

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
LOCAL 2634, AFSCME, AFL-CIO
Involving Certain Employees of
DANE COUNTY

Case 53
No. 40528 ME-263
Decision No. 15696-A

Appearances:

Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53709, appearing on behalf of the Petitioner.
Mulcahy & Wherry, S.C., Attorneys at Law, 131 West Wilson St., Suite 202, P.O. Box 1110, Madison, WI 53703-1110, by Mr. Jon Anderson, appearing on behalf of the County.

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

Local 2634, AFSCME, AFL-CIO, having on April 28, 1988, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing bargaining unit consisting of professional social workers employed by Dane County to include within that unit the position of Community Service Volunteer Coordinator; and a hearing in the matter having been conducted on August 10, 1988, at Madison, Wisconsin, before Examiner Karen J. Mawhinney, a member of the Commission's staff; and the parties having made oral argument at the close of the hearing in lieu of filing post-hearing briefs; and a transcript of the hearing having been received on September 16, 1988; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Local 2634, AFSCME, AFL-CIO, referred to herein as the Union, is a labor organization with its offices at 5 Odana Court, Madison, Wisconsin 53709.

2. That Dane County, referred to herein as the County, is a municipal employer, and has its offices at 210 Martin Luther King, Jr., Blvd., Madison, Wisconsin 53709.

3. That on August 16, 1977, the Wisconsin Employment Relations Commission certified AFSCME as the collective bargaining representative of a collective bargaining unit consisting of:

All professional employees (Social Workers) employed by Dane County in its Social Services Department and Hospital and Home, but excluding all other professional employees, supervisors, law enforcement personnel, craft employees, confidential employees and all other employees of Dane County.

4. That the parties' current collective bargaining agreement contains the following recognition clause:

The Employer recognizes the Union as the exclusive bargaining representative for professional social workers employed by Dane County for purposes of collective bargaining on questions of wages, hours and conditions of employment pursuant to an election conducted by the Wisconsin Employment Relations Commission and representation rights certified on August 16, 1977. (Case L III No. 21862 ME-1454).

and that the position of Command Service Volunteer Coordinator did not exist at the time of the Commission's August 1977 certification.

5. That the Union, contrary to the County, contends that the position of Community Service Volunteer Coordinator shares a community of interest with other members of the bargaining unit and should be included within that unit; that the position is currently occupied by Rita Adair; that the parties have stipulated that the position in dispute is a professional position and is currently not included in any bargaining unit; and that Adair works in the District Attorney's office in the Deferred Prosecution program.

6. That the current job description of the Community Service Volunteer Coordinator is as follows:

DEFINITION

Under general direction, plans, implements, maintains and evaluates community service placements under the District Attorney's Deferred Prosecution program; performs related work as required.

EXAMPLES OF DUTIES

Develops community service placement sites; facilitates First Offender classes for property offenders; conducts intake screening interviews and assessments of first offenders; maintains liaison with private and public non-profit agencies for the community service program; conducts placement interviews and assessments of offenders sentenced to community service work; monitors offenders' progress toward meeting their community service obligations including the evaluation of reports of offenders' progress from supervising community service agencies and verifies offender completion of their community service requirements; prepares periodic statistical reports, including monthly, on the community service program status; assists in the community service program public education effort with emphasis on alerting the public to the community service program's alternative to incarceration; supervises graduate field placement or work study students as assigned to the community service program.

EMPLOYMENT STANDARDS

Education and Experience: Any combination of training and experience equivalent to a Bachelor's Degree from an accredited college or university in a human services field, preferably Criminal Justice and at least one year of full-time paid professional work experience in criminal offender rehabilitation including psycho-socioeconomic assessment, vocational assessment, job placement development, volunteer program planning, evaluation and administration.

Knowledges and Abilities: Ability to organize and maintain the necessary feedback systems to evaluate program effectiveness; knowledge of community education and development programs; a working knowledge of the criminal justice system; knowledge of community resources including private and public non-profit agencies; knowledge of vocational and psycho-socioeconomic assessment methods; knowledge of job development practices and methods; knowledge of criminal offender rehabilitation theory and practice; knowledge of community service-restitution philosophy; ability to communicate effectively verbally and in writing; ability to coordinate a variety of functions in a timely manner; ability to establish record keeping systems.

Special Requirements: Possession of or eligibility for Wisconsin driver's license and access to personal transportation;

that the job description is inaccurate to the extent that the incumbent does not facilitate first offender classes for property crime offenders or carry a caseload

or do intake screening interviews of assessments of first offenders; that this job description was written in 1984; and that the position was last filled in the spring of 1988.

7. That the Community Service Volunteer Coordinator is supervised by the Director of the Deferred Prosecution Unit, Suzanne Beaudoin; that the program is an alternative to prosecution in order to rehabilitate offenders and lessen the burden on the judicial system; that an assistant or deputy district attorney refers cases to the unit; that Beaudoin then assigns cases to intake counselors who interview and assess defendants; that there are two intake counselors in the District Attorney's office, one of whom is a social worker in the bargaining unit and another who is a limited term employee; that the intake counselors determine whether offenders are eligible for the program and draw up contracts specifying conditions to be met in order for charges to be dismissed; that the role of the Community Service Volunteer Coordinator is to meet with agencies, find out their needs for volunteers, help obtain community service volunteer sites, match up an offender to a particular agency, develop policies and procedures, evaluate the program, recommend changes in the program, and maintain a liaison with agencies in the community; that the Community Service Volunteer Coordinator has an assistant to monitor community service hours and make sure that an offender is complying with the hours required by contract; that the Community Service Volunteer Coordinator usually meets once with an offender to match up the offender's skills with a community service site; that the intake counselors have contact with victims but the Community Service Volunteer Coordinator does not; that in a typical day, the Community Service Volunteer Coordinator sees three offenders while an intake counselor sees seven or eight offenders; and that the intake counselors counsel offenders, unlike the Community Service Volunteer Coordinator.

8. That the bargaining unit represented by the Union consists of approximately 100 social workers; that the majority of the social workers are assigned to the Department of Social Services; additionally, social workers are located in several satellite offices; that the basic responsibility for social workers within the Department of Social Services is to work with families with children in cases of child abuse, neglect, delinquency and juvenile offenses; that the social workers see that services are provided to protect children and the community; that the majority of social workers are responsible for managing caseloads of about 25 to 30 families who may be involved in the judicial system; that social workers assess the needs of families and see that those needs are addressed by various agencies; that social workers have ongoing contact between families, agencies, and the courts; that the position of Family Violence Specialist in the District Attorney's office is held by a senior social worker; that the Family Violence Specialist position was originally called a Domestic Violence Specialist but was upgraded from a social worker position to a senior social worker position and renamed at the same time to reflect the nature of the position and to give it special recognition; that the Family Violence Specialist is included in the bargaining unit; that while both the Family Violence Specialist and the Community Service Volunteer Coordinator are involved in the criminal justice system, the former deals with victims and the latter with offenders; that the Family Violence Specialist carries a caseload, assists victims, and monitors a case, unlike the Community Service Volunteer Coordinator; that the Family Violence Specialist uses social work methods, works with people in crises, and makes sure that victims are protected and counseled; that the Community Service Volunteer Coordinator does not intervene in human problems but is more of a program coordinator; that social workers are generally required to have a degree with a major in social work or a closely related human services field, such as sociology, psychology, guidance and counseling; that the Community Service Volunteer Coordinator is required to have a combination of training and experience equivalent to a Bachelor's Degree in a human services field, preferably criminal justice; that social workers are required to have in-service training credits or educational requirements to progress through the salary steps, while the Community Service Volunteer Coordinator has no such requirement; that the pay range of the Community Service Volunteer Coordinator is between \$11.26 to \$13.53 per hour; that the pay range for social workers is between \$9.80 to \$13.13 per hour and the range for senior social workers is between \$11.93 to \$14.50 per hour; that social workers' regular hours are between 7:45 a.m. and 4:30 p.m. but they frequently work outside of the regular schedule and work evenings or weekends; that the Community Service Volunteer Coordinator works established hours of 7:45 a.m. to 4:30 p.m. and is not required to work outside of those hours or to be on call; that social workers receive compensatory time; that the Community Service Volunteer Coordinator, like other nonrepresented professionals and managers working for the County, has discretionary time rather than compensatory time, in

that there is a salary paid to get a job done regardless of whether one works fewer or greater hours from week to week; and that social workers have a nine month probationary period, while the Community Service Volunteer Coordinator has a twelve month probationary period.

