

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

:

In the Matter of the Petition of :

:

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO : Case 3

: No. 44520 ME-442

Involving Certain Employes of : Decision No. 13805-B

:

VERNON COUNTY :

:

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing for the Union.
Klos, Flynn & Papenfuss - Chartered, Attorneys at Law, 800 Lynne Tower Building, P.O. Box 487, La Crosse, Wisconsin 54602-0487, by Mr. Jerome J. Klos, appearing for the Employer.

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

On September 6, 1990, Wisconsin Council 40, AFSCME, AFL-CIO, hereafter the Union, filed a petition with the Wisconsin Employment Relations Commission, seeking the clarification of a bargaining unit of employes of Vernon County. By its petition, the Union sought the inclusion into an existing bargaining unit of the two Coordinators of the programs for the Developmentally Disabled (DD) and Community Options Program (COP). The Employer opposed accretion on the grounds that the subject positions were managerial and/or supervisory. Hearing was held in Viroqua, Wisconsin, on October 31, 1990, before Examiner Stuart Levitan, a member of the Commission's staff. A stenographic transcript was prepared by November 16, 1990. The County and Union submitted briefs on December 27, 1990 and February 19, 1991, respectively, and waived the filing of reply briefs. The Commission, being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at Route 1, Sparta, Wisconsin, 54656.
2. Vernon County, hereafter the County, is a municipal employer with offices at the Vernon County Courthouse, Viroqua, Wisconsin, 54665.
3. At all times material to this proceeding, the Union has been:

the exclusive bargaining representative for all employes of the Courthouse and Social Services Department, except the elected officials, supervisors, confidential, managerial or executive employes; for the purposes of conferences and negotiations relating to wages, hours and other conditions of employment.
4. Subsequent to a July 1, 1988 merger of its Unified Board and Department of Social Services, the County has provided certain services through its Human Service Department. At all times material hereto, Linda Nederlo was Department Director. In the administrative support staff area, there are five represented employes and one non-union Administrative Assistant. In the Economic Support Services division, there are five economic support specialists who are represented, one energy assistance worker contracted for with an outside agency, and a non-union economic support supervisor. In the Intervention Services division, there are four represented positions and one non-union intervention supervisor. In the Long-Term Support Services division, there are three represented positions, two persons contracted for with an outside agency, and three non-union positions -- Long-Term Support Supervisor Jean Klousia, Developmental Disabilities Coordinator DuWayne Drake and Community Options Program Social Worker Carol Navrestad. It is the status of the last-named two positions which are at issue in this proceeding.
5. DuWayne Drake is the incumbent Developmental Disabilities (DD) Coordinator, having held said position since August 30, 1990. In such capacity, he coordinates all services for the DD population of Vernon County. His duties and responsibilities include preparing and submitting an annual plan and budget; writing and submitting grants and applications, and administering contracts with non-County agencies providing services. Drake has the authority to transfer funds from one line to another within his overall budget, although he would presently be likely to discuss such an action with his supervisor due to the short period he has held the position. He has similar authority to choose between alternate providers of goods and services. The hours, wages and conditions of employment of contracted personnel are not under his control.

Drake has not developed a budget yet. He completes vouchers and submits them to bookkeeper for payment. He has authority to redirect and reallocate unspent funds. There is County tax money in his program in contrast to the Community Options Program. Drake's published position description reads as follows:

DEVELOPMENTAL DISABILITIES COORDINATOR

GENERAL STATEMENT OF DUTIES: Plans, develops and coordinates all community services offered for the developmentally disabled by the Unified Board.

DISTINGUISHING FEATURES OF THE CLASS: The work responsibilities of this position involve coordinating all direct and indirect services for the developmentally disabled, which includes overall supervision of those services operated and/or contracted by the Unified Board. It is this employee's responsibility to direct a coordinated system of services to be offered by the community and to administer the programs or services assigned by the Unified Board Program Director.

EXAMPLES OF WORK: (Illustrative only)

Develops an annual coordinated plan and budget to assess current and long-range services and program needs of the developmentally disabled;

Discusses and develops service and program objectives and priorities with local interest and provider groups;

Monitors the provision of services to the developmentally disabled by contracted facilities, which involves authorizing services, evaluating their programs and services, and participating in administrative activities;

Identifies individuals in need of services, assesses their needs, arranges for services and treatment, and refers individuals to specialized services;

Provides a range of protective services to assist individuals who are unable to manage their own resources or properly protect themselves from neglect or exploitation;

Locates, assesses and recommends guardians to be appointed for clients and monitors these appointments for the court;

Acts as case manager for all Board developmentally disabled clients;

Acts as agency liaison with local interest groups representing the developmentally disabled;

Speaks to community people regarding the developmentally disabled to increase knowledge of programs and services and to change attitudes towards these individuals;

Participates in workshops and in-service training.

