

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXXVI
No. 17677 ME-1031
Decision No. 13434

Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County, appearing for the Municipal Employer at hearing. Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. John T. Coughlin and Mr. Michael L. Roshar, filed briefs on behalf of the Municipal Employer.

Manitowoc County Courthouse Employees, Local 986A, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having, on February 19, 1974, filed a petition with the Wisconsin Employment Relations Commission wherein it requested the Commission to issue a clarification of a collective bargaining unit wherein the Commission had previously certified the Petitioner as the exclusive representative of certain employees of Manitowoc County employed in the Manitowoc County Department of Social Services; 1/ and hearings having been held in the matter at Manitowoc, Wisconsin, on April 1, 1974, April 2, 1974 and April 17, 1974, Marvin L. Schurke, Hearing Officer, being present; and the parties having subsequently filed briefs and reply briefs; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following

IT IS ORDERED that the positions of Social Work Supervisor I and Basic Services Supervisor shall be, and the same hereby are, excluded from the collective bargaining unit consisting of all employees of

No. 13434

Manitowoc County employed in the Manitowoc County Department of Social Services, excluding elected officials, supervisors, department heads and all other employees of Manitowoc County.

Given under our hands and seal at the
City of Madison, Wisconsin this 18th
day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

On August 14, 1967, pursuant to stipulations of the parties hereto as to the units appropriate for collective bargaining and the employees eligible to vote within said units, the Commission directed elections in bargaining units consisting of:

"All employees of Manitowoc County employed in the Public Welfare Department, excluding clerical employees, supervisors and department heads" 2/ and

"All clerical employees of Manitowoc County employed in the Public Welfare Department, excluding all other employees, elected officials, supervisors and department heads" 3/

for the purpose of determining whether said employees desired to be represented by Manitowoc County Employees, Local No. 986, AFSCME, AFL-CIO. Elections were conducted on September 14, 1967, at which time the 13 employees in the professional unit and the 9 employees in the clerical unit voted unanimously in favor of representation by the named Union. A Certification of Representatives was issued in each case on September 28, 1967. The Manitowoc County Board of Supervisors changed the name of the Public Welfare Department to Manitowoc County Department of Social Services, and the Union changed its local number to 986A, but the parties hereto have had continuity in their collective bargaining relationship.

The instant proceedings were initiated by the filing of a petition wherein the Union requested that the Commission make a clarification of the bargaining unit as to whether the positions of Social Work Supervisor I and Basic Services Supervisor are supervisory within the meaning of the Municipal Employment Relations Act (MERA).

BACKGROUND:

When the certifications for these bargaining units were issued in 1967, the County's table of organization for the Department indicated three subdivisions within the Department: two groups of professional social workers, each of which was headed by a Social Work Supervisor I and a group of clerical employees in which the highest ranking employee was an Administrative Assistant. Although each of the certifications issued by the Commission provided for the exclusion of "supervisors", in addition to the specific exclusion of the "department head", and although the Social Work Supervisor I positions were then immediately subordinate to the department head in the table of organization, the parties stipulated at that time that the only position to be excluded from the collective bargaining unit was that of the Director.

Between 1967 and 1973 the budget of the Manitowoc County Department of Social Services rose from approximately \$2 million to approximately \$6.33 million, and the staff of the Department was increased from

2/ Manitowoc County, (8151) 8/67.

3/ Manitowoc County, (8150) 8/67.

a total of 24 allocated positions to a total of 48 allocated positions. The table of organization was changed in 1969 to reflect five subdivisions within the Department, as follows: one group of professional employees headed by a Social Work Supervisor II, two groups of professional employees headed by Social Work Supervisor I's, one group of professional employees headed by a Basic Services Supervisor, and a group of clerical employees headed by an Administrative Assistant. The table of organization was altered again in 1970, at which time the structure of the Department was brought into substantially its present form.

As presently constituted, the Department of Social Services is under the jurisdiction of the Manitowoc County Board of Social Services, a five-member committee of the Manitowoc County Board of Supervisors. Directly responsible to the Board of Social Services and superior to all other employees in the Department is the position of Director. While the Board of Social Services acts on numerous personnel matters affecting the employees in the certified collective bargaining units, such actions generally follow actions on the part of the Director to bring the matter before the Board, and the Board does not participate in the day-to-day operation of the Department. The Department of Social Services is divided into two functionally separate divisions: "income" and "service". The "income" division of the Department is directly under the supervision of the Director and is, in turn, divided into three operating units. Two of those units are headed by professional social workers holding the Basic Services Supervisor title, while the third unit is headed by an Administrative Assistant. All of the subordinate employees in these units are non-professional employees, and the activities of the "income" side of the Department relate to determinations of eligibility for and payment of financial benefits to welfare clients under various programs administered by the Department. Since the 1970 revisions, the table of organization has indicated the Social Work Supervisor II position as being immediately subordinate to the Director and superior to all other personnel on the "service" side of the Department. The "service" division is subdivided into four operating units, each of which is headed by a Social Work Supervisor I. These units now consist of professional social workers and their supportive clerical personnel. The activities of the "service" division relate to the provision of social services which do not involve payments of funds. The units headed by the Basic Services Supervisors consist of four to five employees, while the units headed by the Social Work Supervisor I's consist of four to six professional employees and one to three non-professionals.

At some unspecified time previous to the instant dispute, the parties made the status of the Social Work Supervisor II position a subject of discussion between them and agreed to the exclusion of that position from the collective bargaining unit. The parties were parties to a collective bargaining agreement entered into on December 13, 1972 and effective for the period from January 1, 1973 through December 31, 1973, wherein they described the collective bargaining unit as consisting of: "the employees of the Employer [Manitowoc County] engaged in the operations of the Manitowoc County Department of Social Services, excluding the Director and Social Worker [sic] Supervisor II". During collective bargaining for a successor agreement, the County raised an issue concerning the Social Work Supervisor I and Basic Services Supervisor positions, demanding that all six such positions be excluded from the collective bargaining unit as supervisors.

POSITION OF THE UNION:

The Union raises both a procedural issue and arguments on the merits of the case. Although it is the Petitioner in this proceeding, the Union argues that the County should be estopped from obtaining a

ruling excluding the six disputed positions from the bargaining unit. In this regard, the Union cites the stipulated description of the certified bargaining unit, the bargaining history in the unit, and the agreed inclusion of the disputed positions in the unit as recently as December of 1972, claiming that the County has shown no changes during 1973 which would make exclusion appropriate and that the County is bound by its previous actions. On the merits of the eligibility question, the Union strongly contends that in fact only the Director and the Social Work Supervisor II are supervisors within the meaning of MERA. The Union urges a finding that the six positions in dispute are, at most, lead workers who do not meet the statutory criteria of Section 111.70(1)(o)1 of MERA or other criteria traditionally applied by the Commission in determining questions of supervisory status.

POSITION OF THE COUNTY:

The County bases its arguments, in large part, on the premise that more supervision is required in an agency with a budget of six and a third million dollars per year and a staff of 48 employees than was required when the budget was less than a third of that amount and the staff was half of its present size. The County contends that its present organization of the Department is intended to maintain an employee to supervisor ratio of five to one, as has been imposed upon the County by state and federal standards. The County contends that the occupants of the positions in dispute are supervisors within the meaning of MERA, in that they assign work to subordinate employees, evaluate subordinate employees, make effective recommendations on personnel matters concerning their subordinates and generally spend only a small portion of their time performing work of the same nature as is performed by their subordinates. Citing several decisions of the Commission in which similarly titled positions have been excluded from collective bargaining units in other counties, the County here contends that all six of the positions in dispute are supervisory and properly excluded from the bargaining unit.

DISCUSSION:

Practice and Procedure - Timeliness of Demand for Removal

It is undisputed that the Social Work Supervisor I position existed at the time the Commission directed the election which created this collective bargaining unit, that the occupants of that position were then included in the unit and permitted to vote in the election upon the stipulation of the parties, and that the position, along with that of Basic Services Supervisor, has always been included in the bargaining unit. The evidence of record also supports the Union's contention that the staffing pattern of the Department has not been materially altered since 1970. However, the Commission is not persuaded that accumulated changes of authority since 1967 should be overlooked or that the County should be barred from obtaining a ruling here because of bargaining history or its past bargaining agreements. It is well established Commission policy that a petition to clarify an existing bargaining unit of municipal employees is not barred by such historical considerations. 4/ Independent contractors, supervisors, confidential, managerial and executive employees are excluded from the definition of

4/ Wausau School District (10371-A) 4/72; Racine County (11257) 8/72; City of Waukesha (11342) 1/72; City of Milwaukee (10835-A) 12/72; City of Wauwatosa (11633) 2/73.

the term "municipal employee" as set forth in Section 111.70(1)(b) of MERA. Previous bargaining history and previous status determinations by the Commission concerning a position do not bar a change of status where the evidence before the Commission establishes a change in duties which affect the "employee" status. In a number of the cases where the Commission has been called upon to determine the status of positions similar to those involved in the instant case, the ruling of the Commission has resulted in the removal of positions previously included in a bargaining unit from that unit. 5/

Indicia of Supervisory Authority

Section 111.70(1)(o)1 of MERA is controlling in this case. It is common in public employment to find both significant concentrations of authority in elected officials and governing bodies and considerable diffusion of authority among appointed and employed officials. In making determinations as to whether a particular position in municipal employment possesses the authority and calls for the exercise of sufficient independent judgment to be deemed supervisory, the Commission has applied certain considerations, in addition to those specifically provided by statute. One such factor particularly applicable to this case is:

"the number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees" 6/

In a certain sense, many of the arguments of the parties herein relate to the question of distribution of supervisory authority, making: "What ratio of supervisors to employees?", a major issue in the case. The County contends that the present ratio of 2:46 is too low and that its proposed ratio of 8:40 is in line with the mandates of the state and federal governments for a 1:5 ratio of supervisors to employees in agencies of this type. The Union disputes the existence of such an outside-imposed ratio and contends that the facts demonstrate that the supervisory authority is actually vested only in the two positions presently excluded from the bargaining unit.

Were this a plan of organization and a supervisor to employee ratio conjured up solely by the Municipal Employer, the Commission might have considerable hesitation at disenfranchising the occupants of so many positions from their rights to collective bargaining under MERA. An example of a situation where the dispersion of supervisory authority was too thin for claimed supervisory positions to be deemed as such is found in the discussion with regard to the high school music, art and physical education department chairmen in Wausau School District, supra. However, the testimony of Director Tate concerning the existence of a ratio is virtually uncontroverted in this record, and the County Administration Manual issued by the Division of Family Services of the Wisconsin Department of Health and Social Services provides, at Chapter II-A-4, for a ratio of no more than 60 service cases for each social worker, and no more than five social workers per supervisor unless it can be shown that utilization of a different formula results in no less quality than the 60:1 and 5:1 ratios. Further, the pattern of subdivisions found within the Manitowoc County Department of Social Services is familiar to the Commission, in that it

5/ Dunn County (12093) 11/73; Milwaukee County (11382-D) 9/74; Outagamie County (8768-B) 6/72.

6/ Wauwatosa Board of Education (6219-D) 9/67; Racine County (8330) 12/67; City of Milwaukee (6960) 12/64; Milwaukee County, supra.

is very similar to the departmental organizations before the Commission in previous representation cases involving county social services agencies, including: Chippewa County (10497, 10498, 10499) 9/71; Dunn County, supra; Milwaukee County, supra; Outagamie County, supra, and Waukesha County (9132) 7/69. The Commission is satisfied that the format of organization of the Department and the ratio of supervisors to employees are neither unique to Manitowoc County nor of the County's own creation.

