

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**AFSCME LOCAL 522, AFL-CIO**  
Involving Certain Employees of  
**BARRON COUNTY**

Case 163  
No. 66840  
ME-1209

**Decision No. 15711-F**

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**Appearances:**

**Steve Hartmann**, Staff Representative, Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of AFSCME Local 522.

**John Muench**, Corporation Counsel, 330 East LaSalle, Avenue, Barron, Wisconsin 54812, appearing on behalf of Barron County.

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

On March 21, 2007, AFSCME Local 552, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission by which it sought to clarify an existing AFSCME Local 522 bargaining unit of Barron County employees described in the petition as “ALL FULL TIME AND REGULAR PART TIME NONPROFESSIONAL EMPLOYEES OF THE BARRON COUNTY COURTHOUSE, LIBRARY AND JUDICIAL CENTER EXCLUDING HUMAN SERVICES EMPLOYEES, JAILERS, DISPATCHERS, HIGHWAY DEPT., CONFIDENTIAL SUPERVISORY AND MANAGERIAL EMPLOYEES by inclusion of five Payment Counselors in the County Child Support Agency. The Payment Counselors are currently included in a seven-employee bargaining unit represented by Northwest United Educators (NUE).

A hearing on the petition was held on May 8, 2007 in Barron, Wisconsin, before Examiner Paul Gordon, Commissioner. The County, contrary to AFSCME, asserted that the

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Payment Counselors are professional employees, that AFSCME's petition should be dismissed pursuant to the Commission's "deal is a deal" policy, and that exclusion of the five Payment Counselors from the existing seven-employee unit will result in undue fragmentation of bargaining units and inclusion of the Counselors in a unit with whom they do not share a community of interest. NUE received notice of the hearing and did not appear. During the hearing, the Examiner telephonically contacted NUE who confirmed that it did not contest AFSCME's right to seek to represent the Payment Counselors if they are found to be nonprofessional employees and that it took no position on that issue.

The County and AFSCME filed post-hearing briefs by July 23, 2007.

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

### **FINDINGS OF FACT**

1. Barron County, herein the County, is a municipal employer with offices at 330 East LaSalle Avenue, Barron, Wisconsin, which maintains a Child Support Agency. Within the Child Support Agency are employees in positions known as Payment Counselors.

2. AFSCME Local 522, AFL-CIO, herein AFSCME, is a labor organization affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, with offices at P.O. Box 364, Menomonie, Wisconsin. AFSCME is the collective bargaining representative of certain nonprofessional County courthouse employees.

3. Northwest United Educators, herein NUE, is a labor organization with offices at Rice Lake, Wisconsin. NUE is the current collective bargaining representative of the Payment Counselors.

4. The Payment Counselors were at one time represented by AFSCME in a larger bargaining unit of County employees. Following an election, NUE replaced AFSCME as the bargaining representative of this unit. Thereafter, NUE and AFSCME's parent organizations entered into a "No Raid Agreement" whereby the two labor organizations agreed not to seek to represent employees then currently represented by the other. NUE and AFSCME agree that the instant unit clarification petition does not violate the "No Raid Agreement"

5. NUE and the County have historically agreed that the Payment Counselors are professional employees. AFSCME was not part of that agreement.

6. Payment Counselors work in the County Courthouse. The current Job Description for Payment Counselors, revised in May of 2003, accurately reflects the work done and states in pertinent part:

**1) Purpose and Summary**

Under the general supervision of the department head or designee, the Payment Counselor is responsible for managing all aspects of the assigned caseload. This includes intake, establishing support obligations, case monitoring and enforcement.

**2) Duties**

- a) Review and assess applications received or Human Services referrals for child support or medical support services and examine case file to determine that divorce decree and court ordered judgment for payment and medical support are appropriate.
- b) Obtain necessary information such as location and description of absent parent, to facilitate parent locate and the establishment and enforcement of child support and medical support orders.
- c) Refer clients to other resources, programs and agencies when appropriate.
- d) Explain agency role and procedures to clients
- e) Locate absent parent, employment status, income and assets by contacting clients, friends, relatives and employers by using the appropriate manual and automated locating services and the KIDS computer system.
- f) Document all activities on KIDS in accordance with Wisconsin Child Support Procedures.
- g) Review and interpret financial information to determine appropriate child support obligation pursuant to state statutes and to determine access to medical insurance. Meet with CSA Director (Attorney) to make request for and recommendation of proposed legal action to be taken.
- h) Negotiate settlement agreements with parents and attorneys. Discuss stipulating to a medical support and/or child support order prior to scheduled court date, including other orders necessary to provide a full range of enforcement services.

- i) Prepare necessary legal documents for scheduled court hearing. Review orders following hearing and prepare income withholding order.
- j) Prepare legal documents for interstate enforcement and establishment. Work with other states, facilitating enforcement and establishment.
- k) Monitor child support orders awarded by court to ensure compliance and enforcement of child support laws.
- l) Communicate with clients, attorneys, employers and other related persons regarding case concerns, telephone calls, etc.
- m) Day to day caseload planning, processing and evaluating specific case needs and requests.
- n) Process appropriate reviews of court orders, confirming relevant items such as shared-time placement, split custody and serial family payers and bringing to resolution by stipulation or court hearings.
- o) Evaluate and process reports regarding case information, timelines, court schedules, warrants, process service, etc.
- p) Maintain case files on KIDS and paper files in office.

**3) Required Knowledge, Skills and Abilities**

- a) Knowledge of State and Federal laws, policies and procedures relating to child support establishment and enforcement.
- b) Knowledge of business correspondence and the use of proper grammar.
- c) Typing skill, computer literacy and the ability to maneuver through statewide data systems.
- d) Decision and problem solving skills with accuracy and attention to detail.
- e) Dependable, punctual and reliable.
- f) The ability to:

- i) Cooperate and work effectively with many offices, other counties and other jurisdictions; specifically, the Court, Family Court Commissioner, Clerk of Court, Sheriff's Department, Department of Human Services, State Office of Child Support, etc..
- ii) Complete assigned work with a minimum of supervision.
- iii) Communicate effectively with clients from all social and economic levels in a sensitive and professional manner.
- iv) Relate to custodial and non-custodial parents in an unprejudiced and understanding manner, with concern for their circumstances and feelings.
- v) Work effectively and professionally with co-workers.
- vi) Read and interpret varied court orders pertaining to support.
- vii) Plan and organize work to most effectively achieve program objectives.
- viii) To prepare and maintain necessary records, subject to audit and the ability to understand and follow oral and written instructions.
- ix) Prioritize and manage time.
- x) Maintain composure in volatile or otherwise stressful situations as well as when working under deadlines.
- xi) Analyze data and advise individuals and or groups on findings and conclusions.
- xii) Work independently.
- xiii) Maintain and respect client confidentiality and willingness to sign a confidentiality statement.

**4) Education and/or Experience**

Bachelor's degree from a four-year college or university with a degree in Human Services, Criminal Justice, Business Administration or related area; and three (3) years of work experience in a related area.

**5) Qualifications**

To perform this job successfully, an individual must have:

- i) Knowledge and a comprehensive understanding of the areas of child support enforcement and in the use of computer equipment.
- ii) The ability to communicate effectively orally and in writing.
- iii) The demonstrated capacity for evaluating and presenting information.
- iv) Mathematical and problem solving skills.

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7. The previous 1994 Payment Counselor job description had an educational and experience requirement that read:

Graduation from an accredited four (4) year college or university with a degree in social work, sociology, psychology, or related social welfare/science area and three (3) years of work experience in a related field. (emphasis supplied)

The County has had a four-year specialized degree requirement for Payment Counselors since the position was first created. All previous Payment Counselors have met the then existing requirement and all five of the current Payment Counselors have either a Bachelor of Arts or a Bachelor of Science degree.

8. The Director of the Child Support Agency requires the Payment Counselors to act as paralegals in performing their duties. In addition to the duties listed in their job description, they receive and respond to correspondence from the Circuit Judges and the Court Commissioner, discuss and negotiate contested cases with attorneys and individuals, try to reach settlements, and draft legal documents, exercising independent judgment and decision making. They have authority, pursuant to law, to suspend individual professional, recreational and driver's licenses. They can also request that warrants be issued.

9. Within the Child Support Agency is a Deputy Director of Child Support who supervises the Payment Counselors and also is responsible for administration in the Agency, for budgeting, and for a caseload of paternity actions and certain criminal enforcement activities. The Deputy Director formerly was the Director of the Washburn County Child Support Agency where she also supervised payment counselors. She holds a two-year Associate Degree in Business Administration from Wisconsin Indianhead Technical College.

Payment Counselors in Barron County with four-year degrees learn the workings of the Court system and the accounting functions needed to perform Payment Counselor duties more quickly than did Payment Counselors from Washburn County who did not have such degrees and may be better than their non-four year-degreed counterparts at diffusing hostile situations and working independently.

10. The Barron County Payment Counselors each have a case load of about 600 cases. If they have policy questions they review the matter with the Deputy Director. If they have legal questions or questions about financial information they review those with the Director and/or the Corporation Counsel. Counselors use the State-wide KIDS computer system and a State policy manual when performing their work. They attend training programs on new State initiatives and programs in the area of child support. The Payment Counselors act within the guidelines set out by State and federal laws and regulations, with some discretion as to enforcement activities within those parameters. There are also local Barron County guidelines for working with the District Attorney's office on criminal matters and on timelines for service of process.

11. Although employees with a four-year degree typically learn the work of County Payment Counselors more quickly and may be able to perform some of that work at a higher level than employees without a four-year degree, the work of County Payment Counselors does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.

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

#### **CONCLUSION OF LAW**

The Payment Counselors are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

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

**ORDER CLARIFYING BARGAINING UNIT**

The Payment Counselors shall be excluded from the NUE bargaining unit described in Finding of Fact 3, and included in the AFSCME nonprofessional courthouse employee bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of November, 2007.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner



**BARRON COUNTY**

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

The County opposes AFSCME's petition to include the Payment Counselors in a nonprofessional courthouse AFSCME unit because: (1) under the Commission's "Deal is a Deal" policy, AFSCME's failure to raise this issue in the past warrants dismissal of the petition; (2) the Counselors are professional employees; and (3) removal of the Counselors from the current bargaining unit would result in a fragmented two person bargaining unit and place the Counselors in a unit in which they will have no community of interest with other unit employees.

**Deal is a Deal**

Even assuming that AFSCME's failure to challenge the alleged professional status of the Payment Counselors for more than 10 years can be generally be viewed as a "deal" that ought to preclude AFSCME from raising the issue now, our "deal is a deal" policy never prevents union or employer from obtaining a decision as to an employee's statutory status as a "municipal employee" or as a "professional" employee or a "craft" employee. This is so because the Municipal Employment Relations Act creates or denies statutory rights to employees depending on their statutory status (or lack thereof) as "municipal employees" or "professional employees" or "craft employees". Because we are responsible for administering those statutory rights, we are always available to resolve disputes as to such issues. See MANITOWOC SCHOOLS, DEC. No. 29771-B (WERC, 7/00).

As to "professional employee" status, the statutory right implicated is the right of a "professional employee" to be included in a unit consisting exclusively of "professional employees" unless the professional employees have voted otherwise. See Sec. 111.70 (4)(d) 2. a., Stats. Thus, if the Payment Counselors are not professional employees, they cannot remain in the existing professional employee only bargaining unit, because no such vote has occurred.

Given the foregoing, we reject the County's "deal is deal" argument.

**Professional Status**

Section 111.70(1)(L), Stats., defines a "professional employee" as follows:

1. An employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual mechanical or physical work;

- b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual or physical process; or
2. An employee who:
- a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
  - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

All of the criteria in 1 or 2, above, must be present for an employee to be deemed professional. CHIPPEWA VALLEY TECHNICAL COLLEGE, DEC. NO. 22230-A (WERC, 5/88). We have generally interpreted the Sec. 111.70(1)(L)1.d., Stats., criterion of “a prolonged course of specialized intellectual instruction and study” as being met by a four-year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04); MATC, DEC. NO. 6343-D (WERC, 10/89). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is generally acquired, but the statutory definition focuses on the nature of the work that the employee performs. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work and the knowledge needed to perform it. OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86).

We have previously held that employees performing payment counselor <sup>1</sup> work are not professional employees because such work does not require knowledge customarily acquired through a four-year specialized degree and thus fails to meet the Sec. 111.70 (1)(L) 1.d. Stats. portion of the professional employee definition. *See, e. g.*, CLARK COUNTY, DEC. NO. 19477-H (WERC, 10/99); PORTAGE COUNTY, DEC. NO. 6478-D (WERC, 1/90) The job descriptions and duties of the County Payment Counselors are very similar to those of the Child Support

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<sup>1</sup> Whether called a Payment Counselor, Child Support Specialist, or some other title.

Specialists-I and Child Support Specialist-II in CLARK COUNTY, and are similar to the duties of the relevant employees in PORTAGE COUNTY. Representative of those duties are the following:

