

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition for :

WISCONSIN COUNCIL OF COUNTY :  
AND MUNICIPAL EMPLOYEES, :  
AFSCME, AFL-CIO, LOCAL 413 :

Involving Certain Employees of :

IOWA COUNTY :  
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Case XIV  
No. 22725 ME-1519  
Decision No. 16313-A

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Union.  
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Steven A. Veazie, 131 West Wilson Street, Suite 202, P.O. Box 1110, Madison, WI 53701, appearing on behalf of the County.

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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 413, hereinafter referred to as the Union, filed a petition on April 14, 1982, requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of employees employed in the Iowa County Courthouse and related departments by determining whether the position of Business and Personnel Manager, Iowa County Community Health Nursing Agency, should be included in said unit. A hearing on said petition was conducted in Dodgeville, Wisconsin on July 26, 1982 by Examiner Daniel L. Bernstone. Post-hearing briefs were received from the parties by November 1, 1982. The Commission, having reviewed the record and the briefs, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Iowa County, hereinafter referred to as the County, is a municipal employer with offices at 222 North Iowa Street, Dodgeville, Wisconsin 53533.

2. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, Local 413, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin 53719.

3. That the Union is the certified bargaining representative of all employees of the Iowa County Courthouse and related departments, excluding supervisory, professional, confidential, craft, law enforcement employees with the power to arrest, and employees of the Iowa County Highway Department and Iowa County Nursing Home. 1/

4. That the instant proceeding was initiated on April 14, 1982 by a petition filed by the Union, where it contended, contrary to the County, that the position of Business and Personnel Manager, Iowa County Community Health Nursing Agency, currently occupied by Carolyn Olson, is neither supervisory nor managerial in nature and therefore should be included in the bargaining unit.

5. That the Iowa County Community Health Nursing Agency, hereinafter referred to as the Agency, is responsible for providing certain types of medical care to the citizens of Iowa County; that the Agency's staff consists of a Director of Nursing, a Business and Personnel Manager, two (2) full-time and three

(3) part-time registered nurses and two (2) part-time home health aides; that the current Director of Nursing is Patricia Harper and the current Business and Personnel Manager is Carolyn Olson; that until November 3, 1981, a secretary/bookkeeper position existed in the Agency; that Pamela Vondra occupied that position for five and one-half years; that said position was included in the bargaining unit; that the position of secretary/bookkeeper was filled by Carolyn Olson on a part-time basis from September 1, 1981 through September 30, 1981 while Vondra was on maternity leave and on a limited term full-time basis commencing October 1, 1981 at a starting salary of \$4.56 per hour after Vondra's employment with the County terminated on September 30, 1982; that the Business and Personnel Manager position was created in October, 1981 and is currently excluded from the bargaining unit; that the Committee recommended that Carolyn Olson fill the newly created position of Business and Personnel Manager for the Agency at a starting salary of \$6.50 per hour; that after her completion of a three (3) month probationary period, Carolyn Olson's salary was increased to \$7.00 per hour and the salary was to continue in effect through November, 1982; and that Carolyn Olson has served in the position of Business and Personnel Manager since November 6, 1981.

6. That Olson serves as the Agency's receptionist, performs typing for the Agency's staff nurses, receives and channels their mail, answers the telephones, photocopies documents for them and maintains an office filing system; that she monitors the hours of employees of the Agency for each pay period from daily sheets which they turn in to her on which they indicate how their days were spent; that she does not assign work to the Agency's employees; that work assignments and performance evaluations are done by Patricia Harper, the Director of Nursing; that Olson does not schedule employees' vacations, approve their vacation requests, or authorize sick leave; that she is responsible for keeping and monitoring employees' vacation, sick leave and insurance records; that she does not possess authority to hire any Agency employees; and that if employees were to be hired, she would be present during their interviews and would have input into the hiring recommendations of the Director of Nursing; and that Carolyn Olson does not exercise supervisory duties and responsibilities in sufficient combination or degree so as to make her a supervisory employee.