QUALIFICATIONS:

Knowledge of the needs, services and available resources for the developmentally disabled;

Administrative skills;

Ability to relate to and communicate effectively with staff, clients, community professionals and the general public.

TRAINING AND EXPERIENCE: Graduation from a college or university with a degree in social work, rehabilitation or related field, and experience working with the developmentally disabled; or any combination of training and experience which provides the required knowledge, skills and abilities.

6. Carol Navrestad is the incumbent Community Options Program Social Worker, having held such position since 1984. She writes the plan submitted to the State of Wisconsin, detailing past and outlining upcoming programs, assessing state and federal funds, maintaining certification, etc. She prepares a preliminary budget, reviews the proposed budget with Department Director Nederlo and her two supervisors, then submits the proposed budget to the Long Term Support Committee (which includes citizens and County Board members), which in turn forwards it to the County Human Services Committee. In

developing her budget, the most critical factor is meeting requirements set by the State Department of Health and Social Services. After adoption of the budget, Navrestad has authority to transfer funds between accounts, and to determine who receives services within the context of the state requirement that a "significant proportion" of total funds be spent within each program area. The 1990 budget was about \$200,000, none of which is County money. The State allows 7% of COP budget set for administrative costs; Navrestad receives an hourly rate of pay from the state for managing aspects of the program. Navrestad secured State approval for reimbursement of administrative costs higher than normally authorized by the State for salary and fringes. Navrestad had significant input in developing a new administrative procedure for case management billing which allows the County to serve more citizens.

7. Navrestad is responsible for administering contracts with non-County service providers. The largest contract under Navrestad's control is with Bethel Home Supporting Services, for supportive home care and personal care. This past year, Bethel was one of two bidders for this contract. Navrestad is responsible for ensuring satisfactory service by the contractor; her complaints have led to discipline, possibly including discharge, as well as reassignment of the subcontracted personnel who perform the actual services. Contracts for services are subject to competitive bidding. If she has reason to believe a low bidder would not provide adequate service, Navrestad could make a negative recommendation to the Human Services Committee, which has authority to award the contract. Nederlo or other knowledgeable persons within the Department could also make such recommendation. Navrestad selects those group homes with whom the County will contract for services.

8. The budget which Navrestad administers has two sections -- for Bethel Services and for Board Services. Navrestad has discretion to determining how direct Board expenditures are spent and has authority to divert funds from one budget section to the other. Within direct Board service, she has authority to determine how monies up to \$1000 would be spent on a specific project.

9. Navrestad makes final determinations regarding the programs for which an individual applicant may qualify, although she may seek input from Nederlo and LTS Supervisor Klousia. She developed a policy to deal with applicant waiting lists under which she has authority to allow individuals with greater need to receive service before individuals who had applied earlier.

10. The Social Worker/Community Options Program position description reads as follows:

SOCIAL WORKER 1 (Community Options)

GENERAL STATEMENT OF DUTIES

Provides specialized counseling and treatment services for elderly residents of Vernon County. The work involves considerable responsibility and employee makes independent (sic) judgement - although often in conference with other agencies to provide total treatment plan for patients in need.

EXAMPLES OF WORK

Recruit and supervise adult foster home care
Assist people with a variety of problems when they require Nursing Home Placement (sic)
Interview patients, relatives and others to obtain pertinent data to develop and discharge care plans.
Makes referrals and recommendation to other agencies and orients patients to referral sources.
Prepares written records of patients progress, social history and information useful for treatment.
Works with and utilizes resources of community agencies for home care.

Qualifications

Knowledge of basic human behavior and social problems
Knowledge of interviewing techniques and various rehabilitation strategies
Ability to communicate effectively with patients and their families and other agencies.
Ability to observe, interpret and respond to patients' behavior
Ability to maintain confidential and accurate records and prepare reports from them.

EXPERIENCE AND TRAINING

Possession of a Bachelor's Degree in social work or psychology from an approved college or university or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

11. The incumbents in the positions of Developmental Disabilities Coordinator and Community Options Program Social Worker exercise sufficient control over the resources of the employer and have sufficient involvement at a relatively high level of responsibility in the formulation, determination and implementation of management policy, so as to be managerial employes.

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

CONCLUSION OF LAW

The incumbents in the positions of Developmental Disabilities Coordinator and Community Options Program Social Worker are managerial employes within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

That the bargaining unit described in Finding of Fact 3 is hereby clarified by the exclusion therefrom of the positions of Developmental Disabilities Coordinator and Community Options Program Social Worker.

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of April,
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

1/ Please find Footnote 1/ on page 6.

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

POSITIONS OF THE PARTIES

In support of its position that the subject positions are not supervisory, the Union asserts and avers that these are the only departmental positions which do not report directly to the Director of Human Services; that most of the funding for departmental bargaining unit positions comes from other than County property taxes, and that the COP Coordinator does not supervise employees.

In support of its position that the subject positions are not managerial, the Union further asserts and avers that their duties -- especially referrals and recommendations -- are no different than those performed by bargaining unit members.

In support of its position that the subject positions are properly excluded from the unit, the County asserts and avers that they are not supervisory, but are managerial employees who formulate, determine and implement management policies, whose inclusion could cause conflict of interest with unit members. Specifically, that the two Coordinators develop their own budgets; draft and submit annual policy plans; have authority to allocate and reallocate funds; can terminate unsatisfactory programs and providers; can institute new programs and/or providers, and can modify programs by changing the annual plans.

DISCUSSION

The Legislature has excluded "managerial employees" from the definition of "municipal employees," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats. Instead, it has left to the Commission the case-by-case development of precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employees.

There are two analytical paths 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, either by exercising significant authority in the establishment of an original budget or by allocating funds for different program purposes within an original budget. 2/

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." 3/ 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. 4/

Here, we find sufficient indicia of both managerial paths for each position to warrant the exclusion of both from the bargaining unit. 5/

Drake, the DD Coordinator, prepares and submits an annual plan and

2/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (Ct.App. 1984).

3/ 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).

4/ 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).

5/ For discussions on the management status of similar positions, see Northwoods Guidance Center, Dec. No. 20728-A (WERC, 5/85) (DD Coordinator held managerial); Brown County (Mental Health Center), Dec. No. 7954-C (WERC, 11/84) (Community Support Program Coordinator held not managerial); Kenosha County (Brookside Care Center), Dec. No. 19435 (WERC, 3/82) (Plan of Care Coordinator held managerial).

budget, writes and submits applications for grants, and has the authority to redirect and reallocate unspent funds. Further, with the caveat that he would initially be likely discuss such action with one of his two supervisors, he has authority to transfer funds from one line item to another, and to choose between alternate providers of goods and services. In the aggregate, we find that his involvement in program and policy matters is at a relatively high level of responsibility. Coupled with his ability to significantly affect the nature and direction of the employer's operations through resource allocation choices, we conclude that the position is managerial and therefore excluded from the unit.

Navrestad, the COP Social Worker, prepares an initial budget for submission to the County committee review process. This review process generally does not result in major changes. While the basic parameters of the budget are heavily influenced by requirement-setting directives from the Wisconsin Department of Health and Social Services, Navrestad has significant authority after the budget's adoption to determine how services will be provided and at what level. She also has the personal authority to transfer funds from one expenditure area to another. In terms of policy responsibility, Navrestad establishes the service specifications on which competitive bids are received, evaluates bids, and provides effective recommendations to the County Human Services Committee. She administers contracts and evaluates the performance of the providers. Navrestad has also written the County policy regarding the order in which clients on waiting lists will be served and helped develop a case management billing procedure which allows the County to provide more services to its citizens.

We find that this high level of responsibility in setting and implementing program and policy, coupled with the ability to affect significantly the nature and direction of the Employer's operations, are sufficient to warrant the conclusion that the position is managerial and therefore excluded from the unit. 6/

Dated at Madison, Wisconsin this 22nd day of April, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairman

Herman Torosian, Commissioner

William K. Strycker, Commissioner

6/ A side issue relating to the COP position is that the funds for her program come exclusively from State, not County, sources. However, they are resources which have been entrusted to the County, and for which the County (most specifically, the COP social worker) is held responsible. Thus, by extension, they become the employer's resources for purposes of this discussion.