

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

**KEWAUNEE COUNTY**

Case 2  
No. 55053  
ME-883

**Decision No. 13185-G**

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Appearances:

**Mr. Gerald D. Ugland**, Staff Representative, Wisconsin Council 40, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

**Ms. Elma E. Anderson**, Corporation Counsel, 613 Dodge Street, Kewaunee, Wisconsin 54216, appearing on behalf of Kewaunee County.

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

Wisconsin Council 40, AFSCME, AFL-CIO filed two petitions to clarify bargaining unit on March 27, and April 21, 1997, respectively, with the Wisconsin Employment Relations Commission seeking to include the positions of Clinic Nurse and the Emergency Government Program Assistant in an existing unit which AFSCME represents. Hearing was held in Kewaunee, Wisconsin on June 12, 1997. The hearing was transcribed and the County filed a post-hearing brief on August 19, 1997. On August 28, 1997, AFSCME, by letter, indicated it would not file a brief and the record was then closed. The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

**FINDINGS OF FACT**

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at c/o Gerald D. Ugland, P.O. Box 370, Manitowoc, Wisconsin 54221-0370. The Union is the certified exclusive collective bargaining representative for all professional employees in the Courthouse and related departments and non-professional Courthouse and related employees of

Kewaunee County excluding confidential, supervisory, managerial employes, elected officials, deputized law enforcement employes and Highway Department employes except clerical.

Kewaunee County, hereinafter referred to as the County, is a municipal employer, and has its offices located at the Kewaunee County Courthouse, 613 Dodge Street, Wisconsin 54216-1322.

No. 13185-G

3. The Union seeks to include the positions of Clinic Nurse and Emergency Government Program Assistant in the bargaining unit. The County seeks to exclude the Clinic Nurse on the grounds the position is supervisory and the Emergency Government Program Assistant on the grounds that the position is managerial.

The position description of the Clinic Nurse reads, in pertinent part, as follows:

### **Section A**

#### **Essential knowledge, skills, and job related experience required:**

Through knowledge of the procedures and techniques employed in providing immunization clinics.

- Knowledge of measures and techniques used in the prevention of vaccine preventable communicable disease.

Ability to establish and maintain effective relationships.

- Ability to exercise good independent judgment, initiative, and discretion.
- Ability to function in a busy clinic situation.
- Ability to accept direction and supervision from the Public Health Director.
- Ability to maintain confidentiality.

Ability to work cooperatively with other people within/outside of the department.

### **Section B**

#### **Special qualifications required or desired:**

Graduate from an N.L.N. accredited nursing program.

- A valid Wisconsin Motor Vehicle Operator's License is required.

Demonstrates the ability to maintain appropriate reports and records for the project.

Computer knowledge is desirable.

### **Section C**

#### **Tasks routinely performed and approximate time(%) given to each:**

Responsible for the development, implementation, and on-going supervision and monitoring of the county immunization. (20%)

Administration of vaccine according to state and agency policies.

(30%)

- . Performs blood pressure screening as assigned. (10%)
- . Maintains records according to agency policies. (5%)

Provides information regarding the immunization program to public and official inquiries. (on need basis)

- . Compiles immunization statistics and prepares state and local reports. (on need basis)
- . Coordinates the ordering of appropriate materials and supplies for the county immunization program. (on need basis)
- . Responsible for contacting families who are behind schedules for immunizations. (8%)
- . Maintains working linkages with all community immunization clinic sites. (on need basis)

Responsible for referral of clients based on agency referral criteria. (on need basis)

- . Good knowledge and utilization of bloodborne pathogen standard. (on need basis)
- . Able to do proper procedures for appropriate blood collection techniques for analysis. (on need basis)
- . Supervision of staff working in the immunization area.

#### **Section D**

##### **Physical requirements in performing tasks listed:**

Performance of routine tasks associated with this position requires a capacity to intermittently sit, stand, bend, walk, and lift moderately heavy (25-30 pounds) objects.

#### **Section E**

**Equipment used in performing tasks:-** Blood pressure cuff, stethoscope, computer, various other medical supplies (bandages, needles, etc.)

