

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

ROCK COUNTY

Involving Certain Employees of

ROCK COUNTY

Case 10

No. 52546 ME-3461

Decision No. 9428-A

In the Matter of the Petition of

ROCK COUNTY

Involving Certain Employees of

ROCK COUNTY

Case 32

No. 52544 ME-3459

Decision No. 13131-C

In the Matter of the Petition of

ROCK COUNTY

Involving Certain Employees of

ROCK COUNTY

Case 55

No. 52545 ME-3460

Decision No. 14870-A

In the Matter of the Petition of

ROCK COUNTY

Involving Certain Employees of

ROCK COUNTY

Case 120

No. 52543 ME-3458

Decision No. 18239-A

No. 9428-A

No. 13131-C

No. 14870-A

No. 18239-A

Appearances:

Mr. Eugene Dumas, Assistant Corporation Counsel, Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin 53545, for Rock County.

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Ms. Marianne Goldstein Robbins, 1555 North Rivercenter Drive, Suite 202, Milwaukee, Wisconsin 53212, for Lodge 1266, International Association of Machinists and Teamsters Local Union No. 579.

Mr. John S. Williamson Jr., Attorney at Law, 103 West College Avenue, #611, Appleton, Wisconsin 54911, for the Association of Mental Health Specialists.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

On May 1, 1995, Rock County filed two petitions with the Wisconsin Employment Relations Commission, seeking elections in two units described as "all regular full-time and regular part-time employes in the classification of registered nurse of the Rock County Human Services Department and the Rock County Health Care Center, but excluding supervisors, craft employes, physicians, clerical employes, temporary employes and independent contractors," and "all regular full-time and regular part-time professional employes of the Rock County Human Services Department and the Rock County Health Care Center, but excluding supervisors, craft employes, physicians, registered nurses, clerical employes, temporary employes and independent contractors."

On July 3, 1995, Rock County Assistant Corporation Counsel Eugene Dumas wrote Commission General Counsel Peter Davis as follows:

The purpose of this letter is to clarify the intent of the two Petitions for Election, dated April 21, 1995, filed on behalf of Rock County by Mr. Bruce Patterson which initiated the above-referenced cases.

Rock County seeks to have the Commission establish bargaining units which shall appropriately reflect the Rock County Board of Supervisors' adoption of a Sec. 46.23, Wis. Stats., Human Services Department, and the resulting community of interests shared by the professional employees in that Department. After carefully studying the Commission's analysis of the factors present in Marinette County, Dec. No. 26675 (WERC, 11/90), Rock County concluded that asking for the two units identified in our petitions would represent the best balance of the seven factors enumerated in that decision.

While Rock County was very much inclined to seek a single unit comprised of all professional employees employed by the Human Services Department, it appeared that it would better conform to the Commission's overall analysis to avoid having a relatively few registered nurses now presently part of a division of a bargaining unit comprised of all the nurses employed by Rock County included in a unit largely comprised of social workers. This conclusion seemed strongly supported by the fact that at the same time, a strictly department-based reorganization of the bargaining units would result in a similarly small number of "social worker" type employees being subsumed into the nurse dominated bargaining unit of Health Care Center professional employees.

In fact, we believe establishing either the type of units described in Rock County's April 21 petitions, or a Human Services Department bargaining unit (with a residual Health Care Center professional employee unit), would be substantially equivalent in allowing for collective bargaining relationships consistent with the functional design and governmental mission of a Sec. 46.23 Human Services Department.

I have written this letter because we understand it to be our obligation to identify those units which we believe are most appropriate under the existing law. We do not understand we can "plead in the alternative," so to speak. However, for the sake of all parties and in the interest of conserving the resources of the Commission, we felt we should clarify our position that there is a close question as to which of two alternative sets of units are most appropriate. Rock County understands that, based on the record which is developed, the Commission is not restricted to just approving or rejecting the specific units identified in the County's petitions on file.

By providing the Commission and counsel for all parties with this clarification of our position it is our hope that we may facilitate the Commission's efforts to establish the most appropriate bargaining units in a way which will be fair to all parties and minimize unnecessary confusion and expense.

The labor organizations representing the incumbents in the subject positions, the Association of Mental Health Specialists, Teamsters Local Union No. 579 and Lodge 1266 of the International Association of Machinists and Aerospace Workers, all opposed the petitions. Hearings were held in Janesville, Wisconsin before Examiner Stuart Levitan, on October 24 and 25, 1995, and February 13, 1996. The parties submitted written arguments by March 22 and reply briefs by March 29, 1996.

By letter dated June 18, 1996, the Commission advised all parties that:

. . .the Commission believes it is appropriate for the Commission to consider the alternative of a single professional Human Services Department unit.

Should any of you believe consideration of this alternative warrants the need for additional hearing and/or argument, please make such a request. . .

By letter dated July 3, 1996, the Commission further advised all parties that:

. . .the Commission continues to believe the single professional Human Services Department unit is an appropriate option for Commission consideration. This option was first raised by the County in a July 3, 1995 letter to the Commission prior to any hearing. However, because the Examiner may have led the parties to believe the single unit option was not appropriate for Commission consideration, the Commission thought it should:

- (1) explicitly advise you of the viable status of the single unit option, and
- (2) give you the opportunity to request additional hearing/argument.

. . .

In response to a request from Machinists, additional hearing was held in Janesville, Wisconsin on September 20, 1996 before Examiner Peter G. Davis.

All parties thereafter filed additional written argument, the last of which was received October 16, 1996.

The Commission, being fully advised in the premises, now issues the following

FINDINGS OF FACT

1. Rock County, herein the County, is a municipal employer with offices at 51 South Main Street, Janesville, Wisconsin.

2. The Association of Mental Health Specialists, herein the Association, is a labor organization with offices at 103 West College Avenue, Appleton, Wisconsin. The 1994-95 collective bargaining agreement between the Association and the County covered approximately 132 professional employees working at both the Human Services Department and the Health Care Center in the positions of Staff Nurse, Psychologist, Social Worker, Vocational Educator, Community Education Specialist, Inservice Coordinator, Recreational Therapist, Inservice Instructor, Admissions Officer and Outpatient Therapist. All professional represented employees of the Health Care Center are included in the Association bargaining unit.

The Association became the bargaining representative for the employees covered by the 1994-1995 contract through the following evolution. On June 8, 1972, the Wisconsin Nurses Association (WNA) was certified as the exclusive bargaining representative for a unit consisting of "all...registered nurses employed at the Rock County institutions, excluding supervisors and all employees of the Municipal Employer." 1/ On December 6, 1974, the Association of Mental Health Specialists was certified as the exclusive representative for a unit consisting of "all regular full-time and regular part-time psychologists, social workers, clinical pastoral fellows (chaplain), the Research Librarian, TV Grant Coordinator, Associate TV Grant Coordinator and Admissions Officer, but excluding the Alcohol and Drug Abuse Counselor, the Volunteer Coordinator," and all other employees of Rock County. 2/ On December 15, 1980, following cessation of bargaining activities by the WNA, the Association was certified as the exclusive representative of "all regular full-time and regular part-time registered nurses employed by Rock County Health Care Center." 3/

1/ Case XXII, Dec. No. 10978 (WERC, 6/72).

2/ Case XXXII, Dec. No. 10978 (WERC, 12/74).

3/ Case CXX, Dec. No. 18239 (WERC, 12/80).

Through the collective bargaining process, the Association and the County merged these two bargaining units into a single unit covered by a single contract.

The collective bargaining agreement between the Association and the County indicates a division of the workforce into a Psycho-Social Worker Division and a Nursing Division, with approximately 57 and 69 employees, respectively. The agreement, signed by the President of each Division, gives separate treatment to the respective divisions in the following areas: professional performance; leaves of absence; leaves with pay; holidays; vacations; sick leave; benefits in lieu of wages; hours of work, classification and premium pay; private practice; termination, and layoff/rehire. Some of this treatment is separate primarily in formatting; other aspects are substantively different. The Psycho-Social Worker Division reflects a five-classification, five-step wage schedule which, as of May 7, 1995, ranged from a hiring step, lowest classification of \$11.39 to a tenth-year, highest classification of \$22.85. The Nursing Division reflects a four-classification, five-step schedule which, as of the same date and benchmarks, ranged from \$16.11 to \$20.81. From approximately the mid-1980's through the early 1990's, there were at least three occasions on which the successor collective bargaining agreement between the Association and the County provided a substantially higher wage increase for nurses than for psycho-social workers. The County was not successful in obtaining Association approval for a proposal to allow the County to unilaterally implement mid-term wage increases for the nurses.

3. The International Association of Machinists and Aerospace Workers Lodge 1266, herein the Machinists, is a labor organization with offices at 1555 North Rivercenter Drive, Milwaukee, Wisconsin. The 1994-95 collective bargaining agreement between the Machinists and the County, which covers approximately 71 employees, includes the following recognition clause:

ARTICLE II - RECOGNITION

2.01 The Employer recognizes the Union as the exclusive collective bargaining agent for all social workers of Rock County Department of Social Services & Community Programs (Public Welfare), but excluding all other professional, non-professional and supervisory personnel employed by said Department.

The positions in this unit were initially represented by a predecessor to Local 1266, District 68, pursuant to the February 14, 1970 certification of District 68 as the exclusive bargaining representative of a unit consisting of "all social workers and social worker trainees employed in the

Rock County Department of Social Services." 4/ As of January 1, 1995, the positions represented in this unit are classified as either Social Worker I or II, with a total of six pay ranges and three pay steps, ranging from a low of \$12.69 to a high of \$18.23.

4. General Drivers, Dairy Employees and Helpers, Local Union No. 579, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, herein the Teamsters, is a labor organization with offices at 1555 North Rivercenter Drive, Milwaukee, Wisconsin. The 1994-95 collective bargaining agreement between the Teamsters and the County, which covers approximately 12 employees, includes the following recognition clause:

ARTICLE II - RECOGNITION

2.01 The Employer recognizes the Union as the sole and exclusive bargaining agent for all regular full-time and regular part-time employees of the Employer employed in Rock County by the Rock County Probation Department, excluding office clerical employees, supervisory and managerial employees, on matters pertaining to wages, hours and other conditions of employment for the bargaining unit described above.

The positions in this unit were initially covered by a September 20, 1976 certification of the Teamsters as the exclusive representative of a unit consisting of "all regular full-time and regular part-time probation officers employed by Rock County," excluding the standard exemptions. The County abolished the Probation Department and absorbed its staff into a new Youth Services Division within the Department of Social Services and Community Programs (DCC&CP), effective with the 1992 County budget. As of January 1, 1995, the positions within this unit, which is within the new Children and Family Services Division, were classified as either Probation Officer (with social worker certification eligibility) or Probation Officer (without such certification eligibility). Their target client population is delinquent adolescents, children between the ages of 12 and 17 who engage in activity which, if committed by an adult, would have been considered a criminal offense. Juvenile probation officers are not required to be certified or licensed as either a therapist or social worker; the collective bargaining agreement between the County and the Teamsters reflects a pay differential for employees who do have Wisconsin state certification as a social worker. Nine of the eleven current incumbents have such certification. The "social worker certification" positions have a seven-step pay grid capped at six years, ranging, as of January 1, 1995, from \$11.22 to \$14.40; the non-certified positions have a four-step (three-year) grid ranging from \$10.77 to \$12.41. Juvenile

4/ Case X, Dec. No. 9428 (WERC, 2/70).

probation officers spend approximately 15 hours of their 40-hour work week attending to court-related activities, and have their heaviest interaction with members of the law enforcement and administration of justice system. These employees have no professional interaction with members of the Social Services or Nursing Services divisions at the Health Care Center. They have some overlapping responsibilities with the Child Protective Services Division of the Human Services Department.

5. District 1199W/United Professionals for Quality Health Care, SEIU, AFL-CIO, CLC, is a labor organization with offices at 1619 Monroe Street, Madison, Wisconsin. The 1994-95 collective bargaining agreement between the County and 1199 includes the following recognition clause:

ARTICLE I - RECOGNITION

The County recognizes District 1199W/United Professionals for Quality Health Care, SEIU, AFL-CIO, CLC, hereinafter referred to as Union, as the exclusive collective bargaining representative for all regular full-time and all regular part-time registered nurses employed by the Rock County Health Department, excluding supervisory, managerial, confidential and temporary employees on questions of wages, hours and conditions of employment as certified by the Wisconsin Employment Relations Commission in Case CXV No. 26549 ME-1873 Decision No. 17970 dated September 10, 1980.

The County's petitions in the instant proceeding do not affect members of this unit.

The County employs a Jail Nurse, a regular, full-time position within the Sheriff's Department. This position is non-represented, and would not be affected by either of the pending petitions.

6. In the fall of 1990, the County Department of Social Services (DSS) was revealed to have systematically failed to take adequate steps to protect maltreated children over the previous decade. This disclosure was followed by a comprehensive investigation by State of Wisconsin Department of Health and Social Services (DHSS) analysts, which revealed further inconsistent and irregular social work practices and procedures. These developments gave impetus to County plans to establish a comprehensive Human Services Department, to develop and coordinate the delivery of human services throughout the County.

Subsequently, in 1991, the County merged the DSS and the Community Program

(commonly known as "the 51.42 program") into a Department of Social Services and Community Programs, itself responsible to two policy-making bodies, the Board of Social Services and the 51.42 Board. At that time, a county could create a single Human Services Department only by also merging its Developmental Disabilities into the new organization. Rock County did not wish to do so and thus did not create a single, unified Human Services Department.

At the initiative and behest of the County, the Wisconsin State Legislature in 1993 adopted statutory amendments to Sec. 46.23, Stats., which allowed counties to make programs for developmental disabilities an optional, rather than a mandatory, part of a unified Human Services Department and Board.

On March 8, 1994, pursuant to the statutory process, the County formally requested from DHSS approval to establish a Human Services Department. On March 16, 1994, DHSS Secretary Gerald Whitburn approved the County's creation of a Community Human Services Board and Department.

7. As of August, 1995, there were approximately 146 professional employees in the Human Services Department who are represented for the purposes of collective bargaining. The Divisions which comprise the Department and the labor organizations which represent Division employees are as follows:

Human Services Department Divisions

| | |
|------------------------------|------------------|
| Child Protective Services | 51 (Machinists) |
| Children and Family Services | 4 (Machinists) |
| | 13 (Association) |
| | 13 (Teamsters) |
| Outpatient Services | 16 (Association) |
| Adult Services | 18 (Machinists) |
| | 1 (Association) |
| Mental Health Services | 34 (Association) |

At present, the Human Services Department professional employees are in three bargaining units (Teamsters, Machinists, Association).

The units proposed in the County's Petition for Election filed May 1, 1995, would have the Human Services Department professional employees included in two bargaining units (nurses and all other professionals).

The units proposed in the alternative by the County in its July 3, 1995 letter would have the Human Services Department professional employees included in a single bargaining unit.

The County Health Care Center is not part of the Human Services Department. The Divisions which comprise the Center and the labor organizations which represent the Division employees are as follows:

| | |
|------------------|------------------|
| Nursing Services | 57 (Association) |
| Social Services | 12 (Association) |

At present, the Health Care Center professional employees are in the Association bargaining unit.

The units proposed in the County's Petition for Election filed May 1, 1995 would have the Health Care Center professional employees included in two bargaining units (nurses and all other professionals).

The units proposed in the alternative by the County in its July 3, 1995 letter would have the Health Care Center professional employees included in a single unit.

8. The positions within the bargaining units described in Findings of Fact 2, 3 and 4 have identical or substantially similar provisions for vacation, sick leave, sick leave pay-out, holidays, leaves of absence, and insurances.

The Human Services Department professional employees work at 11 different locations. Employees in the Machinists unit work at four of these locations; employees in the Teamsters unit work at four of these locations; and employees in the Association unit work at seven of these locations.

An overall Human Services Department professional employe bargaining unit will increase the existing diversity of supervision and work location already present in the existing professional employe bargaining units.

An overall Health Care Center professional employe bargaining unit will increase the commonality of supervision and work location when compared to the existing diversity of work location and supervision in the existing Human Services/Mental Health Association unit.

9. The professional employees in the Human Services Department perform duties relating to the provision of economic or personal assistance to residents of the County or

administrative support of the provision of said assistance. The employees employed in the various Divisions of said Department possess professional skills necessary to the performance of the above noted functions. While there are educational and functional differences among the professions working in the Department, the occupants of said professional positions perform their duties in the furtherance of common programs relating to economic and personal assistance to residents of the County.

The County's creation of a Sec. 46.23, Stats., Human Services Department created an overriding community of interest among professionals thereby organizationally combined into a single Department operating with the express statutory purposes set forth in Sec. 46.23, Stats.

10. Maintaining separate units of Human Services Department professionals in the context of the County's creation of a Sec. 46.23 Stats., Human Services Department constitutes undue fragmentation of bargaining units.

11. The County's creation of a Sec. 46.23, Stats., Human Services Department enhanced the existing community of interest among professional employees of the Health Care Center. The professional employees of the Health Care Center perform duties relating to the provision of health services to residents of the County or administrative support of the provision of said services. The employees employed in the two Divisions of the Center possess professional skills necessary to the performance of the above noted service. While there are educational and functional differences among the professions working in the Center, the occupants of said professional positions perform their duties in the furtherance of common programs relating to providing health services to residents of the County.

12. In the context of the creation of a Sec. 46.23 Stats., Human Services Department and the existing inclusion of all Health Care Center employees in a single unit, two units of Health Care Center professionals would constitute undue fragmentation of bargaining units.

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

CONCLUSIONS OF LAW

1. In the context of the creation of a Sec. 46.23, Stats. Human Services Department, the bargaining units set forth in Findings of Fact 2, 3 and 4 are not appropriate bargaining units within the meaning of Sec. 111.70(4)(d)2.a., Stats.

2. A bargaining unit consisting of "all regular full-time and regular part-time employees in the classification of registered nurse of the Rock County Human Services Department and the

Rock County Health Care Center, but excluding supervisors, craft employes, physicians, clerical employes, temporary employes and independent contractors" is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. A bargaining unit consisting of "all regular full-time and regular part-time professional employes of the Rock County Human Services Department and the Rock County Health Care Center, but excluding supervisors, craft employes, physicians, registered nurses, clerical employes, temporary employes and independent contractors" is not an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

4. A bargaining unit consisting of all regular full-time and regular part-time professional employes of the Rock County Human Services Department excluding managerial, confidential and supervisory employes is an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a. Stats.

5. A bargaining unit consisting of all regular full-time and regular part-time professional employes of the Rock County Health Care Center excluding managerial, confidential and supervisory employes is an appropriate unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

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

DIRECTION OF ELECTIONS

IT IS DIRECTED that elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within 45 days from the date of this Direction among employes of Rock County in bargaining units consisting of:

1. All regular full-time and regular part-time professional employes of the Rock County Human Services Department excluding managerial, confidential and supervisory employes;

and

2. All regular full-time and regular part-time professional employes of the Rock County Health Care Center excluding managerial, confidential and supervisory employes.

As to bargaining unit 1, the purpose of the election shall be to determine whether a majority of the employees who vote in said election desire to be represented by Association of Mental Health Specialists, International Association of Machinists Lodge 1266, or Teamsters Local Union No. 579 for the purposes of collective bargaining with Rock County with respect to wages, hours and conditions of employment or desire no representation.

As to bargaining unit 2, the purpose of the election shall be to determine whether a majority of the employes who vote in said election desire to be represented by Association of Mental Health Specialists for the purposes of collective bargaining with Rock County with respect to wages, hours and conditions of employment or desire no representation.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

ROCK COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

POSITIONS OF THE PARTIES

In support of its petition, the County asserts and avers as follows:

The existing bargaining units are clearly inappropriate and inconsistent with the intent of MERA in light of the changes which have occurred in the programs and county departments in which the covered employees work. No one has seriously attempted to dispute the county's on-going commitment to more effectively deliver services to county clients through the type of program review and reform activities culminating in the adoption of a Sec. 46.23 Human Services Department. This review and reform is restricted by the existing bargaining relationships, and made easier by the new units as proposed by the county.

The perspectives of the representatives of current bargaining units reflect the historical origins of those units and demonstrate why the existing bargaining unit structure is inconsistent with the goals of a Human Services Department and the purposes of MERA. In particular, the separate treatment of the psycho-social worker division and the nursing division in the agreement between the county and AMHS clearly demonstrates that the parties themselves have recognized that the subject positions have a separate community of interest, even as they work in the same department.

The bargaining units proposed by the county are clearly appropriate and consistent with the intent of MERA.

The record shows that all parties have been increasingly uncertain how to maintain proper relationships with regard to the various bargaining units; this has made more difficult assigning the most qualified employees and developing new roles or duties for specific positions necessary to support changing human service programs.

This confusion would be alleviated by a clarification of the existing units into a new structure. The units described in the county's initial petitions, or department-based units would be substantially equivalent to allowing relationships consistent with the functional design and governmental mission of a Sec. 46.23 Human Services Department.

The petitioned-for units do meet the generally applicable criteria. Given the anti-fragmentation policy of MERA, the fact that the petitions would reduce the number.

Bargaining history is relevant to determining whether the interests of one identifiable group of employees is being submerged to those of a larger group. The undisputed testimony here was that the Association's response to the Health Care Center's difficulty recruiting registered nurses was a classic case of a minority group's interest being submerged.

Given their separate target client population and separate statutory provisions, it is not unreasonable to not include the public health nurses with the proposed unit of Health Care Center nurses.

There is no Commission precedent which indicates that municipal employers may not reasonably attempt to partially implement the scope of integration and reorganization of human services authorized by Sec. 46.23, Stats. No case truly stands for the proposition that only a theoretically ideal form of bargaining unit structure will be approved, where the employer proposes a set of units which are consistent with the purposes of MERA and will constitute a great improvement over existing bargaining units.

The Commission should either direct elections be held in accordance with the petitions filed, or provide for elections in such alternative units as the Commission may deem to be more appropriate.

In support of its position that the petitions should be denied and dismissed, the Association asserts and avers as follows:

What the Commission has joined together, let no County tear

asunder.

This attempt to fragment a certified unit of employees who have negotiated together for more than twenty years in absence of even a claim that their working relationship with each other has been changed is unprecedented and far from insignificant.

The AMHS unit is not based either on department or profession, but rather, for more than twenty years, on the work that the AMHS nurses and AMHS psycho-social workers perform together in mental health; these positions are all the non-supervisory professionals in the interdisciplinary teams the county has established to deal with mental health needs. The other positions affected by these petitions are neither part of the interdisciplinary teams not intended to become so. The inclusion of the AMHS positions and the exclusion of all others is and always has been based on the uniqueness of the mental health work they perform.

The county's human services reorganization has not affected the AMHS positions in such a way as to justify these petitions. AMHS nurses had no contact with the Local 563 or Local 1266 positions before the merger, and they have none now. The AMHS Health Care Center psycho-social workers and the probation officers had, and have, no contact with each other, and have differing functions, departments, supervision, skills and target populations. The same distinctions hold true for the AMHS Human Services Psycho-social workers, except that the merger has placed the two employe groups in the same department. There is no basis for forcing the AMHS psycho-social workers and the juvenile probation officers into a unit that none of them wants.

The AMHS Health Care Center psycho-social workers and the Local 1266 social workers had minimal interaction before the merger, and continue that way working in their separate departments. The AMHS Human Services psycho-social workers have been placed in the same department with Local 1266 social workers.

The difficulties which the county alleged arose from having employes of the merged department represented by separate unions,

particularly as relates to the Community Services Position, were short-lived and readily cured. And in the case of the CHIPS Case Management position, the county's attempted transfer of the position from the AMHS unit to Local 1266 was held illegal by the examiner, and thus forms no basis for a claim of redress by the county.

One "extra" negotiation and one movement of a position from one unit to another because of changes in duties over a four-year period involving nine employees out of units consisting of well over 150 employees and the movement of a position from the one unit to another because of changes in duties is a totally inadequate justification for eviscerating the AMHS unit, reducing the unit for nurses by one-half, creating a unit that extends beyond the Human Services department and forces the subject positions into a unit none of them wants.

The Commission's decision in Marinette County provides no support for these petitions, in that the extent of reorganizations are different, the impacts are different, and the petitions are different. Further, unlike in Marinette, where employee representatives supported the employer's petition, all representatives in the instant case vehemently oppose it; clearly, this unanimous opposition is entitled to great weight, because the employees know what units are best able to serve their interests.

No one has argued that the AMHS unit is inappropriate, yet the county seeks to treat the bonds these employees have forged as a nullity. The AMHS members do not deserve such treatment.

The granting of the petitions would irrevocably disrupt a relationship between the AMHS positions that has benefitted them for more than twenty years, reduce the unit of nurses approximately by one-half, compel probation officers into a unit in which their unique interests will be submerged, and place psycho-social workers and juvenile probation officers in the same unit although they perform entirely different functions without any interaction. The harm to employees the granting of the petitions would cause vastly outweighs the slight inconvenience to the county their denial would cause.

No one contends the AMHS unit is not legally viable. It should not be dismembered.

The petitions should be dismissed.

In support of its position that the petitions should be dismissed, the Machinists and the Teamsters assert and aver as follows:

There is no basis to allow a unit clarification in the present case. Although the county has filed election petitions rather than a unit clarification petition, it is clear that what the county is asking the Commission to do is reorganize or clarify already existing units rather than to create new units. As such, the established commission principles on unit clarifications apply. The county's only argument in that regard is that the positions in dispute have been impacted by changed circumstances which materially affect their unit status. But that argument must also fail, for the only changed circumstance has been the creation of the 46.23 department.

That reorganization has had absolutely no affect on the wages, hours and conditions of employment of any represented individual, and in no way affected unit status. There is no common board overseeing the new department, as called for in statute. All individuals who worked separately and were represented by different bargaining units prior to the merger still work separately and are still represented by different bargaining units. The County cannot rely on the reorganization to justify the petitions because the units it seeks are not related to the reorganized structure, but slice across the new department and the Health Care Center.

Because the circumstances of this case do not meet the standards necessary for a unit clarification, the County's petitions must be dismissed.

Further, the individuals in the units sought by the County do not share a community of interests, in that there is no common bargaining history among the affected units; no commonality of duties and job skills; disparity of wages, hours and conditions of employment; differing workplaces, and a lack of common

supervision. Thus, these are not appropriate units.

The County's reliance on Marinette County is misplaced, in that the facts and circumstances here are totally distinguishable, such that decision neither supports the County's position, nor require the granting of the petitions.

The County's petitions should be dismissed and the bargaining units as they presently exist be maintained.

In further support of its position, the County posits further as follows:

On several critical points, the union briefs misrepresent the record before the Commission. Contrary to the union assertions, there are presently three bargaining units representing non-nurses and a fourth bargaining unit representing registered nurses employed by the human services department and the health care center, and the petitions filed by the county will result in a reduction of bargaining units if granted by the Commission.

There are a few obvious reasons for believing such glaring omissions are not an acknowledgment that the nurses are a separate unit. One is a self-defined interest in blocking the County's petitions; the other is that the petition on file clearly shows the County is seeking only one unit to represent what are largely social workers holding social worker licenses.

The Teamster/Machinist argument fails to take into account the fact that recognition clauses do not establish or alter bargaining units. And the unreliability of the Association's recognition clause is shown by its reference only to employees of the Health Care Center. As much as their separate historical origins and the current certification status of the bargaining units originally represented by each of the Association 'Divisions,' the extensive separation of the two Association 'Divisions,' incorporated into the written terms and practices of the collective bargaining agreement between the County and the Association, combined with their clearly distinct professional interests, warrants treating the nurses as being and having always been recognized as separate entities by the parties. Any deferral to

the parties' past agreements supports continued separation of the registered nurses from other professional employees.

The two proposed bargaining units will better serve the purposes of MERA than the existing units. Accordingly, the county asks for directions of elections as petitioned for, or for such alternative units as the Commission deems to be more appropriate.

In further support of its position, the Association posits further as follows:

The county's arguments do not show the existing units are inappropriate, or that the units it seeks are appropriate. Contrary to the county's assertions, the units for which it has petitioned will not appropriately reflect the actual community of interest of the Human Services Department, which community is, in fact, shown by the existing units. The County must, but cannot, show that the community of interest the Associations health care center psycho-social workers shares with the probation officers and social workers is greater than the community of interest they share with the Association nurses.

In discussing the alleged difficulties it faced in negotiating arrangements in the Adolescent Day Services Program, the County, contrary to its argument, acknowledges that negotiation with one professional union creates the same difficulties to those created by negotiations with two.

Contrary to the county, the Association has always acted as one union with one bargaining team. The County's assertion that the Association submerged the interests of nurses, who are approximately one-half the unit, is absurd.

The County's reason why public health nurses should not be placed together with mental health nurses, namely that they serve different clients, applies with equal force to the placement of the health care center psycho-social workers with the social workers and the juvenile probation officers, the departmental psycho-social workers with the juvenile probation officers, and with almost equal force to the placement of departmental psycho-social workers with the social

workers.

The petitions should be dismissed.

In further support of their position, the Machinists and Teamsters posit further as follows:

The County alludes to the seven factors for determining appropriate unit composition, but fails to apply them to the case at hand. Doing so would prove the County's attempt to reorganize the existing units to be without a basis in law.

The County has failed to show the existing units are more problematic than its proposed units would be. Particularly, the county magnifies a few isolated instances, fails to note the negotiations resolved the "problem," fails to acknowledge that it never asked for combined bargaining and in fact strove to keep bargaining separate, and fails to establish any showing that combining the units would create a like interest of all unit members. The County speaks in general terms and makes unsupported predictions as to why it thinks the new proposed units would be better than established ones. But neither future predictions nor employer convenience are criteria in determining present unit appropriateness.

The distinctions contained within the Association bargaining agreement do not support the county's argument, and the exclusion of the public health nurses shows that the petitions must be dismissed. The County fails to recognize that the units which it now seeks to combine all serve different clientele and have different target populations.

As the County did not petition for an alternative unit, and the parties did not present evidence on the propriety of any other configuration, the petitions should be dismissed and the existing units maintained.

DISCUSSION

The WERC has "the duty, when requested, to determine appropriate bargaining units in

accordance with the law. . ." 5/ Section 111.70 of the Municipal Employment Relations Act (MERA) defines a "collective bargaining unit" as "the unit determined by the Commission to be appropriate for the purpose of collective bargaining." In determining whether the unit sought is appropriate, the Commission must consider Sec. 111.70(4)(d)2.a. of MERA which provides, in part, as follows:

The commission shall determine the appropriate bargaining unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, division, institutions, crafts, professions or other occupational groupings constitute a unit.

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we have consistently considered the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and the skills of the employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to the wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of

5/ Madison Teachers v. Madison Metropolitan School District, 197 Wis. 2d 731, 762 (Ct. App. 1995).

bargaining units.

7. Bargaining history.

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2-5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. 6/

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." 7/ The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. 8/

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight 9/ and thus a single criterion or a combination of criteria listed above may be determinative. 10/ Consequently, the

6/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580, 592 (1984):

. . .when reviewing the Commission's decisions, it appears that the concept (community of interest) involves similar interests among employees who also participate in a shared purpose through their employment. (Emphasis supplied.)

7/ Section 111.70(4)(d)2.a., Stats.

8/ Marinette School District, Dec. No. 27000 (WERC, 9/91).

9/ Shawano-Gresham School District, Dec. No. 21265 (WERC, 12/83); Green County, Dec. No. 21453 (WERC, 2/84); Marinette County, Dec. No. 26675 (WERC, 11/90).

10/ Common purpose Madison Metropolitan School District, Dec. Nos. 20836-A and 21200 (WERC, 11/83); similar interests, Marinette School District, supra; fragmentation, Columbus School District, Dec. No. 17259 (WERC, 9/79); bargaining history, Lodi Joint School District, Dec. No. 16667 (WERC, 11/78).

Commission gives effect to the aforesaid statutory provision by employing a case-by-case analysis 11/ "to avoid the creation of more bargaining units than is necessary to properly reflect the employees' community of interest." 12/

The Commission addressed the issue of appropriate units following the creation of a 46.23 Human Services Department in Marinette County, Dec. No. 26675 (WERC, 11/90), in which we said:

The Commission finds that . . .the Sec. 46.23 reorganization approved by the County Board on October 19, 1989 and implemented on January 1, 1990 created an overriding community of interest among the two groups of professionals that were organizationally combined into a single Human Services Department as of the latter date. In Portage County, and Green County, the Commission, in applying the foregoing criteria, considered the implications for an existing bargaining unit structure among groups of professional employees when those groups are organizationally combined into a single Human Services Department for the first time by a Sec. 46.23, Stats. reorganization. In directing Human Services Department-wide elections among the professional employees in those cases, the Commission rejected many of the same kinds of contentions advanced herein by AFSCME. In both cases the Commission stated,

. . .that the commonality of the professional education, training and skills characteristic of the professionals involved herein, as well as the programs in which they are involved, and apparently as recognized by the State Legislature in enacting Sec. 46.23, Stats., and the County in establishing the Department of Community Human Services, in accordance with such statutory provision, creates a community of interest among said professional employees which overrides other factors, including

11/ Appleton Area School District, Dec. No. 18203 (WERC, 11/80).

12/ Area Board of Vocational, Technical and Adult Education District No. 1, Dec. No. 11901 (WERC, 5/73).

bargaining history. . .especially in view of the statutory admonition to avoid the fragmentation of bargaining units.