The evidence of record here indicates that the situation in the Manitowoc County Department of Social Services is similar in many respects to the situations existing in the other county social services agencies which have been before the Commission. A comprehensive review of the Commission's docket records concerning all of the counties in the state reveals the following: In five of the counties, the Commission's records indicate that collective bargaining exists among social workers on the basis of voluntary recognition agreements, but give no indication as to the descriptions of the collective bargaining units. In another ten of the counties, the unit descriptions contained in the Commission's docket records do not specify which levels of supervision are included in or excluded from the collective bargaining units of social workers. In two of the counties, the parties stipulated in representation proceedings before the Commission that persons holding Basic Services Supervisor titles should be included in the bargaining unit of social workers while persons holding Social Work Supervisor I titles should be excluded from those units. In ten of the counties, the parties stipulated that both Basic Services Supervisor and Social Work Supervisor I positions should be excluded from social worker collective bargaining units. In the six counties where the parties have sought a determination from the Commission on the status of Basic Services Supervisor or Social Work Supervisor I positions or their equivalent, the Commission has invariably ruled that such positions are supervisory and excluded from collective bargaining units. See: Barron County (10146) 2/71 (Basic Services Supervisor having authority over 13 social workers and case aides. One level of supervision exists above the Basic Services Supervisor); Chippewa County (10497, 10498, 10499) 9/71 (Basic Services Supervisor having authority over five professional employees and Social Work Supervisor I having authority over six professional employees. One level of supervision above positions in question); Dunn County (12093) 11/73 (Basic Services Supervisors having authority over five non-professional employees and Social Work Supervisor I's having authority over six professional employees. One level of supervision above positions in question.); Milwaukee County (11382-D) 9/74 (Financial Assistance Supervisor I positions comparable to Basic Services Supervisor and responsible for units of seven to 11 non-professional employees. Assistant Casework Supervisor positions comparable to Social Work Supervisor I and responsible for units of five to 11 professional employees. All positions in question subordinate to at least three higher levels of supervision); Outagamie County (8768-B) 6/72 (Basic Services Supervisors and Social Work Supervisor I's subordinate to Director and having authority over units of five to eight employees); and Waukesha County (9132) 7/69 (Basic Services Supervisor having authority over five to seven professional employees. Parties stipulated that Social Work Supervisor I positions should be excluded as supervisors. Two or more higher levels of supervision are present). In the remaining counties, the Commission's docket records give no indication of collective bargaining activity among social workers.

The record here leaves little doubt that the Director and the Social Work Supervisor II exercise significant supervisory authority. Liaison between the Department and the Board of Social Services appears to be almost entirely in the hands of the two top positions, and the authority to take certain actions such as issuing notice of staff

vacancies is limited to the two top positions. Only in the event of the absence of both the Director and the Supervisor II could one of the occupants of the disputed positions take action, and that chain of command ends with the single designated Social Work Supervisor I, to the exclusion of the other Social Work Supervisor I's and the Basic Services Supervisors. The Director personally participates in the hiring of new employees, and particularly in the consideration of candidates for positions on the "income" side of the Department. The Social Work Supervisor II receives and reviews applications for employment for positions on the "service" side of the Department, arranges for interviews of applicants, interviews applicants herself, and receives the recommendations of any Social Work Supervisor I who might also have interviewed the applicant before a decision is made on hiring. Offers of employment are customarily made by, and letters of resignation are customarily directed to, the Director, although the Supervisor II has made offers of employment on various occasions. The Director and the Supervisor II also take a hand in any transfers of work or employees within the Department. The Director conducts weekly "administrative staff" meetings which are attended by the Social Work Supervisor II, the four Social Work Supervisor I's, and the Basic Services Supervisors, at which times new directives of state or federal authorities are given to the first level supervisors for dissemination to their subordinates, operational problems in the Department are discussed, and personnel problems may be discussed. However, the record here also indicates that the occupants of the positions in dispute possess and exercise authority similar to that exercised by their counterparts in the six counties listed above.