9. That the County bargains with units consisting of: (1) social workers; (2) attorneys; (3) blue-collar employees of the highway department, airport, zoo, and exposition center; (4) non-professionals; (5) deputy sheriffs; (6) law enforcement supervisors; (7) nurses; and (8) craft employees; that there is no residual professional unit in the County; that the County estimates that there are 30 to 50 professional employees who are not included in any bargaining unit but would be eligible for representation; that all the nonprofessional "municipal employees" are included in a bargaining unit; that in the District Attorney's office, only the Community Service Volunteer Coordinator and the Deferred Prosecution Program Counselor are eligible for representation but not represented by any union; and that all the other professional employees and clerical employees in the District Attorney's office are either represented in one of the bargaining units listed above, or are excluded on the basis of supervisory status.

10. That the Community Service Volunteer Coordinator does share a sufficient community of interest with professional social workers to warrant inclusion with social workers in the unit.

11. That inclusion of the Community Service Volunteer Coordinator in a bargaining unit with social workers does not affect the Union's majority status as the collective bargaining representative.

On the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

That the position of Community Service Volunteer Coordinator is appropriately included in a bargaining unit with professional social workers.

On the basis of the above and foregoing Findings of Fact, and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT AND AMENDING CERTIFICATION 1/

That the position of Community Service Volunteer Coordinator is included in the bargaining unit represented by the Petitioner, and therefore the existing bargaining unit description is amended to read as follows:

all professional employees of Dane County who are engaged in providing social and related services, but excluding all other professional employees, law enforcement personnel, supervisory, confidential and managerial/executive employees, craft employees, and employees in other collective bargaining units.

Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of December, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosiah
Herman Torosiah, Commissioner

A. Henry Kempe
A. Henry Kempe, Commissioner

(See Footnote 1/ on Page 5)

- 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.

DANE COUNTY

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

BACKGROUND

The Union represents a bargaining unit of approximately 100 professional social workers who work in several locations in the County. In this proceeding, it seeks to add to that unit the position of Community Service Volunteer Coordinator, a professional position within the District Attorney's office. The parties do not know exactly when this position was created, although the existing job description was written in 1984. The position was last filled in the spring of 1988 by Rita Adair.

THE PARTIES' POSITIONS

The Union asserts that the Community Service Volunteer Coordinator has a community of interest with the professional social workers in the County. The Union points to the similarity of wages, hours and conditions of employment to support its contention that the position appropriately belongs in the unit. The Union argues that if this position were to be excluded from the unit, the County would then be fragmenting the professional employees by denying one of them the opportunity to be included in the bargaining unit.

The Union points out that the County has created another professional position in the District Attorney's office which was included in the unit -- the position of the Domestic Violence Specialist, which later became the Family Violence Specialist. About the same time, the Union asserts the County created the Community Service Volunteer Coordinator but kept that position out of the unit. The Union urges the Commission to look beyond the titles and look to the duties and similarities in wages, hours and conditions of employment between employees in the District Attorney's office, the Department of Social Services in several locations, the Badger Prairie Health Care Center, all of whom provide related services.

The County's position is that the Community Service Volunteer Coordinator is not a professional social worker and therefore not appropriately included in an existing unit of professional social workers. The County asserts that there is no community of interest between the disputed position and the bargaining unit members. The County points out that the social workers' main function is to help others in times of need. The Community Service Volunteer Coordinator's main function is to develop community placement sites and match a defendant to a community site in fulfilling a contract in the Deferred Prosecution Program. The County states that there is no duplication or overlap of services between social workers and the Community Service Volunteer Coordinator.

Additionally, the County notes that this is a well-defined social worker bargaining unit, not a residual professional unit. It submits that a unit clarification proceeding is not the appropriate forum to address the nature and character of the bargaining unit, and that to place the Community Service Volunteer Coordinator in the unit would be to attack the integrity of the unit. The County further states that the antifrAGMENTATION policy is one of many factors to be used in determining an appropriate unit but has no application when dealing with a defined unit in a unit clarification context.

DISCUSSION

The County has historically excluded the position in dispute from the unit because it did not believe the position was that of a "social worker." The Union's arguments for inclusion appear to concede that the Community Service Volunteer Coordinator is not a "social worker" and focus instead upon the community of interest which this position has with social worker positions. The County disputes the Union's community of interest claim and also asserts that a unit clarification proceeding is not the appropriate vehicle by which an existing unit's composition can be altered.

The County correctly cites Shawano County, Dec. No. 22382 (WERC, 2/85) for the proposition that unit clarification proceedings are generally not an available means to attack the propriety of an existing unit. However, the Union herein is not attacking the propriety of the social worker unit. The Union is not asking that the existing unit be expanded because it is "inappropriate" as currently constituted, but rather because a position has been created which the Union believes should most appropriately be added to the social worker unit. As we noted in Shawano:

Once an appropriate unit is established, it may be that a clarification proceeding is needed from time to time if positions are eliminated or new positions are created or there are other material changes in circumstances. In those cases, additions to or deletions from the established unit--with or without need of amendment of the unit description and with or without need of a self-determination vote--are made not on the basis that the existing unit is inappropriate, but rather on the basis that the positions in question belong in or out of the existing unit.

Thus, where appropriate, we have expanded the scope of existing units through unit clarification proceedings if: (1) sufficient community of interest exists between the positions in the unit and the positions to be added thereto and (2) the addition of the position(s) doesn't call into question the Union's continuing majority status. Madison Metropolitan School District, Dec. No. 14161-A (WERC, 1/77); Dec. No. 13735-A (WERC, 4/77); Dec. No. 13735-B (WERC, 8/78); Dec. Nos. 20835-A and 20836-A (WERC, 11/83). Applying those two criteria to the instant record, we are satisfied that it is appropriate to expand the existing unit to include the Community Services Volunteer Coordinator. 2/

Critical to our conclusion as to the sufficiency of the community of interest is the closely related and supportive nature of the Volunteer Coordinator's work responsibilities vis-a-vis those of the social workers. While our Findings of Fact acknowledge certain differences in working conditions exist between social workers and the Volunteer Coordinator, those differences appear as much a function of the impact of collective bargaining as anything else. While it is true that the Coordinator is more of an administrative position than those held by social workers currently in the unit, the skills, duties and general function of the Coordinator are closely interrelated to skills, duties and functions of, for instance, the intake counselor who is in the unit and also works in the Deferred Prosecution unit. Thus, on balance, we are satisfied that there is a sufficient community of interest between the Volunteer Coordinator and the social workers to expand the existing unit to include the Coordinator position. As it is also apparent that inclusion of a position in a unit of 100 employees will not call into

2/ Presumably because the position did not exist at the time the social worker unit was certified, the County does not argue that the parties have implicitly or explicitly agreed to exclude the disputed position, and thus that inclusion is therefore inappropriate on that basis. See MATC, Dec. No. 8382-A (WERC, 1/80); City of Cudahy, Dec. No. 12997 (WERC, 9/74); Greendale Board of Education, Dec. No. 12611 (WERC, 4/74); Jackson County, Dec. No. 14129-B, C (WERC, 8/79); Milwaukee Board of School Directors, Dec. No. 13134-A (WERC, 1/76); City of West Allis, Dec. No. 14617-A (WERC, 11/77).

question the Union's majority status, the unit expansion can appropriately occur through the unit clarification process.

Dated at Madison, Wisconsin this 16th day of December, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

A. Henry Hempe
A. Henry Hempe, Commissioner