- Prepare legal documents (i.e., stipulations, orders, warrants, commitments, contempt findings, etc.) in order to initiate action to be taken.
- Schedule and coordinate all court dates and appointments with applicants, recipients, Specialist II, agency attorney, private attorneys, Clerk of Court and Circuit Court.
- Exercise the ability to use sound judgment and analytical skills in processing administrative orders (i.e., genetic testing, license suspensions, lien dockets) and administrative subpoenas as required in Wisconsin's 1997 ACT 191.
- Determine action to be taken and, if so delegated, take said actions (i.e., delinquency notices, income assignments, garnishments, Uniform Interstate Family Support Act (UIFSA), Uniform Reciprocal Enforcement of Support Act (URES), Federal and State tax Intercept Project, Workers' Compensation claims, court actions through criminal, contempt of civil notions/judgments).
- Draft and/or create legal documents for review and signature by the agency and/or private attorney and judge.
- Prepare cases for court action which includes but is not limited to drafting of all legal documents, compiling all necessary evidence, reports and/or financial exhibits, and communicating with witnesses and employers.
- Contact responsible parties, answer questions relating to financial obligation for child support, prepare payment agreements, prepare detailed case reports.
- Initiate action to be taken in case of nonpayment or delayed or deferred payments.
- Perform mandated periodic review of assigned cases, using proficient analytical skills for determination of appropriateness of adjustments(s) to existing orders; and, if an adjustment is tenable, notify all case participants and initiate court pleadings.

- Prepare assigned cases, as necessary, for court action which includes but is not limited to drafting of all legal documents, compiling all necessary evidence and/or financial exhibits, interviewing witnesses, consulting with the agency attorney for proper legal procedure, negotiations with attorneys and determining arrearages.

We held in PORTAGE COUNTY that, while this type of work is done without close supervision and requires use of discretion and judgment, the exercise of such discretion and judgment in taking certain actions, including seeking court action or performing other what might be viewed as para-legal responsibilities, primarily involves the use of common sense, i.e., judging the likelihood of obtaining any monies, rather than professional expertise. We further held in CLARK COUNTY that this type of work requires knowledge of a kind customarily obtained on the job or through vocational education, including familiarity with specific policies and procedures, clerical, bookkeeping and research skills, and the ability to work with the public. The record before us now does not persuade us otherwise.

However, the crux of the County's position is that while it may well be possible for someone without a four-year specialized degree to perform the work of the Payment Counselor position, employees with a four-year specialized degree perform the work more effectively, efficiently and independently. While this may be true, the statutory definition of a professional employee focuses on the knowledge required to do the work-not the knowledge required to do the work most effectively, efficiently and independently. Thus, we reject the County's contention that by requiring a high level of performance of Payment Counselor work, it can create a professional employee even though performance of the work itself does not require knowledge customarily acquired through a four-year specialized degree. In addition, assuming *arguendo* that independence or the ability to effectively deal with hostility are, as argued by the County, job related attributes/skills more likely to be possessed by employees with four-year degrees, those are examples of attributes/skills that are not acquired through a specialized degree but rather from a specific course or are manifestations of the discipline and diligence needed to pursue higher education in the manner necessary to acquire any four-year degree.

Given all of the foregoing, we conclude the Payment Counselors are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

### **Fragmentation and Community of Interest**

The County contends that removal of the Payment Counselors from the bargaining unit created by the Commission in 1998 is not appropriate because it will result in fragmentation of bargaining units and place employees in a unit in which they have no community of interest.

To the extent the County is arguing that we should consider fragmentation/community of interest concerns when applying the "deal is a deal" doctrine or to how a professional employee is defined, we cannot do so. As noted earlier herein, our statutory responsibilities make the "deal is a deal" policy inapplicable to issues such as the one before us. Further, a

decision as to whether or not the Payment Counselors are professional employees cannot depend in any measure on fragmentation or community of interest concerns. The statute defines a professional employee and does so in a manner that does not allow for consideration of fragmentation or community of interest matters.

As to fragmentation, we also note that removal of the Payment Counselors from the professional unit does not create an additional bargaining unit. The Payment Counselors will now be included in an already existing bargaining unit of nonprofessional courthouse employees. To the extent the County is arguing that the remaining/resulting two person bargaining unit is too small to be viable/appropriate, the County and NUE can voluntarily agree to merge the two person unit into an existing NUE unit. We also note that units of this size are not per se inappropriate even in the context of a larger employer such as the County.

As to the community of interest argument, AFSCME represents a bargaining unit of nonprofessional courthouse employees. Where, as here, a broad but appropriate bargaining unit already exists, there is no need for an independent "community of interest" analysis to be done. BROWN COUNTY, DEC. NO. 11983-J (WERC, 3/06); CITY OF WAUSAU, DEC. NO. 20916-J (WERC, 9/07). Instead, our role is limited to determining whether the employees in dispute fit within the confines of the unit into which it is argued they should be placed. Because the Payment Counselors have been found to be nonprofessional employees and they work in the courthouse, inclusion in the AFSCME nonprofessional courthouse unit is appropriate and we have so ordered.

Dated at Madison, Wisconsin, this 14th day of November, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

