

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XXIII
No. 19322 ME-1214
Decision No. 14518

Felhaber, Larson, Fenlon & Vogt, Attorneys at Law, by Mr. David R. Hols, appearing on behalf of the Municipal Employer.
Mr. Guido Cecchini, Representative Local 576, appearing on behalf of the Union.

St. Croix County Health Care Center having, on June 30, 1975, filed a petition with the Wisconsin Employment Relations Commission, wherein it requested that the Commission clarify an existing certified collective bargaining unit consisting of all regular employees of the St. Croix County Health Care Center, excluding the Superintendent, Assistant Superintendent, Registered Nurses, Registered Occupational Therapists, Social Workers, Director of Alcoholism Services, and all other supervisors as defined by law; and a hearing having been held in the matter at Hudson, Wisconsin on August 14, 1975, Robert M. McCormick, Hearing Officer, being present; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

1. That since the following positions are professional, they are excluded from the above-described unit: Developmental Disabilities Coordinator, Director of Sheltered Employment Services.

2. That since the following positions are supervisory, they are excluded from the above-described unit: Farm Manager, Counseling Supervisor, Food Services Supervisor, Coordinator of Administrative Services, Director County Day Services.

3. That since the following positions are neither professional nor supervisory, they are hereby included in the above unit: Coordinator of Maintenance, Assistant Farm Manager, Sheltered Employment Workshop Supervisor, Chemical Dependency Counsellor, Director of Information and Referral, Assistant Director Home Trainer, Medical Records Practitioner, Collection Agent.


4. That the unit described in the preface of this Order, as certified in St. Croix County (13644) on June 13, 1975 is now amended to read as follows:

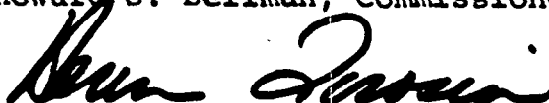
"All regular employees in St. Croix County Health Care Center excluding the Superintendent, Assistant Superintendent, professional supervisory and confidential employees, and all other employees of St. Croix County." 1/

Given under our hands and seal at the
City of Madison, Wisconsin this 7th
day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Howard S. Bellman, Commissioner


Herman Torosian, Commissioner

1/ The Commission today is amending the Certification issued on
June 13, 1975 to reflect the changes made in this Order.

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Employer initiated the instant proceeding by filing a petition requesting the Commission to determine whether the following positions should or should not be included in the unit described in the preface of the Commission's Order:

Director of Sheltered Employment Services
Food Service Supervisor
Coordinator of Administrative Services
Workshop Foreman
Coordinator of Maintenance
Farm Manager
Assistant Farm Manager
Sheltered Employment Workshop Supervisor
Counseling Supervisor
Chemical Dependency Counselor
Director of Information and Referral for Alcohol and Other
Drug Abuse
Assistant Director - Home Trainer St. Croix County Day Services
Medical Records Practitioner
Collection Agent

At the outset of the hearing, the Employer was permitted to amend its petition to seek the exclusion of additional positions, namely, Developmental Disabilities Coordinator and the Director of St. Croix County Day Services, as professionals.

During the hearing, the parties mutually agreed that the position of Developmental Disabilities Coordinator, the Director, St. Croix County Day Services, the Director of Sheltered Employment Services, the Food Service Supervisor, and the Coordinator of Administrative Services should be excluded from the collective bargaining unit because they are either supervisory or professional. The parties agreed that the current job descriptions describing the duties and qualifications of the aforesaid positions are accurate and complete and that the occupants of said positions in fact carry out the duties and responsibilities indicated. The Commission is satisfied that the duties and responsibilities of Developmental Disabilities Coordinator and Director of Sheltered Employment Services are professional in nature; and that the duties and responsibilities of the Food Service Supervisor, Coordinator of Administrative Services and the Director of County Day Services are supervisory in nature; and that, therefore, all of said positions are excluded from the unit.

The parties also stipulated that the petition be amended to delete the proposed exclusion of Workshop Foreman from the unit. The Commission will therefore treat said stipulation as establishing the continued inclusion of the Workshop Foreman in the unit.

The Employer contends that ten other positions should be excluded from the unit on the basis that they are either supervisory or professional.

The Union raised a general objection to the Commission's clarifying whether several of the positions should now be excluded from the bargaining unit on the ground that many of the occupants appeared on the original eligibility list at the first representative election on December 13,

1973 1/ and on the list involving the "fair share" referendum on June 5, 1975. 2/ The Commission rejects the Union's contention in this regard and concludes that it is obliged to clarify whether certain positions are supervisory or professional and therefore excluded because of Section 111.70(1) of MERA. 3/

THE ISSUES AS TO SUPERVISORS

Section 111.70(o)(1) of MERA defines the term "supervisor" as follows:

"As to other than municipal and county firefighters, 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."