Hiring of professional employees in the Manitowoc County Department of Social Services is regulated, at least in part, by the State. The Wisconsin Department of Health and Social Services operates a referral list for social work vacancies in county agencies throughout the State. Candidates for employment make contact with the county agency, and arrangements are made for interviews. In Manitowoc County, most, but not all, such candidates are interviewed by one or more of the Social Work Supervisor I's, and there is evidence of a particular effort to involve the unit supervisors in the units where vacancies exist. The Supervisor I's make recommendations on candidates in order to narrow the field, with the re-interviewing of candidates and the final decision on hiring largely being left to the Director and the Supervisor II. In this respect, the Supervisor I's at Manitowoc County have an involvement in hiring which is similar to that of their counterparts in Barron, Chippewa, Dunn and Waukesha counties and greater than that of their counterparts in Milwaukee and Outagamie counties. The procedures for hiring of non-professional employees appear to be entirely local, but the involvement of the Basic Services Supervisors in hiring in Manitowoc County is similar to that of the Social Work Supervisor I's in Manitowoc County and also compares on the same basis to their counterparts in the other six counties.

Transfers within the Manitowoc County Department of Social Services are made by the Director, but the record herein indicates that the first level supervisors have an involvement in and make recommendations on some transfers. The vigorous opposition of the first level supervisors to a transfer plan initiated by the Director was effective in blocking the implementation of that plan. Our decision in Outagamie County, supra, and Waukesha County, supra, do not make mention of authority to transfer employees, and the single unit nature of the agency organization in Barron County would likely obviate the need for discussion of transfers in that case. The authority of the first level supervisors in Manitowoc County with regard to transfers would appear to be similar to that of their counterparts in Milwaukee County, while less than that of their counterparts in Chippewa and Dunn counties.

Suspension, Discharge and Discipline of employes is generally handled in a similar manner in Manitowoc County and the other counties which have been before the Commission. The Basic Services Supervisor in Barron County was limited to consultation with the Director on matters of discipline and discharge, while the first level supervisors in Manitowoc County and the other five counties all appear to have authority to impose reprimands on their subordinates and authority to recommend imposition of more severe discipline such as suspension and discharge. The record before us indicates that the Basic Services Supervisors and Social Work Supervisor I's possess the authority, and some of them have actually exercised the authority, to recommend the imposition of disciplinary penalties on their subordinates. The ultimate decision to suspend or discharge an employe lies with the Social Work Supervisor II, the Director and the Board of Social Services, but it is apparent that the higher levels of management are not in day-to-day contact with the subordinate employes in the Department and must rely on the information and recommendations, if any, transmitted to them by the first level supervisors.

Promotion and Reward of employes is regulated by the merit system imposed by the State and influenced by the evaluations of employes made by the first level supervisors pursuant to that State merit system. Such evaluations are made, in writing, on at least an annual basis. The evaluations are acknowledged by the employe evaluated and are reviewed by higher management within the Department before becoming part of the employe's permanent personnel file. As was brought to the attention of the Hearing Officer during the course of the hearing herein, evaluations by supervisors are specifically recognized by the Chapter PW-PA 10 of the Wisconsin Administrative Code as confidential records not available for disclosure except under very limited circumstances. The recommendations of the first level supervisors, as contained in the annual evaluations and as made when the occasion arises, have a bearing on the continuation of a subordinate as an employe in the Department, as well as on promotions received while an employe. It is noted that the first level supervisors in each of the six other counties where the status of first level supervisors has been decided evaluate their subordinates and make recommendations on matters of promotion, reward or withholding of increments or benefits.

