

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

TREMPEALEAU COUNTY SOCIAL
SERVICES EMPLOYEES, LOCAL 485-A,
AFSCME, AFL-CIO

Involving Certain Employees of

TREMPEALEAU COUNTY
(DEPARTMENT OF SOCIAL SERVICES)

Case 9

No. 50696 ME-696

Decision No. 16402-B

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of Trempealeau County Social Services Employees, Local 485-A, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, by Ms. Victoria L. Seltun, 4330 Golf Terrace, Suite 205, P. O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of Trempealeau County.

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

Trempealeau County Social Services Employees, Local 485-A, AFSCME, AFL-CIO, filed a Petition to Clarify Bargaining Unit with the Wisconsin Employment Relations Commission on February 25, 1994. Said petition requested the Commission to include the positions of Long Term Support Services Supervisor, Family and Children's Services Supervisor, and Economic Support Services Supervisor in the bargaining unit composed of "all regular full-time and regular part-time employees of the Trempealeau County Department of Social Services, excluding managerial, supervisory and confidential employees." Following mediation by the Commission and efforts by the parties to settle this matter, hearing on said petition was conducted on May 15, 1995, in Eau Claire, Wisconsin, before James W. Engmann, an Examiner on the Commission's staff. The hearing was transcribed. The County filed its brief on May 22, 1995. Local 485-A waived its right to file a brief in this matter in a letter received on June 1, 1995. A copy of the transcript was also received by the Commission on June 1, 1995, at which time the record was closed. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Trempealeau County Social Services Employees, Local 485-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with a mailing address of Route 1, Sparta, Wisconsin 54656.

2. Trempealeau County, hereinafter referred to as the County, is a municipal employer with offices located in the Trempealeau County Courthouse, Whitehall, Wisconsin 54773.

3. The Union is the certified 1/ bargaining representative of "all regular full-time and regular part-time employees of the Trempealeau County Department of Social Services, excluding managerial, supervisory and confidential employees."

4. On February 15, 1994, the Union filed a Petition to Clarify Bargaining Unit requesting that the positions of Long Term Support Services Supervisor, Family and Children Services Supervisor, and Economic Support Services Supervisor be included in the bargaining unit described in Finding of Fact 3. The Union asserts that the employees occupying said positions are municipal employees within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, said positions should be included in the bargaining unit. The County asserts said the occupants of said positions are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and, therefore, said positions should continue to be excluded from the bargaining unit.

5. In early 1993, the Director of Trempealeau County Department of Social Services (hereinafter Department) resigned. At that time, the Director was the only employe in the Department who was excluded from the bargaining unit. The positions of Long Term Support Services Supervisor, Family and Children Services Supervisor, and Economic Support Services Supervisor were included in the bargaining unit and listed in the salary schedule in the collective bargaining agreement under the job title of Supervisor or IM Supervisor. The three employes occupying these positions also resigned in early 1993.

6. In June 1993, the County appointed Roberta Ward as Director of Trempealeau County Social Services (hereinafter Director). The Director rewrote the job descriptions of each of the three disputed positions with the intention of giving each of the three positions more supervisory duties. These descriptions were approved by the Social Services Board with the understanding that these positions would have full supervisory duties, that the Director would not supervise the employes in these units directly, and that these supervisors would do little bargaining unit work. On or about July 1, 1993, the County filled the positions as follows: Stacey A. Garlick, Long Term Support Services Supervisor; Connie J. Oates, Family and Children Service Supervisor; and Beverly A. Waldera, Economic Support Supervisor. Each of these individuals was a member

1/ Trempealeau County (Department of Social Services), Dec. No. 16402 (WERC, 8/68).

of the bargaining unit at the time of they were hired as a Supervisor. The County did not thereafter include these employes in the bargaining unit.

7. Each of the three positions (hereinafter Supervisors) has been involved in the hiring decisions made of each employe hired into her unit since she became Supervisor. Each Supervisor reviews the resumes and applications which are received, indicates to the Director those candidates the Supervisor wants to interview, contacts the candidates to schedule an interview, prepares or reviews the questions which will be asked, conducts the interview together with the Director, ranks the candidates, and with the concurrence of the Director, generally makes the offer of employment. The Director and the Supervisor have always reached a consensus on who to hire. The Long Term Support Supervisor has been involved with the hiring of five of the six bargaining unit employes in the unit. The Economic Support Services Supervisor has been involved in the hiring of one of the six bargaining unit employes in the unit. The Family and Children's Services Supervisor has been involved in the hiring of four of the five bargaining unit employes currently in the unit, and three others who were previously in the unit and left.