#### **Section F**

**Other positions an employee in this position may be expected to routinely supervise:**

- . Clinic aide

5. RN Merrie Novak has been the incumbent of the Clinic Nurse position since the initiation of the clinic program in July or August, 1982. Novak reports directly to the Director of Public Health, Julie Chaloupka. The Clinic Nurse is a part-time position and Novak usually works five days a month but in the fall and spring, she works an additional three days. Three days of each month are for immunization clinics and Novak has a Public Health Nurse and a Clinic Aide to assist her in these clinics. The other two days a month, Novak has blood pressure clinics in the morning which she does alone and on those afternoons she attends a staff meeting or does paperwork. Novak is paid by the hour and submits a time card. Besides her duties at the immunizations clinic, the Clinic Aide works a majority of her time in the WIC program for the County. The Public Health Nurse who assists Novak is a Union bargaining unit member and reports directly to Director Chaloupka. Novak has not hired anyone and does not have effective authority to do so, does not approve overtime, vacation or sick leave and has no authority to transfer, layoff or recall employees. Novak has no authority to adjust

grievances, and has never disciplined anyone and has no effective authority to do so. Novak does not attend supervisory or managerial meetings. Novak gives oral evaluations of the Public Health Nurse and the Clinic Aide to Chaloupka but does not formally evaluate either. Novak is primarily supervising an activity, the immunization clinic, and does not exercise supervisory responsibilities in sufficient combination and degree to be a supervisor.

6. The position of Emergency Government Program Assistant was created by the County on April 15, 1997 and was not filled as of the date of the hearing. The position description of the newly created position states the following:

**Purpose of Position:**

Assists the Emergency Government Director in all administrative functions and provide (sic) the clerical, managerial and administrative support for the operation of the Emergency Government Department, and assists in planning and preparation for present and future programs, projects, and goals.

A. Essential Functions:

1. Transcribes dictation which includes correspondence, news releases, and reports. (25%)

2. Assists in the development of a computerized budget. Monitors revenues and expenses, makes vouchers and assures that all expenses and revenues are assigned to correct accounts. (15%)

3. Opens and sorts mail; interacts with public and other private/public staff (referrals, answers questions, etc.) on telephone and in person; maintains filing system; orders and monitors equipment and office supplies for the department. (10%)

4. Assists LEPC with off-site plan development and updating of same. Responsible for preparing agendas, mailings and recording the minutes for LEPC meetings. Assists with preparations for LEPC exercises. (15%)

5. Assists with preparations for annual nuclear plant emergency plan exercises with Point Beach or Kewaunee Nuclear Plants and serving as Operations officer in Emergency Operations Center, assisting the Director with inventory of supplies and preparing physical facilities, supplies, and equipment before and after exercise. (10%)

6. Prepares application and close-out paperwork on grants for LEPC and EMA and submit to State Regional office. (6%)

7. Assists with the testing and maintenance of monitors, pagers and sirens, tracking problems and scheduled maintenance. (7%)

8. Assists in distributing Emergency Government planning documents throughout the County, monitors and replaces supply inventories in EOC and other locations as needed. (4%)

9. Assists in preparation of quarterly statement of itemized nuclear plant expenses for reimbursement from WPS. (4%)

10. Schedules and coordinates appointments/meetings for Director. Assists and coordinates all set-up involved in exercises, meetings, training and other gatherings which may involve refreshments, etc. (4%)

**Physical Demands of the Essential Functions:**

Sitting, talking and hearing are required 75% of the time, while near vision is required about 50% of the time. Standing, walking, and climbing (ascending/descending stairs) are required 10% of the time, while activities such as reaching and far vision are required in unusual or non-routine situations. Typing, writing, and data entry are required over 75% of the time. Pushing, pulling, handling, carrying and lifting are all required in unusual or non-routine situations.

Page 5  
No. 13185-G

**Working Conditions While Performing Essential Functions:**

Over 75% of the time is spent inside. Working outside is required about 10% of the time. Working under extreme temperature, exposure to atmospheric conditions and in physically confined work site are present only in unusual situations.

**Equipment Used to Perform Essential Functions:**

Typewriter, calculator, copy machine, computer, fax machine, telephone, printing equipment, scanner, transcribe, siren computer, cellular phone, fax board, dosimeters/chargers, minter (sic) pagers/chargers, radio, and automobiles.

**Qualifications Desired:**

One to two years at a university, community college, college, business school, trade or technical school are required, with an emphasis in computers. Basic everyday living skills as well as the ability to understand and follow directions are required. The ability to read, write, add and subtract is required. Vocational or business skills, clerical skills, and a knowledge of a general professional or specialized technical field, preferably computer and related fields of software. Communication skills as well as telephone skills.

## **Hours/Wages**

This position would be for 25 hours per week, with a wage to be determined, with benefits pro rated as per county contract.

This position description was last reviewed March, 1997

At the time of the hearing, the Emergency Government Department consisted of two employes, the Director and one clerical employe. At one time, there was a Deputy Director but he died about six years ago and the position was never filled. Employes of the City of Kewaunee and Algoma performed the duties of the Deputy, however both those positions became vacant and were not filled. The clerical employe retired on July 5, 1997 and the County created the Program Assistant position to perform the duties of both the clerical and Deputy Director positions. Inasmuch as there is no incumbent in this position, there is no track record of what duties will actually be performed and thus a determination of whether the position is managerial depends on the position description and the Director's testimony regarding the position. The current Director will operate his Department on a cooperative basis and, depending on the qualifications of the person hired, some of the Director's duties may be assigned to the Program Assistant position in the future. The Program Assistant position description lists duties which for the most part are clerical in nature and would assist the Director in budgetary matters and program operations, i.e. providing services to a managerial employe. The position description fails to establish that the new hire will have sufficient discretion and authority to commit the County's resources or to formulate, determine or implement County policy to make the incumbent a managerial employe.

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

Page 6  
No. 13185-G

## **CONCLUSIONS OF LAW**

1. The occupant of the position of Clinic Nurse is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

1.The future Emergency Government Program Assistant is not a managerial

employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2.The Clinic Nurse and Emergency Government Program Assistant are appropriately included in the bargaining unit set forth in Finding of Fact 1.

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

**ORDER CLARIFYING BARGAINING UNIT**

The positions of Clinic Nurse and Emergency Government Program Assistant are hereby included in the bargaining unit set forth in Finding of Fact 1.

Given under our hands and seal at the City of Madison, Wisconsin this 29th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

Paul A. Hahn /s/  
Paul A. Hahn, Commissioner

**KEWAUNEE COUNTY**

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

The Union filed the instant petitions to clarify bargaining unit seeking to include in the unit the Clinic Nurse and the newly created position of Emergency Government Program Assistant. The County takes the position that the Clinic Nurse is a supervisor and the Emergency Government Program Assistant is a managerial employee.

**THE PARTIES' POSITIONS**

**Union**

The Union contends that the record establishes that both positions are municipal employees and must be included in the unit.

**County**

The County contends that the Clinic Nurse is responsible for the immunization clinics at remote sites in the County and at each clinic, she supervises the Clinic Aide and from time to time, another RN. It points out that the Clinic Nurse establishes the schedule for the clinic operations and hours of the employees working at the clinics. It submits that she has the authority to discipline or effectively recommend discipline of employees but has not exercised it to date. It observes that she has authority to grant employees time off. It argues that although the Clinic Nurse spends a good deal of her time in nursing activities, her supervisory activity should be judged against the limited number of hours worked. The County submits that the Clinic Nurse has sufficient indicia of supervisory authority over her small staff to qualify as a supervisory employee. It also asserts that because the Union has not sought inclusion of the position for so many years, there is no community of interest between the Clinic Nurse and the Public Health Department employees.

The County believes that the Emergency Government Program

Assistant is managerial based on the job description and the testimony of the Director. It insists that the Director and the Emergency Government Program Assistant work collaboratively to formulate, determine and carry out policy and to commit the County's resources through budgeting or allocation and the newly created position should be excluded from the unit.

### **DISCUSSION**

Section 111.70(1)(o)1, Stats., defines a 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 grievances 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.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

Page 8  
No. 13185-G

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

In addition the Commission has historically held that not all of the above-quoted factors need be present, and that if the factors appear in sufficient number and degree, the Commission will find an employe to be a supervisor. 2/ The record demonstrates that the Clinic Nurse has not been involved in hiring employes. 3/ The Clinic Nurse has never disciplined anyone and has not promoted or transferred employes. 4/ The Clinic Nurse has only three clinics a month where the Clinic Aide is present as well as a Public Health Nurse. The Clinic Aide works 600 hours a year on immunization, but works two and one-half days a week in the WIC program. 6/

The position description for the Public Health Nurse indicates that the position routinely supervises the WIC Aide and Clinic Aide. 7/ The Public Health Nurse works at the Clinic 250 - 260 hours a year. 8/ The position description for the Clinic Nurse indicates that she supervises the Clinic Aide. 9/ The Public Health Nurse is in the bargaining unit and is not a supervisor and yet is listed as supervising the WIC Aide and Clinic Aide -- the same person the Clinic Nurse allegedly supervises. The evidence fails to demonstrate how the Public Health Nurse with seemingly more supervisory responsibility is included in the unit and the Clinic Nurse who supervises less time should be excluded as supervisory.

The Clinic Nurse can keep the employes beyond their normal hours or let them come in later or leave earlier but that is a function of the public served at the Clinic in that if fifteen people are waiting at the end of the scheduled time, the Clinic stays open until the immunizations are done. 10/ The Clinic Nurse has some responsibility for the direction and assignment of work but this is of a routine nature and is not sufficient to warrant a conclusion that the position is supervisory. The Clinic Nurse has no significant authority on hiring, firing, promoting, transferring or rewarding the two employes assigned to the immunization clinics. The Clinic Nurse supervises an activity as opposed to supervising employes. The Clinic Nurse does not have sufficient indicia of supervisory authority for the Commission to conclude that the position is supervisory and the position is appropriately included in the unit.

The Legislature has excluded "managerial employes" from the definition of "municipal employes," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats.

Two analytical paths have developed to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources. 11/

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." 12/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. 13/

With respect to the Emergency Government Program Assistant, there is no incumbent so any determination of managerial status is based on the job description and Director's testimony. The County has relied on the theory that the Director operates in a cooperative manner. The Director's testimony was that depending on the individual hired, it would take some time before managerial duties would be performed by the Assistant. 14/ Our review of the job description indicates that the position would perform mainly clerical duties and the level of authority to commit the County resources is not sufficient to conclude that the position is managerial. The duties are providing services to the Director rather than performing managerial responsibilities. Once there is an incumbent with a track record, the County can ask us to revisit the status of the position. However, given the job description and the Director's testimony, we conclude that the position is not managerial and is appropriately included in the bargaining unit.

Dated at Madison, Wisconsin this 29th day of October, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**ENDNOTES**

- 1/ MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 6595-C (WERC, 5/96).
- 2/ TAYLOR COUNTY, DEC. NO. 27360 (WERC, 8/92).
- 3/ TR. 10.
- 4/ TR. 11.
- 5/ TR. 44, 46, 47.
- 6/ TR. 59.
- 7/ Ex. 5.
- 8/ TR. 60.
- 9/ Ex. 1.
- 10/ TR. 20-22.
- 11/ MILWAUKEE V. WERC, 71 WIS.2D 709 (1976); EAU CLAIRE COUNTY V. WERC, 122 WIS.2D 363 (CTAPP, 1984).
- 12/ VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88); PORTAGE COUNTY, DEC. NO. 6478-C (WERC, 10/87); DOOR COUNTY (COURTHOUSE), DEC. NO. 24016-B (WERC, 8/88).
- 13/ VILLAGE OF JACKSON, SUPRA; FOREST COUNTY, DEC. NO. 17528-B (WERC, 6/85); JACKSON COUNTY, DEC. NO. 17828-B (WERC, 10/86); CITY OF WHITEWATER, DEC. NO. 24354 (WERC, 3/87).
- 14/ TR. 87, 90, 97, 104.

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