Assignment of work is universally the function of the first level supervisors in the seven social service agencies compared here. Review of the work-product of subordinate employes and the taking of steps to assure the completion of assignments are functions related to and flowing from the authority to assign work to subordinates, and the evidence of record indicates that the first level supervisors perform all aspects of the assignment function. Some of the follow up is accomplished through individual conferences with subordinates, while sub-group or unit meetings are utilized in other situations. Systems for the assignment of cases vary from unit to unit in Manitowoc County, and it is noted that systems for case assignment vary considerably from agency to agency and from unit to unit within any particular agency among the other six counties. Some assignment systems require considerable day-to-day exercise of judgment on the part of the case assigner, while other systems result in the assignment of cases becoming largely automatic or a matter of routine except when one of the elements of the otherwise automatic system requires change. As previously noted, the Department of Social Services in Manitowoc County is divided into six operating units. While any particular unit may handle cases of two or more types or cases under two or more different programs, relatively clear jurisdictional lines have been delineated between these units. Where "gray areas" are encountered, it is the unit supervisors in the potentially affected units who become involved, but in the ordinary course of business case "intake" is directed to a

unit on the basis of the case type or program involved, and the case is then assigned to a worker by the unit supervisor or under a system of assignment authorized and administered by the unit supervisor. The Director and the Social Work Supervisor II have little, if any, involvement with the day-to-day functions of case assignment and follow up.

Other factors noted in this record which compare to the situations existing in other social service agencies include the participation of the first level supervisors in training of subordinates, as resource persons to their subordinates, as managers of the work schedules of subordinates, and as counterparts to their subordinates in dealings with the clients of the agency. The decisions in Chippewa County, Milwaukee County, Outagamie County and Waukesha County all reveal that the first level supervisors in those organizations, like the Basic Services Supervisors and Social Work Supervisor I's in Manitowoc County have a clear and significant role in the training of new employees, in the ongoing process of inservice training of their subordinates and in performing the role of advisor to their subordinates when the subordinates seek assistance in the handling of particular case problems. Some of the training and resource function is accomplished through unit meetings chaired by the unit supervisor, but the unit supervisors also meet with subordinates individually and in small groups as the need arises. Unlike their counterparts in Dunn and Milwaukee counties, who actually schedule the office hours and itineraries of some or all of their subordinates, the first level supervisors in Manitowoc County, like their counterparts in Outagamie County, generally only receive and process requests for compensatory time off, vacations, and other such matters. The individual social workers establish their own schedules and conflicts in scheduling are generally resolved by consensus. It appears that the unit supervisor would be required to act in the event of a conflict which his or her subordinates were unable to resolve among themselves. Finally, it is clear that in Manitowoc County, as in the other six counties compared in this discussion, the first level supervisors are not performing significant amounts of work of the same type as is performed by their subordinates. In this regard, a range is noted from no case work in Milwaukee County to minimal case work in Dunn, Outagamie and Waukesha counties, to occasional case work in Barron County and 15% to 35% of a normal case load in Chippewa County. There is a variance among the units in Manitowoc County as to the amount of case work performed by the Basic Services Supervisors and Social Work Supervisor I's. However, none of these first level supervisors carry a case load or perform case work sufficient to occupy a significant minority of their time, let alone a majority of their working hours. Of what little direct contact clients that does exist, much of that is performed merely as an emergency service in the absence or upon the unavailability of the assigned employee.

CONCLUSION:

The Commission concludes that the positions of Basic Services Supervisor and Social Work Supervisor I in the Manitowoc County Department of Social Services are supervisory within the meaning

and that all such positions should be excluded from the collective bargaining unit previously certified by the Commission. The accompanying order reflects this conclusion.

Dated at Madison, Wisconsin this 18th day of March, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner