

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**VERNON COUNTY COURTHOUSE AND HUMAN SERVICES EMPLOYEES,
LOCAL 2918, AFSCME, AFL-CIO**

Involving Certain Employees of
VERNON COUNTY

Case 23
No. 49909
ME-3357

Decision No. 13805-J

Appearances:

Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO.

Mark B. Hazelbaker, Attorney at Law, 3240 University Avenue, Suite 3, Madison, Wisconsin, 53705, appearing on behalf of Vernon County.

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

On June 14, 2002, Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Vernon County employees that AFSCME Local 2918 represents by including the following four employees/positions: WIC Coordinator/Nutritionist, Network Administrator, Program/Account Manager, and Director of Court Services.

No. 13805-J

Examiner Stephen G. Bohrer, a member of the Commission's staff, conducted a hearing on November 6 and 7, 2002, at the Vernon County Courthouse Annex in Viroqua, Wisconsin. Contrary to AFSCME, the County contended that the WIC Coordinator/Nutritionist should continue to be excluded from the unit because she is a supervisor and a managerial employee while the Network Administrator and Director of Court Services should be so excluded as managerial employees.

The parties voluntarily resolved the status of the Program/Account Manager.

The County filed a brief on January 29, 2003 and the record was closed on March 7, 2003 when AFSCME confirmed that it would not be filing written argument.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Vernon County, herein the County, is a municipal employer with offices at Viroqua, Wisconsin.

2. Vernon County Courthouse and Human Services Employees, Local 2918, AFSCME, AFL-CIO, herein AFSCME, is a labor organization with offices located at 18990 Ibsen Road, Sparta, Wisconsin 54656-3755. The County and AFSCME are parties to a 2002-2003 collective bargaining agreement which contains the following recognition clause:

The COUNTY hereby recognizes the UNION as the exclusive bargaining representative for all employees for the Courthouse and Human Services Department, except the elected officials, supervisors, confidential, managerial or executive employees; for the purposes of conferences and negotiations relating to wages, hours and other conditions of employment.

3. Since January 2002, Jennifer Sprengelmeyer has been a part-time (32 hours per week) professional employee in the County's Health Department employed as the County's Women, Infants and Children (WIC) Coordinator/Nutritionist. She has overall responsibility for ensuring that services available through the WIC Nutritional Program are provided to County citizens. She reports to Health Department Director Johnson.

Sprengelmeyer spends a majority of her time directly providing WIC services and is assisted by a part-time (24 hours per month) Nurse and a full-time clerical Outreach Worker. Sprengelmeyer and Director Johnson share responsibility for directing the work of the Nurse and Outreach Worker with Sprengelmeyer providing worksite direction and Johnson approving

leave requests and establishing work schedules. Sprenglemeyer and Johnson jointly evaluate the work performance of the Nurse and Outreach Worker.

Sprenglemeyer will play a role in the decision to hire or discipline of employees but will not effectively recommend such action.

Johnson is paid \$22.56 per hour. The Nurse is paid \$17.99 per hour. Sprenglemeyer is paid \$16.37 per hour and the Outreach Worker is paid \$10.66 per hour.

4. WIC Coordinator/Nutritionist Sprenglemeyer does not possess supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

5. Sprenglemeyer drafts operating procedures and policies for the WIC program. Those procedures and policies rely heavily on information provided by the State of Wisconsin.

Sprenglemeyer will play a significant role in the development of the budget for the WIC program. The expenditures and revenues reflected in the WIC budget are largely dictated by law and formulas over which the County has little control.

6. WIC Coordinator/Nutritionist Sprenglemeyer does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the County's resources to be a managerial employee.

7. Under the supervision of Circuit Court Judge Michael Rosborough, the County employs Kathy Sullivan as the Director of Court Services. She has been employed in this position since September 2002. The incumbent will implement court-related or court-attached programs (such as victim offender mediation, mediation of small claims actions, intensive supervision of offenders) that Judge Rosborough identified as having the potential to enhance the services provided by the Court to the community and reduce the County's jail population/costs. Sullivan's responsibilities will include working with the Clerk of Court to develop a budget for these programs, securing grant monies and selecting vendors.

8. Director of Court Services Sullivan does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the County's resources to be a managerial employee.

9. The County operates a Human Services Department. The Department is heavily dependent on computer technology when providing services, particularly since the advent of certain state-wide programs that require the Department to connect to the State main frame computer system and to maintain data files in a compatible manner. Since September 1, 2000, Paula Mickelson has been employed as the Computer Network Administrator for the Department, working approximately 22.5 hours per week.

Mickelson attends weekly meetings with the Department Director Nederlo and the supervisors of the other divisions of the Department . At these meetings, which were initiated at Mickelson's suggestion, the management team discusses productivity and technology concerns and Mickelson effectively recommends how computer technology will be utilized within the Department.

Mickelson also usually attends and is on the agenda for the monthly meetings of the Vernon County Department of Human Services Committee. At these meetings, approval is often sought to expend monies for additional computer-related equipment. The Committee has always accepted her recommendations and often gives her discretion to expend up to a sum certain to implement the recommendations. Implementation of her suggestions has resulted in increased productivity for social workers (through the use of Quick Pads) and for the County Clerk who no longer has to re-key information from the Department (due to new interfaces).

In addition to making presentations to the Human Services Committee, the Computer Network Administrator has made a presentation to the County Board to explain the current computer network and to describe future needs and direction of the system.

10. Although the Computer Network Administrator does not have a separate line item within the Department budget, she advises the supervisors of the various Department divisions as they develop their segments of the Department budget to ensure that present and future computer needs are addressed. Monies included in the division budgets for computer equipment cannot be expended without Sullivan's involvement and approval. Expenditures under \$500 are made upon the approval of Sullivan and Nederlo. Sullivan presents expenditures greater than \$500 to the Human Services Committee with Nederlo's approval, for final approval.

11. Mickelson is working with the County's Computer Resource Specialist, Oldenburg, to develop a countywide policy on the use of computers, including personal use of e-mail and the Internet. She also participates on the Computer Advisory Committee with Oldenburg, the County Clerk, a County Board member and a representative of the Sheriff to discuss and guide the growth of the countywide network.

12. Mickelson is also working with Department managers on developing policies and procedures to implement the federal HIPAA law, in particular as to that law's electronic data privacy and security requirements.

13. Network Administrator Mickelson sufficiently participates in the formulation, determination and implementation of management policy and has sufficient authority to commit the County's resources to be a managerial employee.

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

CONCLUSIONS OF LAW

1. The WIC Coordinator/Nutritionist is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats. or a managerial employee within the meaning of Sec. 111.70(1)(i), Stats. and therefore is a municipal employee within the meaning of Sec. 111.70 (1)(i), Stats.
2. The Director of Court Services is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats. and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.
3. The Computer Network Administrator is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats. and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The WIC Coordinator/Nutritionist and the Director of Court Services are included in the bargaining unit described in Finding of Fact 2 and the Computer Network Administrator continues to be excluded from that unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

VERNON COUNTY

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

WIC COORDINATOR/NUTRITIONIST

Sprenelmeyer as a Supervisor

When determining whether an employee is a supervisor, we apply Sec. 111.70(1)(o)1, Stats., which defines a supervisor as an 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.

When interpreting this statutory language, we consider the following:

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/her skill or for his/her 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/her time supervising employees; and

7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

As to Factor 1, in the limited time she has served as WIC Coordinator/Nutritionist, neither of the two employees with whom Sprenglmeyer works has been hired, promoted, transferred, or disciplined. Thus, our assessment of her role/authority in these critical areas is of necessity based on a consideration of the evidence regarding what her role/authority would be in those circumstances.

Sprenglmeyer's job description indicates that she:

Assists in selection, orientation and evaluation of WIC staff and has the power to effectively make recommendations regarding hiring and firing in cooperation with Health Department Director, Board of Health and Personnel Coordinator.

From the job description's identification of three other individuals/entities with whom Sprenglmeyer "cooperates" as to hiring and firing, we infer that Sprenglmeyer does not have the effective authority to hire or fire. Such a spread of responsibility is contrary to the concentration of influence required for an individual to effectively recommend such personnel actions.

In support of the proposition that Sprenglmeyer has the effective authority to hire, the County points to the important role she played when the County selected an independent contractor to serve as an interpreter for the WIC program and Johnson's testimony that her role would be the same when hiring a County employee. First, we note that both Director Johnson and Sprenglmeyer investigated the independent contractor's credentials and then jointly concluded that the County should enter into a contract. Thus, if this had been the hiring of an employee, we would not conclude that Sprenglmeyer effectively recommended the hire. Further, because the hiring of an employee is generally a more significant decision than the selection of an independent contractor, we are somewhat skeptical as to whether Sprenglmeyer's role would be as significant-particularly in light of the spread of authority reflected in the job description.

In light of the foregoing, we conclude that Sprengelmeyer does not have the authority to effectively recommend the hiring of employees.

As to discipline, from the testimony of Director Johnson, we find that Sprengelmeyer's role is limited to reporting misconduct to Johnson who would, in turn discuss the matter with the Personnel Coordinator and the Board of Health. Thus, Sprengelmeyer does not have the authority to effectively recommend significant discipline. There is no evidence that Sprengelmeyer has any independent disciplinary authority. Therefore, we conclude that her disciplinary role is quite limited.

As to Factors 2 and 3, Sprengelmeyer has some authority to direct and assign the work of the two other WIC employees but that authority is shared with Director Johnson. When the part-time WIC Nurse is performing non-WIC duties (the substantial majority of her work time), she is supervised by another individual.

As to Factor 4, Sprengelmeyer's level of compensation is not supportive of supervisory status but rather reflects the professional nature of her job responsibilities. In this regard, we note that her compensation level is roughly equivalent to that specified in the parties' 2002-2003 contract for professional employees.

As to Factors 5-7, Sprengelmeyer exercises some independent judgment when directing the work of the other two WIC employees but spends a small percentage of her work day doing so. She is primarily supervising an activity rather than employees.

Considering all of the foregoing, we have concluded that Sprengelmeyer is not a supervisor. Particularly in the crucial areas of hiring and discipline, we are persuaded that Director Johnson and the Board of Health have retained too much authority for Sprengelmeyer to be a supervisor.

Sprengelmeyer as a Managerial Employee

A "managerial" employee is specifically excluded from the definition of "municipal employee" found in Sec. 111.70(1)(i), Stats. However, because there is no statutory definition of a "managerial" employee, that term has been defined by the Commission through case law. With judicial approval, the Commission has defined a "managerial" employee by considering the extent to which the employee participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. *CITY OF MILWAUKEE V. WERC*, 71 WIS. 2D 709 (1976); *VILLAGE OF WHITEFISH BAY*, 103 WIS.2D 443 (CT. APP. 1981); *KEWAUNEE COUNTY V. WERC*, 141 WIS.2D 347 (CT. APP. 1987); *MANITOWOC COUNTY V. LOCAL 986A*, 170 WIS.2D 692 (CT. APP. 1992); *COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223*, 190 WIS.2D 298 (CT.

APP. 1994). To confer managerial status, the employee's policy role must be "at a relatively high level" MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92), or the employee's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the municipal employer's operations. VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88).

Applying these general principles to Sprengelmeyer, we conclude that she is not a managerial employee. While she plays an important role in the success of the WIC program, the parameters of that program and the financial resources related thereto are so constrained by law and reimbursement formulas that Sprengelmeyer's present role in drafting policies and future budgetary responsibilities cannot meet the "relatively high level" and "significantly affects the nature and direction" standards referenced above.

Given all of the foregoing, Sprengelmeyer has been placed in the AFSCME bargaining unit.

DIRECTOR OF COURT SERVICES

The Director of Court Services is not a managerial employee.

From her testimony and that of Judge Rosborough, it is clear that the programs and policies she will be implementing have been selected/established by the Judge. In such circumstances and with the indefinite but limited financial resources over which she will have authority, her policy and resource role falls short of the "relatively high level" and "significantly affects the nature and direction" standards required for managerial status.

Therefore, the Director is included in the AFSCME bargaining unit.

COMPUTER NETWORK ADMINSTRATOR

The Computer Network Administrator is a managerial employee. Unlike many employees with similar titles, the incumbent not only maintains the computer network for the County Human Services Department but is also very involved in both the long-term and day-to-day management policy and resource decisions of the agency.

Mickelson attends weekly Department meetings with Department Director Nederlo and the supervisors of all of the other Department divisions. Because the Department is heavily dependent on the use of technology to ensure compliance with state and federal laws, to account for state and federal program revenues, and to increase employee productivity, Mickelson's effective recommendations as to which technology options will fit the Department's needs make her a significant participant in the formulation, determination and implementation of Department policies.

Although she does not have the ability to expend County funds in amounts greater than \$500 without getting approval from Nederlo and the County Board Committee on Human Services, Mickelson effectively recommends all County purchases, often amounting to several thousand dollars, as to software, hardware, and networking equipment for the Department.

Mickelson also helps develop County policies for personal computer usage, including e-mail and Internet. She sits on the countywide Computer Advisory Committee together with the IT Specialist, a member of the County Board of Supervisors and a Sheriff's department representative. They discuss and guide the growth of the countywide network and countywide policy on network usage.

Mickelson estimates that 25 to 50% of her work time is dedicated to policy development and expenditure recommendations. Thus, it is clear that she is far more than a technician overseeing the physical components of the computer network. Although it is a close call, it is the breadth and depth of her impact on County policy and resource expenditures that warrants the conclusion that Mickelson is a managerial employee who should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 28th day of April, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

gjc
13805-J