In concluding whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

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 skill 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.
7. The amount of independent judgment and discretion exercised in the supervision of employees. 4/

Coordinator of Maintenance

The Employer contends that the Coordinator of Maintenance presently occupied by Mr. Clifford Nelson, should be excluded from the collective bargaining unit because it is a supervisory position. Nelson has held this position since February, 1974. He is responsible for the general

1/ (12271) 11/73.

2/ (13644) 6/75.

3/ Sheboygan County (8256-E) 4/70; City of Milwaukee (6960-F) 1/70.

4/ Fond du Lac County (10579-A) 1/72.

maintenance of three buildings. He services and repairs the boilers, performs some carpentry and plumbing tasks, inspects equipment to insure that it is safe, replaces light bulbs, and makes certain that the fire alarm system is operative. He performs maintenance tasks approximately 75 percent of his time, similar to the tasks performed by the two other maintenance employees, who however, are less skilled. The remainder of his time is spent on such duties as assigning routine tasks, determining if anything is in need of maintenance and transmitting specific directions of Administration. The Coordinator of Maintenance is compensated at \$900 per month, regardless of the number of hours worked, while the other maintenance employees "punch a clock" and are entitled to overtime.

Although the Coordinator of Maintenance takes inventory and requisitions supplies, central administration must approve major repair projects. He does have the authority to secure a plumber, steamfitter or electrician from outside the Health Center if a repair problem is beyond the scope of his expertise.

The work schedule is established by Administration. The incumbent testified that he can grant emergency leaves and adjust vacations. He does evaluate some, but not all, of the work performed by the other two maintenance personnel.

The evidence indicates that Nelson does not effectively participate in the hiring, firing, discipline, promotion, layoff or transfer of any maintenance employees. Decisions regarding such matters are decided by the Administration and he merely transmits the decisions.

Farm Manager

The Employer seeks to exclude the Farm Manager, Aulden Davis, from the collective bargaining unit as a supervisor. Davis has been Farm Manager for ten years and his general responsibilities include the placement and care of crops, maintenance of registration papers on the cattle, purchasing of seed, fertilizer, and equipment and the breeding and selling of cattle. He is salaried and makes work assignments to other employees.

Four other employees work on the farm and the incumbent has the authority to hire and discharge these employees without consulting anyone else. Davis determines the work schedules, grants emergency leave and recommends to the Board of Trustees and the Administrator whether an employee is entitled to extra compensation. He has the authority to engage outside contractors to perform work without approval of the Administrator.

Assistant Farm Manager

The position of Assistant Farm Manager has been occupied by Mr. Robert Ringberg, since March, 1975. Ringberg's responsibilities are primarily confined to the care of the cattle and he has one employee to assist him therein. He assigns routine tasks and works alongside the other employee.

Unlike the Manager of the farm, the Assistant Manager along with the other farm employees, is entitled to extra compensation for work performed on "non-working" days. Ringberg's salary is approximately \$150.00 per month more than the other farm employees, and Davis testified that part of Ringberg's salary is attributed to his "supervisory" functions; but he also testified that the aforesaid \$150.00 per month differential in salary was based upon Ringberg's special qualifications.

The Assistant Farm Manager interviews prospective employees along with the Farm Manager and has the ostensible authority to reprimand and discharge employees although he has not done so. In the Manager's absence he assigns work and shows buyers the herd of cattle. Although there are four employees assigned to the farm, the Assistant Farm Manager exercises control concurrently with the Farm Manager over only one of them. The Assistant Farm Manager performs the identical tasks as the other employee assigned to him and works alongside the other employees for the substantial portion of his time.

Sheltered Workshop Supervisor

The Employer contends that Ronald Leibl and Gerald Severson, the Sheltered Workshop Supervisors, should be excluded from the unit because they are supervisors. The Sheltered Workshop is an extended employment service for the mentally retarded. The Workshop Supervisors perform time studies, direct clients' work, arrange for the contracting of work, price the work, and engage in quality control of the products. They direct the Workshop Foremen, of which there are two positions, although one is presently vacant.

The Workshop Supervisors evaluate 19 clients and provide therapeutic services for them just as the foreman does. The goal is to rehabilitate the clients. The Workshop Supervisors earn about two dollars an hour more than the foreman and this is primarily attributable to their special skills with respect to conducting time studies, contacting customers and their general experience. The Commission finds that the clients are not municipal employees within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act (MERA), and consequently the Workshop Supervisors do not act in a supervisory capacity with respect to the clients.

The judgment of Workshop Supervisors, who obtain their direction from the Director of the Sheltered Employment Services, is considered by the Director in hiring and terminating employees, however, the authority for hiring and firing rests with the Director of the Sheltered Employment Services. The Workshop Supervisors can reprimand employees. The Workshop Supervisors, therefore, only exercise some control over two foremen positions.

Counseling Supervisor

The Employer argues that the Counseling Supervisor is a supervisory position and should be excluded from the unit. Mr. Keith Richter is the present Counseling Supervisor and he is directly responsible to the Coordinator of Alcohol and Drug Abuse Services. The Alcohol and Drug Abuse Services treats patients afflicted with problems related to the use of chemicals. He is responsible for the operation of the in-patient program and has four employees reporting directly to him; two counselors and two trainees. He assigns patients to the counselors, evaluates their work with patients and he can effectively hire, fire and direct the four employees. The Counseling Supervisor is paid a salary, \$5,000 per year over and above the salaries of the employees under his direction. He prepares the work schedules and evaluates the four employees.