7. That Carolyn Olson, as Business and Personnel Manager for the Agency, reports to the Iowa County Committee on Health and Institutions on a monthly basis and at other times if necessary; that prior to her employment with the Agency she worked as an insurance clerk with the County Hospital and as a secretary/bookkeeper with a law firm; that she is a high school graduate, has had no college or post-secondary education, and has had no formal training in the health care field; that she is involved in the preparation and administration of the Agency's budget; that she works with the Director of Nursing in the performance of that responsibility as well as on matters pertaining to most other Agency functions, long range goals and personnel matters; that she informs the Committee about the financial position of the Agency on a monthly basis; that she presents payment vouchers to the Committee on a monthly basis; that she spends approximately one-half of her time performing routine clerical functions similar to those performed by the previous secretary/bookkeeper; that Olson has instituted certain bookkeeping changes, such as monthly reports to the Committee on the Agency's income and expenses, and a breakdown of the time spent by employees in direct patient care activities and indirectly related activities; that the primary source of funding for the Agency's services is the tax revenue generated in the County followed by Medicare insurance and federal grants; that Olson prepares and updates records indicating the amount of revenue generated for the Agency from these sources and the expenses incurred by the Agency in implementing each of its programs; that Olson participates in the application for and implementation of grants, and provides information relating to the cost of proposed new programs for the Agency; that Olson prepared a Medicare report which was previously prepared by the County's auditors, thereby saving the County \$800; that unlike the previous secretary/bookkeeper, Olson evaluates the costs of programs, is involved in the determination of whether to alter the fees for Agency clients, and reviews each employee's mileage and visits to determine whether the geographic areas to which employees are assigned should be altered; that she recommended a reduction in the hours worked by part-time nurses; that she reduced the budgetary allocation for telephone expenses; that she has been involved in contacting public schools for which the Agency conducts educational programs, in order to negotiate the fees charged by the Agency for those programs; that the fees for such programs were not changed since Olson became Business and Personnel Manager; that her involvement in budget preparation consists mainly of a projection of revenues and expenses which are of a standard bookkeeping nature; that Olson purchases and maintains an

inventory of supplies for the Agency, but has no authority to commit the Agency's resources beyond the sum of one hundred dollars (\$100); that any of Olson's proposals which require expenditures in excess of \$100 must be approved by the Committee; that the Committee approved Olson's recommendation to purchase a glycometer, which cost over \$100; and that Carolyn Olson does not participate in any significant degree in the formulation, determination and implementation of management policy, nor does she have the effective authority to commit her employer's resources in sufficient manner or degree so as to render her a managerial employee.

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

CONCLUSION OF LAW

1. That the occupant of the position of Business and Personnel Manager is neither a supervisory nor managerial employee and therefore is a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

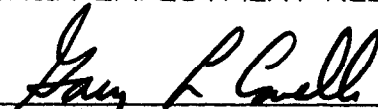
ORDER CLARIFYING BARGAINING UNIT 2/

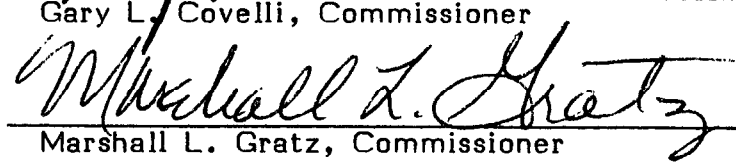
That the position of Business and Personnel Manager, currently occupied by Carolyn Olson, is hereby included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 8th day of April, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Gary L. Covelli, Commissioner

  
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Marshall L. Gratz, Commissioner

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2/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.  
(Continued on Page Four)

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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

BACKGROUND

The Union is the certified bargaining representative of all employees of the Iowa County Courthouse and related departments, excluding supervisory, professional, confidential, craft, law enforcement employees with the power to arrest, and employees of the Iowa County Highway Department and Iowa County Nursing Home. This proceeding was initiated by the Union's petition to clarify the status of Carolyn Olson, who occupies a recently created position of Business and Personnel Manager in the Iowa County Community Health Nursing Agency. The County contends that the position is both supervisory and managerial and therefore should be excluded from the bargaining unit. The Union disputes this contention, arguing that the position is neither supervisory nor managerial and should therefore be included in the bargaining unit.

DISCUSSION

In October of 1981, the County created the position of Business and Personnel Manager in the Nursing Agency. At that time, Carolyn Olson was serving as a limited term full-time secretary/bookkeeper for the Agency in place of the regular secretary/bookkeeper, Pamela Vondra. Vondra had taken a maternity leave of absence and subsequently terminated her employment with the County. In November of 1981, Olson commenced serving in the position of Business and Personnel Manager. In that capacity, she spends approximately one-half of her time performing routine clerical functions similar to those performed by the previous secretary/bookkeeper. Unlike the latter, she also prepares a breakdown of the time spent by Agency employees in direct patient care activities and in indirectly related activities. She reviews each employee's mileage and home visits to determine whether the geographic areas to which employees are assigned should be altered. She has also recommended a reduction in the hours worked by the part-time nurses and monitors the hours of Agency employees for each pay period from daily sheets which they turn in to her on which they indicate how their days were spent. Olson does not, however, approve the employees' vacation requests or authorize their sick leave. The vacation, sick leave and insurance records of Agency employees are merely kept and monitored by her. She serves as the Agency's receptionist, performs typing for the staff nurses, receives and channels their mail, answers the telephone, photocopies documents for them and maintains the office filing system. She does not assign work to Agency employees.

The record does not establish that Carolyn Olson has the authority to hire employees. At most, she would be a participant in the hiring process. She does not have the authority to transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline Agency employees, or effectively recommend such action. Her relationship to them is that of office receptionist and recordkeeper.

Section 111.70(12)(o)1 of the Municipal Employment Relations Act defines "supervisor" as:

. . . 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 grievance 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 determining whether the statutory criteria of Section 111.70(1)(o)1 are present in sufficient degree or combination to warrant the conclusion that a position is supervisory, we consider the following criteria:

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment and discretion exercised in the supervision of employees. 3/

Not all of the above factors need be present, but if they appear in a sufficient combination, we will find an employee to be a supervisor. 4/

In view of the statutory definition of the term "supervisor," and after considering the above criteria, we conclude that on the basis of the record, Carolyn Olson is not a supervisor within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act.

With respect to the County's contention that Carolyn Olson is a managerial employe and should therefore be excluded from the bargaining unit described herein, the record does show that her responsibilities are more extensive than those of a secretary/bookkeeper. As Business and Personnel Manager she performs duties which were previously performed by the Director of Nursing. Specifically, Olson prepares and updates records indicating the amount of revenue generated for the Agency from various sources as well as expenses incurred in implementing each of the Agency's programs. Then, on a monthly basis, she informs the Health Committee about the Agency's financial position. Unlike the secretary/bookkeeper, Olson participates in the application for and implementation of grants, provides information relating to the cost of proposed new programs for the Agency and is involved in the determination of whether to alter the fees charged to Agency clients. Additionally, she has been involved in contacting public schools for which the Agency conducts educational programs, for the purpose of determining whether the fees charged by the Agency for those programs should be renegotiated. She was responsible for the reduction in the budgetary allocation for telephone expenses, and her preparation of a Medicare report, which was previously prepared by auditors, saved the County \$800. Furthermore, Olson purchases and maintains an inventory of supplies for the Agency. However, she has no authority to commit the Agency's resources beyond the sum of one hundred dollars (\$100). She must obtain the Committee's approval before making expenditures in excess of that amount. The Committee did, however, approve her recommendation to purchase a glycometer, which cost over \$100.

We have held that:

Managerial employees, as well as supervisors, have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employees. In that managerial employees participate in the formulation,

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3/ City of Milwaukee, (6960) 12/64; City of Manitowoc (18590) 4/81.

4/ Dodge County, (17558-C) 2/81; City of Lake Geneva (18507) 3/81.

determination and implementation of management policy, they are unique from their co-workers . . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources . . . 5/

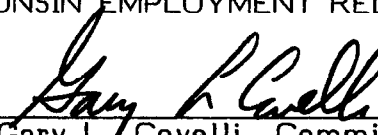
While the record clearly demonstrates that Carolyn Olson's responsibilities as Business and Personnel Manager are more extensive than those of a secretary/bookkeeper, they are, nevertheless, insufficient in nature and extent to support a conclusion that she is a managerial employee. Her role with respect to the Agency's budget is primarily one of maintaining the Agency's books. Her budget preparation duties consist mainly of a projection of revenues and expenses which are of a standard bookkeeping nature. The record indicates that Carolyn Olson unquestionably holds a responsible position with the County. However, the authority to make managerial decisions affecting the Nursing agency is vested in the Health Committee. The record does not indicate that Olson is engaged in any significant degree in the formulation, determination and implementation of management policy. Her duties in connection with the preparation and administration of the Agency's budget do not require that she make decisions concerning management policy. Rather, she is responsible for providing information regarding available Agency funds; the Health Committee then formulates, determines and implements management policy, using, in this process, the data supplied by her. She has no authority to commit her employer's resources beyond the sum of one-hundred dollars (\$100). She must obtain the approval of the Committee before making expenditures in excess of that amount. This does not constitute authority to commit the County's resources in manner sufficient to warrant the conclusion that she is a managerial employee.

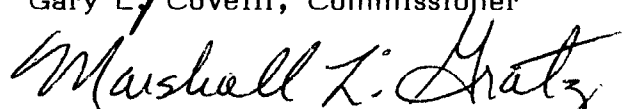
On the basis of the foregoing we find that Carolyn Olson, as Business and Personnel Manager for the Iowa County Community Health Nursing Agency, is a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and is included in the collective bargaining unit described herein.

Dated at Madison, Wisconsin this 8th day of April, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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5/ City of New London, (12170) 9/73. This definition has been approved by the Wisconsin Supreme Court in City of Milwaukee v. W.E.R.C. 71 Wis. 2d 709, 716-717, 239 N.W. 2d 63 (1976).