Green County, supra, at 9, quoting Portage County, supra, at 11.

We are satisfied that the same overriding community of interest among professional employes in the newly created Human Services Department was created herein by the County's Sec. 46.23 creation of such a department herein. That reorganization is sufficient to overcome the lengthy separate unit history of bargaining in the Social Services Professionals unit and the County's recent recognition of and bargaining round with AFSCME.

Neither the absence at present of a common work location nor the retention of historical divisional structures and supervision within the Human Services Department dissuades us from the propriety of our conclusion above. See, Portage County, supra, at 11 ("We are cognizant that the professionals employed in the three new divisions [incorporated in the Human Services Department] to not interchange among divisions, are under separate divisional supervision, and exercise their professional skills in different human care services. They are nevertheless all engaged in providing same to the residents of the County.") The removal of what the reorganization has made into artificial and unjustifiable bargaining unit differentiations among the professionals in the combined Human Services Department will enhance the ability of all concerned to integrate the services provided by all of the professionals in the new department in the manner outlined in Sec. 46.23, Stats.

AFSCME's reliance on City of Madison, and Chippewa County, is misplaced, since neither of these cases involved a Sec. 46.23 Human Services Department. Therefore, neither of these cases represents an exception to the approach taken in Portage County and Green County, and neither supports the continued existence of a unit of former Unified Services Board/ADAPT professionals in the face of the Sec. 46.23 Human Services Department reorganization adopted by the County Board in this case.

All unions contend that it is inappropriate for us to consider the option of a single overall unit of Human Services Department professionals (and a single overall unit of Health Care Center professionals). We disagree. We have always allowed parties to take alternative positions in a representation proceeding. 13/ Alternatives improve our ability to best exercise our statutory discretion to create appropriate units. Alternatives avoid the delay and waste of resources caused by dismissal of "single position" petitions and the subsequent filing of an alternative petition. Thus, for instance, in the Marinette County case upon which the parties herein have appropriately focused, the Commission had several alternatives before it and selected the employer's "second choice" as the appropriate unit configuration.

From almost the beginning of this proceeding, as first evidenced by its July, 1995 letter to the Commission, the County has made clear that it sought an election in the overall professional units identified above if the Commission concluded the nurses/all other professional units identified in its petitions were inappropriate. Any confusion about our willingness to entertain this alternative was eliminated by our supplemental hearing and argument. Thus, we are satisfied this alternative is appropriately before us.

Unit Alternatives

The unions argue that the existing units continue to be appropriate despite the creation of the Human Services Department. We conclude otherwise. The community of interest generated by creation of the Department and the statutory mandate to avoid undue fragmentation of bargaining units combine to overcome bargaining history and the varying degrees of common work location, supervision, duties, skills and wages present in the existing units.

We also find the two units proposed by the County in its original petition (all Human Services/Health Care nurses and all other Human Services/Health Care professionals) to be inappropriate for several reasons. First, such units are at odds with the overriding community of interest shared by all professionals which is established by creation of the Human Services Department. Second, such units are contrary to existing bargaining history. Third, such units

13/ Green County, Dec. No. 21453 (WERC, 1/84); Mid-State VTAE, Dec. No. 14526-A (WERC, 5/85); City of Watertown, Dec. No. 24798 (WERC, 8/87); Stevens Point Schools, Dec. No. 7713-A (WERC, 7/89); West Allis-West Milwaukee School District, Dec. No. 16405-A (WERC, 9/89); Waukesha County, Dec. No. 26020-A (WERC, 9/89); Adams County, Dec. No. 27094 (WERC, 1/91); West Bend Schools, Dec. No. 28491 (WERC, 8/95).

produce undue fragmentation in the context of the Health Care Center (creates two units where one now exists) and the Human Services Department (only reduces existing units from three to two).

However, we do find the County's proposed alternative of overall professional units in the Human Services Department and Health Care Center, respectively, to be appropriate. Such units are consistent with the overriding community of interest among all professionals in the Human Services Department established by the Department's creation/statutory mission 14/ and with the more focused and thus enhanced overall community of interest among Health Care Center professionals which we believe is a secondary effect of the Department's creation. Such units are entirely consistent with the statutory directive that we ". . .whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." In the context of this case, the community of interest and fragmentation factors are sufficiently strong to overcome bargaining history and the lesser diversity in workplace, supervision, specific duties and skills, etc., represented in the existing units.

Our Direction places the incumbent unions on the election ballot based upon their current representation of employees who will be included in the two new units. Any union wishing to have its name added to or removed from the election ballot should advise us in writing within fifteen (15) days of this Direction.

Dated at Madison, Wisconsin this 25th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

14/ As we noted in Portage County, Dec. No. 18792 (WERC, 7/81), inclusion of all Human Services professionals in a single unit based on common programmatic purpose and mission is consistent with our general inclusion of all school district professionals in a single unit.