8. Presently, each Supervisor informally evaluates the employes in the unit supervised. The Department is in the process of formalizing employe evaluation. The Director and the Supervisors reviewed evaluation formats received from 30 counties in Wisconsin and selected ten for further review. The Supervisors went through these ten evaluation formats, drafted a Department evaluation form and forwarded said draft to the Director. The Director made some minor changes, and forwarded the revised draft for final typing. Once the evaluations are finished, the Supervisors will completely fill out the forms with their employes. The Director will not be a part of that process, although she will review the evaluations after they are completed.

9. The Director has informed the Supervisors that each of them has the authority to issue oral and written reprimands but that they do not have the authority to suspend or discharge an employe. Each Supervisor will informally discuss any disciplinary situation with the Director before issuing a verbal or written warning. Since the Supervisors have been hired, one Supervisor has issued an oral reprimand which was documented, signed by the Supervisor and employe, and placed in the employe's file. No other oral or written discipline has occurred in these units since the Supervisors were hired. A suspension of an employe occurred and two of the Supervisors were involved in the process, although it was the Director, with the Board's approval, who suspended the employe.

10. Each of the Supervisors assigns and directs the work of the employes in their unit. The Director is not involved in the day-to-day operations of the three units. The Supervisors approve overtime, vacation, sick leave and compensatory time requests. The Long Term Support Services Supervisor supervises five full-time employes and one part-time employe. The Family and Children's Services Supervisor supervises five full-time employes. The Economic Support Services Supervisor supervises six full-time and two contract employes. The only other person with supervisory authority over these employes is the Director.

11. Prior to being hired as Supervisors, each of the Supervisors was in the bargaining unit. Upon hiring as a Supervisor, each received a raise of at least \$360 per month. Although the previous supervisors carried an individual case load and interviewed clients outside the office, none of the current Supervisors have a case load or interview clients. On occasion, when an employee is absent, the Supervisor will do some work usually done by the employees.

12. Stacey A. Garlick is the Long Term Support Services Supervisor. Her salary is \$3062 per month; the salary of the employees she supervises ranges from \$1677 to \$2596 per month. About 65 percent of her time is spent on program planning and budget track evaluation; 25 percent on case consultation, assigning cases and approving time off; 5 percent on information and referral and public relations, and 5 percent conferring with the Director. The job description of the Long Term Support Services Supervisor reads in part as follows:

PURPOSE OF POSITION: Supervise the COP-COP-Waiver (sic) and CIP II workers, Adult Protection workers, Supportive Home Care worker, Day Care Services worker, and any other worker assigned to this unit according to agency policies and procedures, collective bargaining contracts, and state and federal mandates, policies, manuals, procedures, and guidelines.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. ESSENTIAL DUTIES:

1. Will be part of the hiring process for any new workers for this unit. Will review job description for accuracy and publication and submit for (sic) same after consultation with director (sic) as to agency needs. Will review resumes and participate in the interview process, including making final recommendations for hiring.
2. Provide yearly written evaluations on all unit staff. Investigate unit personnel problems, take necessary and/or required and/or written disciplinary action. Will not have ability to suspend or fire employee but will make recommendations to director for such action when necessary.

...

4. Reviews time and mileage usage records, approves overtime, vacation, sick leave, and comp. time usage according to county, agency, and collective bargaining policy.

...

6. Assign cases and assure required case load coverage. Assure that adequate unit coverage is maintained during business hours and after business hours. Serve as back-up to on-call and intake staff workers and, in an emergency, take over primary duty.

7. Serve as intake person for all unit clients wishing to appeal a denial of services from a case manager/social worker, having a grievance, or requesting a change in worker/case manager. Will resolve concern and inform Director or will transfer problem to Director.

...

QUALIFICATIONS NEEDED TO PERFORM ESSENTIAL FUNCTIONS:

MINIMUM EDUCATION AND EXPERIENCE: A Bachelor's degree in social work, psychology, counseling, or an equivalent field of study. A Master's degree preferred, at least 20 credits of graduate study a must. At least three of the past five years working in a county/tribal social services department with at least two years experience in adult protection, community options programs, protective placement program, and supportive services programs, with at least 25 hours of training in social work supervision as certified by the Department of Health and Social Services or an equivalent combination of training and experience. Shall be expected to qualify for state licensure as a social worker.

...

ABILITIES: (a) To gain and maintain the confidence and cooperation of subordinates and administrators.
(b) To direct and supervise the work of others.

- (c) To delegate responsibility of duties.

...

- (i) To recognize when discipline is necessary and be able to effectively give oral or written sanction.