Conclusions as to Supervisor Issues:

On the basis of the facts adduced in the hearing herein, the Commission finds that the "supervisory" duties and responsibilities of the positions of Coordinator of Maintenance, Assistant Farm Manager and Sheltered Employment Workshop Supervisor, are not in sufficient combina-

tion and degree to warrant a conclusion that the occupants of said positions are supervisors and, therefore, they are included in the unit. However, based on the statutory criteria and the combination of duties performed by the Farm Manager and Counseling Supervisor, we conclude that the positions are supervisory positions.

THE ISSUES AS TO PROFESSIONALS

Chemical Dependency Counselor

The Employer seeks to exclude the position of Chemical Dependency Counselor as professional. Said Counselor is responsible for the progress of the patients. He communicates with psychiatrists, psychologists, medical doctors, and clergymen concerning patients' progress. The position requires a one-year internship training program, which is not primarily academic in nature, or related to a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. Interns are taught professional reading, interviewing, group therapy, and lecturing. Former patients have acted as Counselors and the testimony indicated that persons affected by chemical dependency in the past are desirable candidates for such positions, although counselors must have two years of sobriety. The evidence persuades the Commission that the position of Chemical Dependency Counselor does not fall within the definition of "professional employees" 5/ as set forth in MERA, and consequently said position is included in the unit.

Director of Information and Referral

During the hearing, the Employer amended its petition to exclude the captioned position as professional, rather than as a supervisor. The record indicates that the training and qualifications of the Director of Information and Referral are almost identical to the training and qualifications of the Chemical Dependency Counselor.

The Director of Information and Referral, Mr. Michael Early, refers patients to the appropriate services, is responsible for alcohol education through St. Croix County and assists in evaluating patients. There is evidence that only a half-time secretary reports to him. In the alternative there is no evidence in the record that would indicate that he exercises effective supervisory control over the secretary so as to qualify said position as supervisory. 6/ We conclude that the Director of Information and Referral is neither professional nor supervisory, and therefore is included in the bargaining unit.

Assistant Director - Home Trainer St. Croix County Day Services

The Employer would exclude this position from the unit as a professional employee. The position is presently vacant. A minimum of two years education beyond high school and experience with the mentally retarded is required for the position. The position also requires a minimum of 40 hours supplemental training each year.

The duties of the position require the supervision of developmentally disabled adults, and visits to clients' homes to render advice and evaluate clients' health, speech, and hearing problems. The occupant of the position will also recommend hand-eye coordination exercises to be performed by the clients and he or she must be knowledgeable about physical therapy.

5/ Rock County (13131) 11/74.

6/ Ibid.

The Employer has failed to establish that the position requires the completion of a prolonged course of specialized intellectual instruction in an institution of higher education or a hospital and consequently it is not a professional position; 7/ and, therefore, is included in the unit.

Medical Records Practitioner

The Employer seeks to exclude this position from the unit as a professional employee. Ms. Kathy Drury has occupied this position since June, 1974. Testimony indicated that the minimum requirement for the position is two years of college, specializing in medical records. Ms. Drury has passed the American Medical Records Association test for accreditation.

The Medical Records Practitioner directs, plans and controls the medical records. Ms. Drury testified that she develops and assigns patient information systems and renders advice concerning record attention and release of information relating thereto. She analyzes and evaluates medical records and establishes procedures for the utilization review committee. She works without direct supervision and is continuously called upon to exercise independent judgment.

The incumbent is salaried at \$700.00 a month. Familiarity with legislation in this field is required. The testimony shows that Ms. Drury is the entire medical records department of the Health Center.

The evidence demonstrates that two years of college specialization in the medical records field is required for the position. The Commission concludes that such education does not constitute a prolonged course of specialized intellectual instruction and study in an institution of higher learning and therefore said position is not professional, and is included in the unit. 8/

Collections Agent

The Employer contends that the position of Collection Agent, presently occupied by Ms. Patricia Spoentgen, should be excluded from the unit on the basis that she is a professional employee. Ms. Spoentgen has held this position since March, 1975. She has a BA degree in psychology and four years' experience in bookkeeping and billing. She is responsible for gathering financial information from clients, which information provides the basis for determining the client's fee. Ms. Spoentgen makes decisions concerning the processing of delinquent accounts for outpatients.

The evidence fails to convince the Commission that the BA degree in psychology is intimately related, or even necessary, to perform the

7/ Marinette General Hospital (8637) 7/68; Rock County, supra, footnote four.

8/ Ibid.

responsibilities as Collections Agent. Consequently, the Commission finds that said position is not professional 9/ and is included in the unit.

Dated at Madison, Wisconsin this 7th day of April, 1976.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney -
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner

9/ Supra, Rock County.

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