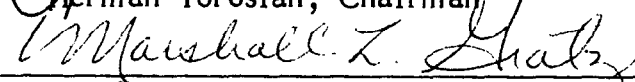
That the position of Community Support Program Coordinator, currently occupied by Pat Everhard, is hereby included in the bargaining unit described in Finding of Fact 3.

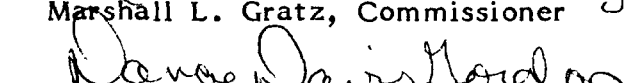
Given under our hands and seal at the City of  
Madison, Wisconsin this 13th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

(See footnote 2 on Page 6).

- 2/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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. 227.20 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.

BROWN COUNTY (MENTAL HEALTH CENTER)

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

BACKGROUND

The Union's petition alleged that the positions of Scheduling Secretary, Pharmacy Technician and Community Support Program Coordinator should be included in the bargaining unit. At the outset of the hearing, the parties agreed the position of Pharmacy Technician, which is now excluded, should be included in the bargaining unit and that the position of Scheduling Secretary, which is now excluded, should remain excluded from the bargaining unit as a confidential employee. Remaining at issue is the status of Pat Everhard, who occupies a recently created position of Community Support Program Coordinator. The County contends that the position is both supervisory and managerial and therefore should be excluded from the bargaining unit. The Union disputes this contention, arguing that the position is neither supervisory nor managerial and therefore should be included in the bargaining unit.

DISCUSSION

Due to growth in the number of clients served by the Community Support Program, the County in May, 1984, created a new position of Community Support Program Coordinator. The task of coordinating the Community Support Program had previously been performed by William Jones. Pat Everhard, who was the Outreach Worker for the Community Support Program was upgraded to fill the new position. As the Outreach Worker, Everhard had provided services (including home visits) to between 45-50 clients. After Everhard was upgraded, the duties of the Outreach Worker position were subsequently divided among Everhard and the five contract employees, since the position of Outreach Worker was not filled. As Coordinator, Everhard now spends half of her time providing direct service (including home visits) to about 30 clients, and the remainder of her time scheduling clients with the contract employees, evaluating client referrals and assessing client needs, reviewing client progress notes, scheduling in-service training for contract employees, preparing statistics on program results, serving as client money manager/payee, and coordinating the work of the contract employees. While the tasks of scheduling in-service and serving as money manager/payee are new duties for Everhard which she did not perform as Outreach Worker, she continues to evaluate client referrals, assess client needs, prepare statistics and coordinate the work of the contract employees, much as she did as the Outreach Worker, except that she now spends more of her time on these tasks because her client case load has been reduced.

Section 111.70(1)(o)1 of the Municipal Employment Relations Act defines "supervisor" as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievance or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In determining whether the statutory criteria of Sec. 111.70(1)(o)1 are present in sufficient degree or combination to warrant the conclusion that a position is supervisory, we consider the following criteria:

1. The authority to recommend effectively the hiring, promotion, transfer, discipline, or discharge of employees;
2. The authority to direct and assign the work force;
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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. <sup>3/</sup>

Not all of the above factors need be present, but if they appear in a sufficient combination, we will find an employee to be a supervisor. <sup>4/</sup>

The Commission is not persuaded that the duties listed above which Everhard performs in addition to her client case load are sufficient to make her position supervisory. Instead, those duties are indicative of the fact that Everhard has assumed more responsibilities for coordinating the Community Support Program and now serves as leadworker for the contract employees. While the record indicates that as the Outreach Worker Everhard participated in interviewing potential contract employees with her supervisor and another employee, the decision of which applicant to hire was reached by group consensus. Everhard's limited involvement in the hiring process with no other supervisory responsibilities is not sufficient to exclude her as a supervisory employee. Additionally, we note that the job description of her newly created position, which is quite extensive, does not require any responsibility in the hiring process. Finally, the Commission is not persuaded that Everhard's potential, but unexercised, authority to evaluate, discipline and discharge is sufficient basis to establish supervisory status. Again, the job description of the position does not require the involvement of Everhard in the effective discipline or discharge of employees.

In view of the statutory definition of the term "supervisor," and after considering the above criteria, we conclude that on the basis of the record, Pat Everhard is not a supervisor within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act.

With respect to the County's contention that Everhard is a managerial employee and should therefore be excluded from the bargaining unit described herein, a review of the record indicates that Everhard is not a managerial employee. While Everhard has assumed the additional duties of developing the annual plan for the Community Support Program and developing a budget for the Community Support and Family Care Programs, as well as writing the state grant requesting funds for the contract employees, she has not, as of the time of the hearing, performed these responsibilities without the assistance of her supervisor. Instead, these are responsibilities that she expects to perform in the future. It is also noted that when Everhard submits her proposed budget next year to her supervisor for review he in turn will then submit it to the Program Director.

We have consistently held that in order for an employee to be found to be a managerial employee, said employee must participate in the formulation, determination, and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. <sup>5/</sup> The record does not indicate that Everhard has this responsibility or that Everhard's participation in the development of the budget involves significant monetary decisions. Rather, the process appears to be primarily an extension of the

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3/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); City of Manitowoc Dec. No. 18590 (WERC, 4/81).

4/ Dodge County, Dec. No. 17558-C (WERC, 3/81).

5/ Oneida County, Dec. No. 9134-D (WERC, 7/83); Green County, Dec. No. 16270 (WERC, 3/78); City of Wausau, Dec. No. 14807 (WERC, 7/76); Door County, Dec. No. 14810 (WERC, 7/76).



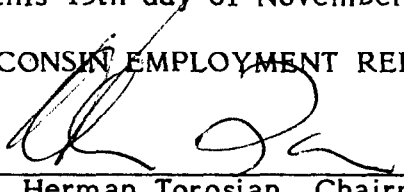
current budget with adjustments for anticipated changes. Similarly, it appears that the state grant and the annual plan which Everhard will write will be developed within the confines of existing programs and policies. As a result, we conclude that Everhard's authority with regard to the budget, annual plan and grant writing is more ministerial than managerial in nature. Accordingly, Everhard is not a managerial employee.

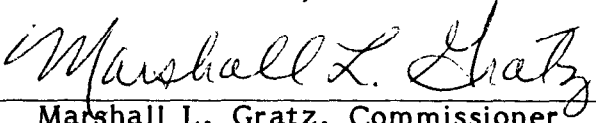
On the basis of the foregoing, we conclude that the Community Support Program Coordinator is neither supervisory nor managerial and, therefore, is a "municipal employee" within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act, and is included in the collective bargaining unit described herein.

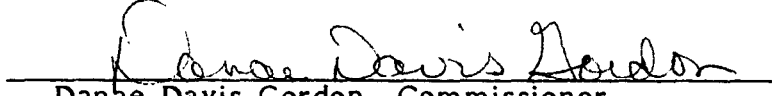
Dated at Madison, Wisconsin this 13th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner