

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
BROWN COUNTY : Case 3
Involving Certain Employees of : No. 44051 ME-418
BROWN COUNTY : Decision No. 7954-F
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Appearances:
Mr. James W. Miller, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2785 Whippoorwill Drive, Green Bay, Wisconsin 54304, for the Union.
Mr. John C. Jacques, Assistant Corporation Counsel, Brown County, 305 East Walnut Street, Room 303, P.O. Box 1600, Green Bay, Wisconsin 54305-5600, for the County.

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

Brown County, on May 21, 1990, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit of certain employees of Brown County (Mental Health Center) to determine whether the Volunteer Services Specialist should be excluded from said unit. Hearing in the matter was held on September 18, 1990 in Green Bay, Wisconsin before Examiner Jane B. Buffett, a member of the Commission's staff. A transcript of the proceedings was received on October 18, 1990. The parties submitted briefs, on November 2, 1990. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Brown County, herein the County, is a municipal employer and has its offices at 305 East Walnut Street, Green Bay, Wisconsin 54305.
2. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization, and has its offices at 2785 Whippoorwill Avenue, Green Bay, Wisconsin 54304.
3. The Union is the certified, exclusive bargaining representative of County employees in the following unit:

all regular full time and all regular part time employees of Brown County employed in the Brown County Hospital, including licensed practical nurses, certified occupational therapists, laboratory technician, maintenance employees, barbers, beauticians, bus drivers, social worker assistant, aides, orderlies, laundry employees, dietary personnel, volunteer-coordinator, agricultural employees, housekeeping employees and office clerical, but excluding Superintendent, Assistant Super-intendent, supervisors, craft employees, registered nurses, social workers, registered-occupational therapist, confidential secretary and all other employees of the Municipal Employer, 1/

4. On May 21, 1990, the County petitioned the Commission to clarify the above-described bargaining unit to exclude the position of Volunteer Services Specialist at the Mental Health Center. 2/ The Union opposed the exclusion.
5. The Brown County Mental Health Center is a 106 bed facility which includes 84 beds for intermediate care for the mentally retarded. The Volunteer Services Specialist works within the Rehabilitation Services Department. She recruits and trains volunteers who come to the Center to help lead social activities such as holiday dances, bingo games and field trips. Volunteers also work in the canteen which makes items available for patients to

1/ Brown County, Dec. No. 7954 (WERC, 4/67).
2/ The petition referred to the disputed position as the "Volunteer Coordinator." At the hearing, the parties and the evidence identified this position as "Volunteer Services Specialist."

purchase and the Volunteer Services Specialist makes decisions regarding the stocking of said items at the canteen. The Volunteer Services Specialist runs the Resident Council meetings at which resident representatives discuss their opinions and desires regarding the canteen, meals, social life and future activities. The Council meets once a month for approximately 30 minutes. As part of her responsibilities for volunteers, the Volunteer Services Specialist must address community groups and keep records regarding volunteers, their participation and abilities. The Mental Health Center expects the Volunteer Services Specialist to have good speaking and writing skills in order to project a good image of the Center to community leaders, many of whom are college graduates.

6. The current incumbent of the position of Volunteer Services Specialist is a temporary employee, Carin Higgins, who had been in the position for two months at the time of the hearing. Higgins holds a college degree with a major in Wellness and Physical Education. She has two-and-a-half years' experience in handling volunteers for her previous employer and that experience is more directly relevant to the responsibilities of Volunteer Services Specialist than is her educational background.

7. The most recent position description for this Volunteer Services Specialist was written on July 23, 1990. That position description includes the following relevant portion:

EDUCATION AND EXPERIENCE:

Bachelor's Degree in Human Service or related field plus two years experience as a volunteer and/or coordinator of a Volunteer Services Program (preferred), some of which shall be in a mental health setting.

. . .

The corresponding provision in the December 23, 1977 position description was as follows:

Education and Experience

Any combination equivalent to a bachelors degree and two years experience as a volunteer, some of which shall be in a mental health setting. Any combination equivalent to four years experience in coordinating volunteer services.

8. The Volunteer Services Specialist is not engaged in work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process.

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

CONCLUSION OF LAW

The position of Volunteer Services Specialist is not held by an employee who is a professional within the meaning of Sec. 111.70(1)(L), Stats.

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 3/

The position of Volunteer Services Specialist shall continue to be included in the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 6th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____

3/ Please find Footnote 3/ on page 4.

A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

3/ 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.

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

BACKGROUND

After the former incumbent of the position of Volunteer Services Coordinator retired in May 1990, the County retitled the position "Volunteer Services Specialist" and added a requirement that applicants for the position hold a college degree with a major in Human Services or a related field. At the same time, the County initiated this proceeding by filing a petition for unit clarification which asserted that the position was professional, and, as such, should not continue to be included in the unit of non-professionals. 4/

POSITIONS OF THE PARTIES

The County

The County argues that the employee in the position of Volunteer Services Specialist, is a professional, and, as such, lacks a community of interest with the other members of the non-professional bargaining unit involved in this case. Additionally, it argues her interests are dissimilar to those of the other unit members and her interests should not be subordinated to the interests of the unit. The County cites a Commission decision in which a similar position was held to require the exercise of independent judgment and discretion and the employee was found to be professional. It also cites cases for the proposition that a position can be professional even if a college degree is not required.