13. Connie J. Oates is the Family and Children's Services Supervisor. Her rate of pay is \$3062 per month; the rate of pay of the employees supervised ranges from \$2318 to \$2445 per month. She receives compensatory time. About five to ten percent of her time, she does bargaining unit type work, usually filing in if someone is absent. The job description for the Family and Children's Services Supervisor reads in part as follows:

PURPOSE OF POSITION: Supervise all family and children/child protection social workers, juvenile court intake worker, family services case aide, foster licensing and training workers, and any other worker assigned to this unit according to agency policies and procedures, collective bargaining contracts, and state and federal mandates, policies, manuals, procedures, and guidelines.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. ESSENTIAL DUTIES:

1. Will be part of the hiring process for any new workers for this unit. Will review job description for accuracy and publication and submit for (sic) same after consultation with director (sic) as to agency needs. Will review resumes and participate in the interview process, including making final recommendations for hiring.
2. Provide yearly written evaluations on all unit staff. Investigate unit personnel problems, take necessary and/or required and/or written disciplinary action. Will not have ability to suspend or fire employee but will make recommendations to director (sic) for such action when necessary.

...

4. Reviews time and mileage usage records, approves overtime, vacation, sick leave, and comp. time usage according to county, agency, and collective bargaining policy.

...

6. Assign cases and assure required case load coverage. Assure that adequate unit coverage is maintained during business hours and after business hours. Serve as back-up to on-call and intake staff workers and, in an emergency, take over primary duty.
7. Serve as intake person for all unit clients wishing to appeal a denial of services from a case manager/ social worker, having a grievance, or requesting a change in worker/case manager. Will resolve concern and inform Director or will transfer problem to Director.

...

QUALIFICATIONS NEEDED TO PERFORM ESSENTIAL FUNCTIONS:

MINIMUM EDUCATION AND EXPERIENCE: A Master's degree in social work, psychology, counseling, or an equivalent field of study, with at least three of the past five years working in a county/tribal social services department with at least two years experience in child protection, juvenile delinquency and family based services, with at least 25 hours of training in social work supervision as certified by the Department of Health and Social Services or an equivalent combination of training and experience. Shall be expected to qualify for state licensure as a social worker.

...

ABILITIES: (a) To gain and maintain the confidence and cooperation of subordinates and administrators.
(b) To direct and supervise the work of others.
(c) To delegate responsibility of duties.

...

(i) To recognize when discipline is necessary and be able to effectively give oral or written sanction.

14. Beverly A. Waldera is the Economic Support Services Supervisor. Her pay is \$2345 per month; the employees rate of pay ranges from \$1677 to \$1762 per month. About five to ten percent of her time is spent doing the unit work of absent employees; 20 to 30 percent of her time is spent checking records and target reviews; and 65 to 70 percent is spent supervising the employees and their work. The job description of the Economic Support Services Supervisor reads in part as follows:

PURPOSE OF POSITION: Supervise all economic support workers, general relief worker, energy assistance worker, and any other worker assigned to this unit according to agency policies and procedures, collective bargaining contracts, and state and federal mandates, policies, manuals, procedures, and guidelines.

FUNDAMENTAL JOB DUTIES AND RESPONSIBILITIES:

A. ESSENTIAL DUTIES:

1. Will participate in the hiring process for new unit workers by reviewing job description, preparing an advertisement for publication, review resumes, assist in the interviews and make final recommendations to the Director.
2. Provide yearly written evaluations on all unit staff. Investigate unit personnel problems, take necessary and/or required and/or written disciplinary action. Will not have ability to suspend or fire employee but will make recommendations to director (sic) for such action when necessary.
3. Reviews time and mileage usage records, approves overtime, vacation, sick leave, and comp. time usage according to county, agency, and collective bargaining policy.
- ...
5. Assign cases and assure required case load coverage. Reviews cases to evaluate compliance with mandated record keeping, need for agency service and expenditures, and provide direction and training

to workers.

6. Serve as intake person for all unit clients wishing to file a grievance, or requesting a change in worker/case manager. Will resolve concern and inform Director or will transfer problem to Director.

...

QUALIFICATIONS NEEDED TO PERFORM ESSENTIAL FUNCTIONS:

MINIMUM EDUCATION AND EXPERIENCE: High School Graduate. Six years of Economic Support experience in a county/tribal social services department, three of which must have been at the Economic Support worker level, three years of post-high school educational training with an emphasis in the social sciences may be substitutes for three years of the general economic support experience. An equivalent combination of training and experience will also be considered.

...

ABILITIES: (a) To gain and maintain the confidence and cooperation of subordinates and administrators.

(b) To delegate responsibility of duties.

(c) To direct and supervise the work of others.

...

(g) To learn techniques and acquire skill in the evaluation of employee performance.

15. The Long Term Support Services Supervisor, Family and Children's Services Supervisor and Economic Support Services Supervisor exercise supervisory responsibilities in sufficient combination and degree to be deemed supervisory employees.

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

CONCLUSIONS OF LAW

1. The occupant of the position of Long Term Support Services Supervisor is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupant of the position of Family and Children's Services Supervisor is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. The occupant of the position of Economic Support Services Supervisor is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER 2/

1. The position of Long Term Support Services Supervisor in the Department of Social Services, currently held by Stacey A. Garlick, is excluded from the bargaining unit described in Finding of Fact 3.

2. The position of Family and Children's Services Supervisor in the Department of Social Services, currently held by Connie J. Oates, is excluded from the bargaining unit described in Finding of Fact 3.

3. The position of Economic Support Services Supervisor in the Department of Social Services, currently held by Beverly A. Waldera, is excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of September, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

2/ See footnote on pages 11 and 12.

Herman Torosian /s/
Herman Torosian, Commissioner

James R. Meier /s/
James R. Meier, Commissioner

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- 2/ 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.

(footnote continued on page 12.)

2/ (footnote continued from page 11.)

(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.

TREMPEALEAU COUNTY (DEPARTMENT OF SOCIAL SERVICES)

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

POSITIONS OF THE PARTIES

In the petition, the Union asserts that the three positions at issue were previously in the bargaining unit; that they were unilaterally excluded by the County; that these are not supervisory positions; and that they should be included in the bargaining unit.

On brief, the County asserts that the Department of Social Services and the manner in which it delivers services to clients have changed drastically since the late 1970's and early 1980's; that as laws, regulations and standards become more complex, employes, and those who supervise them, must know and do more; and that, consequently, the Director saw the need to redefine the three positions at issue here.

In addition, the County argues that based on the authority of these three positions to assign, direct and evaluate the work of unit employes, their involvement in the employment process, their higher level of pay, their differing working condition, and their exercise of authority requiring independent judgment, the three positions involved are occupied by supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and should continue to be excluded from the bargaining unit.

DISCUSSION

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

. . . (A)ny individual who has the authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, 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 determining a position's supervisory status under Sec. 111.70(1)(o)1, Stats., the

Commission 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 employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the alleged supervisor is paid for the employe's skills or for the supervision of employes;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the alleged supervisor is a working supervisor or whether the employe spends a substantial majority of time supervising other employes; and
7. The amount of independent judgment exercised in the supervision of employes.

In each case, the question is whether these factors are present in sufficient combination and degree to warrant finding the position to be supervisory. 3/

This is a case where the County made a conscious decision to change three bargaining unit positions titled "Supervisor" into positions which we find are supervisory within the meaning of the statute. This decision was implemented by rewriting the job descriptions of the three Supervisors and then granting the employes hired to fill these positions the authority needed to run their units.

The record is clear that each of these Supervisors has played a significant role in the hiring process each time a vacancy has been filled. Their disciplinary authority is less significant. While

3/ Somerset School District, Dec. No. 24968-A (WERC, 3/88).

they have been given the authority to independently issue verbal and written reprimands, each Supervisor has or will consult with the Director before taking any action. Suspensions or discharges involve decision making by both the Director and a County committee so the Supervisors' role in such decisions appears to fall short of an effective recommendation.

Although the Supervisors have not formally evaluated the employees in the past, the record establishes the County's intention to have these Supervisors formally and independently evaluate these employees in the future.

Each of these Supervisors has the independent discretion and authority to operate their units by directing and assigning the work to the employees and, for example, by granting or denying employe requests for overtime, vacation, sick leave and compensatory time.

Each of them received a significant pay increase when they were hired as Supervisors. As they came out of the bargaining unit and their skill levels did not increase, we are persuaded such increased salary compensated these Supervisors for the supervision of employees.

These Supervisors generally do not do the work of the bargaining unit; instead, they supervise both the work and the employees doing the work. Each of them supervises at least five employees for a total of 19 employees. If these Supervisors were excluded from the unit, the Director would be supervising the 19 employees as well as the three Supervisors for a total of 22 employees.

Given the foregoing, we are persuaded that the three positions involved in this matter exercise supervisory responsibilities in sufficient combination and degree to be supervisors and not municipal employees and, therefore, should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 6th day of September, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

James R. Meier /s/
James R. Meier, Commissioner