The Union

The Union asserts the position is not professional, noting that a college degree was not a requirement of the 1977 job description and the employee who held that position without a college degree fulfilled all the duties included in the revised job description, dated July 23, 1990. Furthermore, the current incumbent of the disputed position testified that her college degree is unrelated to her job responsibilities.

DISCUSSION

To evaluate the County's contention that the Volunteer Services Specialist is a professional employee, we turn to Sec. 111.70(1)(L), Stats., which provides that a professional employee is:

1. Any employee engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
 - a. Has completed the courses of specialized

4/ Section 111.70(4)(d)2.a., Stats. provides in pertinent part:

The Commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit.

intellectual instruction and study described in subd. 1.d.;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

All of the criteria in 1 or 2, above, must be present for a position to be deemed professional. 5/

Assuming, for the sake of analysis only, that the duties of the Volunteer Services Specialist, described in Finding of Fact 5, are sufficiently intellectual in character and involve a consistent exercise of discretion and judgment so as to meet the criteria of subsections a, b, and c, of paragraph 1, the criterion of subsection d, which describes the body of knowledge relied upon by a professional employe, would still have to be met for the Commission to conclude the Volunteer Services Specialist is a professional employe.

The County correctly argues that the statute does not require that the incumbent of a position hold a college degree for the position to be found professional. This is true because the statute defines a professional position as one that cannot be performed without knowledge of a certain kind, i.e., that which is usually acquired through "a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital." In other words, the course of study is a definition of the required knowledge which is the criterion, but is not the criterion itself. It necessarily follows that some professional positions require this kind of knowledge even though the incumbent acquired it through a means other than a formal program of instruction or a college degree.

Thus, in Outagamie County, Dec. No. 21143-A (WERC, 10/86) and Sun Prairie, Dec. No. 20841-B (WERC, 10/86), cited by the County, the Commission found that although the incumbents did not possess a degree, the required knowledge was of the type customarily acquired through social work and engineering degrees, respectively and therefore satisfied the Sec. 111.70(1)(L)1.d. test.

By the same token, it follows that an employer might insist an applicant for a position hold certain specialized educational credentials, but if the performance of the job duties does not require that body of knowledge, the position would not be found to be professional. In other words, an employer cannot cause a position to be professional within the meaning of the Statute by establishing educational standards which do not provide the knowledge necessary to fulfill the tasks associated with the position.

In this case, the County asserts that the knowledge required to perform the duties of the Volunteer Services Specialist is acquired through a college degree with a major in the area of Human Service or a related field. To test this assertion, it is necessary to review the responsibilities of the Volunteer Services Specialist.

Most of the Volunteer Services Specialist's time is devoted to recruiting, training and supervising the volunteers who work with residents in social functions and who staff the canteen. She also leads the meetings of the Resident Council which meets each month for approximately half-an-hour. There was no evidence that a degree in Human Service or a related field was necessary to enable the Volunteer Services Specialist to work with the residents. 6/ The County did not argue that the Volunteer Services Specialist was acting as a social worker in her contacts with the residents.

The County did, however, argue that a college education was necessary for the desired level of accomplishment in speaking and writing skills. The County presented convincing evidence that these skills were necessary in order to project an appropriate image of the Center to the public and in order to recruit volunteers. Additionally, Nursing Home Administrator Dorothy Riley testified the Volunteer Services Specialist needs to have judgment, creativity and initiative, in part because the Volunteer Services Specialist does not receive intensive supervision from her immediate superior, the Volunteer Services Manager. While the skills of speaking, writing, and working independently are likely to be found in a person who has had the benefit of a college education, the record does not demonstrate that they are skills that are specifically addressed and taught in a major in a Human Service field. When asked why the requirement of a major in Human Service was added to the July, 1990 job posting, the Rehabilitation Services Manager testified that she and the Nursing Home Administrator decided the major would make the education "more specific" but there was no evidence that a Human Service major was more

5/ Marinette County, Dec. No. 26675 (WERC 11/90).

6/ For an example of an employe who works with mentally ill clients but is not a social worker and was not found to be professional, see the discussion of the Community Support Worker in Marinette County, Ibid.

directly related to the work of the Volunteer Services Specialist than any other college major. This is emphasized by the fact that the incumbent, who has been performing satisfactorily, does not have a degree in Human Service or a related area as defined by the employer. The incumbent's testimony reinforced Administrator Riley's perspective regarding needed skills and abilities. Further, there is no evidence that volunteer program administration skills and knowledge, are obtained through a "prolonged course of specialized intellectual instruction" as required under Sec. 111.70(1)(L)1.d., Stats. We therefore conclude that the skills necessary for the performance of this position are the skills derived from a general academic education, and therefore explicitly excluded from the statutory definition of a professional.

In summary, since we are persuaded that the specialized study of a college degree with a major in Human Service is not necessary for the performance of the duties of the Volunteer Service Specialist, the position is not professional and should continue to be included in the unit of non-professionals represented by the Union.

Dated at Madison, Wisconsin this 6th day of March, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner