

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
IRON COUNTY PUBLIC EMPLOYEES LOCAL 728-D, AFSCME, AFL-CIO

Involving Certain Employees of
IRON COUNTY

Case 72
No. 67454
ME(u/c)-1231

Decision No. 16821-E

Appearances:

Michael J. Wilson, Staff Representative, Wisconsin Council 40, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1093, appearing on behalf of Iron County Public Employees Local 728-D, AFSCME, AFL-CIO.

John Spiegelhoff, Staff Representative, Wisconsin Council 40, 1105 East Ninth Street, Merrill, Wisconsin 54452, appearing on behalf of Iron County Public Employees Local 728, AFSCME, AFL-CIO.

Michael K. Pope, Dean and Pope, P.C., 204 North Harrison Street, Ironwood, Michigan, 49938, appearing on behalf of Iron County.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

On November 13, 2007, Iron County Public Employees Local 728-D, AFSCME, AFL-CIO. filed a unit clarification petition with the Wisconsin Employment Relations Commission seeking to accrete the position of Forestry Department Trail Coordinator/Office Manager to an Iron County employee bargaining unit that it represents for the purposes of collective bargaining. The position is currently included in a bargaining unit represented by Iron County Public Employees Local 728, AFSCME, AFL-CIO. Local 728 and the County oppose the petition.

No. 16821-E

A hearing in the matter was held in Hurley, Wisconsin on April 10, 2008 before Commissioner Susan J.M. Bauman serving as Hearing Examiner. A transcript of the proceedings was filed with the Commission on May 13, 2008 and the parties then filed written arguments-the last of which was received on August 20, 2008.

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

FINDINGS OF FACT

1. Iron County, hereinafter the County or the Employer, is a municipal employer providing a variety of governmental services through its employees.

2. Iron County Public Employees Local 728-D, AFSCME, AFL-CIO, hereinafter the Courthouse Union, is a labor organization that serves as the exclusive bargaining representative for certain employees of the County described in their 2008-2010 collective bargaining agreement as:

... all its regular full-time employees and regular part-time employees in the Courthouse, Department of Human Services and Health Department..., but excluding elected or appointed officials, supervisors, and confidential employees for purposes of collective bargaining with respect to wages, hours and working conditions and other conditions of employment which are mandatory subjects of bargaining.

This bargaining unit has always included the positions of Forestry Department Secretary and Forestry Department Administrative Assistant. When the unit was originally created, the Forestry Department's offices were located in the Courthouse and thus the incumbents in those positions worked in the Courthouse. When the Forestry Department's offices (and these two positions) moved to a separate location, these two positions remained in the Courthouse unit.

3. Iron County Public Employees Local 728, AFSCME, AFL-CIO, hereinafter the Forestry Union, is a labor organization that serves as the exclusive bargaining representative for certain employees of the County described in their 2008-2010 collective bargaining agreement as:

... all its regular full-time employees and regular part-time employees in the Highway Department, Highway Office Personnel, and Forestry Department, but excluding elected or appointed officials, supervisors, and confidential employees for purposes of collective bargaining with respect to wages, hours and working conditions and other conditions of employment which are mandatory subjects of bargaining.

4. Tara Stuhr is the Forestry Department Trail Coordinator/Office Manager. She has primary responsibility for the operation and maintenance of the County snowmobile and all terrain vehicle trails which includes inspecting trails, obtaining funding for trail improvements and meeting with private trail use organizations. She also functions as the Department's Office Manager.

5. Stuhr was originally hired as the Forestry Department Office Manager/Secretary on February 24, 2006. She was promoted to Forest Department Administrative Assistant on October 11, 2006. The County created the position of Forestry Department Trail Coordinator/Office Manager in early fall 2007 and placed it in the bargaining unit represented by the Forestry Union. Stuhr filled the position in October 2007. The positions of Secretary and Administrative Assistant continue to exist but are vacant.

6. Stuhr spends approximately 25 percent of her working hours performing outdoor activities related to overseeing the County's trails-including inspecting the trails on all terrain vehicles and snowmobiles. She spends almost all of her other working hours in the Forestry Department's offices and a significant portion of those hours are devoted to activities related to the operation and maintenance of the trails. A portion of her office duties includes those she previously performed as Forestry Department Office Manager/Secretary and as Forestry Department Administrative Assistant.

7. For most of the work year, Stuhr's hours are 7am to 4pm Monday to Thursday and 7am to 11am on Friday. These are the same work hours of the other Forestry Department employees. The entire Department's work hours, including Stuhr's, shift to 6am to 4pm, Monday to Thursday during the summer. The typical work hours for employees in the Courthouse Union are 8am to 4pm Monday to Friday.

8. Stuhr's supervisor is Joe Vairus, the Forestry Department Administrator. Vairus supervises every employee of the Forestry Department and does not supervise any County employee outside of this Department.

9. The wage rate for the Trail Coordinator/Office Manager position is \$20.70 per hour-the same rate as the Highway Department Office Manager. The wage rate for the Forestry Department Office Manager is \$18.70 per hour.

The wages rates in the Forestry Department unit range from \$20.70 per hour to \$24.28 per hour. The wages rates in the Courthouse unit range from \$15.48 per hour to \$23.77 per hour. The fringe benefits for the two units are similar

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

CONCLUSIONS OF LAW

1. Neither the contractual recognition clauses in Findings of Fact 2 and 3 nor the historical inclusion of Forestry Department Secretary/Office Manager and Administrative Assistant positions in the Local 728-D Courthouse unit determine the appropriate unit placement of the Forestry Department Trail Coordinator/Office Manager.

2. The Forestry Department Trail Coordinator/Office Manager shares a stronger community of interest with the employees in the Local 728 Forestry unit than with the employees in the Local 728-D Courthouse unit.

3. Given the stronger community of interest shared with the employees in the Forestry unit, it is appropriate to include the Forestry Department Trail Coordinator/Office Manager in the Local 728 Forestry unit.

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

ORDER CLARIFYING BARGAINING UNIT

The position of Iron County Forest Department Trail Coordinator/Office Manager shall continue to be included in the bargaining unit represented by Iron County Public Employees Local 728, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin this 11th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

IRON COUNTY

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

THRESHOLD ISSUES

The County and the Forestry Union argue that the language in the two relevant contractual recognition clauses is sufficient to resolve this dispute in their favor because the Forestry unit recognition clause specifically calls for the inclusion of all “Forestry Department” employees while the Courthouse unit recognition clause only calls for the inclusion of employees who work “in the Courthouse . . .”

However, as the Courthouse Union persuasively points out, this argument must fail because the positions of Forestry Department Office Manager/Secretary and Forestry Department Administrative Assistant are included in the Courthouse unit even though, like the Trail Coordinator/Office Manager, they do not work in the Courthouse and are part of the Forestry Department. Thus, it is clear that the contractual recognition clauses do not resolve the issue before us. *See generally*, KENOSHA COUNTY, Dec. No. 9533-B (WERC 2/08) (in which the Commission declined to read an unambiguous recognition clause to preclude inclusion of a position within a bargaining unit when there was a history of including such positions in contradiction of that language.)

The Courthouse Union argues that this dispute should be resolved in its favor based on the historical and ongoing inclusion of Forestry Department “clerical” employees in the Courthouse unit which the Courthouse Union views as a “tacit agreement” between it and the County that should be enforced here. This argument has some persuasive force but does not directly confront the possibility that the ongoing inclusion of “clerical” Forestry Department is simply a carryover based on the initial physical location of such “clerical” employees in the Courthouse building. However, assuming for the sake of argument that the County is bound to include “clerical” Forestry Department employees in the Courthouse unit, the success of this argument still hinges on the question of whether the Trail Coordinator/Office Manager is such a “clerical” employee.

As to this “clerical” issue, the Courthouse Union forcefully points to the unfilled Forestry Department Office Manager/Secretary and Administrative Assistant positions (which Stuhr previously held) and to the reality that Stuhr continues to perform many of those same responsibilities in the newly created position of Trail Coordinator/Office Manager. The County and the Forestry Union counter by pointing to Stuhr’s Trail Coordinator duties which take her out of the office for 25% of her work time, require her to drive the trails to fulfill her Coordinator responsibilities, and generate more than a minimal amount of Coordinator-related administrative work. While it is a close question, we are persuaded that the nature and amount of Stuhr’s out of the office Coordinator duties remove her job from that of a “clerical”

employee as the Courthouse Union would define it. Thus, we do not view this argument as dispositive of the issue before us.¹

APPROPRIATE UNIT INCLUSION

Since the threshold issues do not resolve this matter, the bargaining unit placement of the new job of Trail Coordinator/Office Manager turns on the question of whether that position has a stronger community of interest with the Courthouse unit or the Forestry unit.² We analyze that question by looking at the following factors:

1. Whether the employees in the unit sought share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.

ARROWHEAD UNITED TEACHERS V. WERC, 116 Wis.2D 580 (1984).

We have used the phrase “community of interest” as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase “community of interest” as a means of determining whether

¹ When doing so, we acknowledge the Courthouse Union’s reliance on WAUPUN SCHOOL DISTRICT, DEC. NO. 19321-A (WERC, 10/92) in which the Commission concluded that additional “blue collar” duties amounting to 25% of an employee’s work time were not sufficient to move an employee from a “white collar” to a “blue collar” unit. However, a critical part of the Commission’s WAUPUN analysis turned on the fact that the position had a mix of “blue” and “white” collar duties when the parties originally agreed to place it in the “white collar” unit. There is no comparable prior mix of relevant Trail Coordinator duties in the record before us.

² While the parties have also referenced analysis of “fragmentation” and “bargaining history”, these additional factors are inapplicable here. Fragmentation is not an issue because the number of bargaining units will remain the same no matter what result is reached and bargaining history has already been discussed in the context of the threshold issues above.

employees share similar interests, usually – though not necessarily – limited to those interests reflected in Factors 2-5. This definitional duality is long standing and has received the approval of the Wisconsin Supreme Court. *ARROWHEAD UNITED TEACHERS V. WERC*, SUPRA.

As to Factor 1, certainly all County employees across departments have the “shared purpose” of providing quality service to the citizens of Iron County. Employees of the Forestry Department have the more narrow shared purpose of maintaining the natural resources within Iron County’s public forests. Because of the range of forestry-related tasks she performs, the Trail Coordinator/Office Manager more fully participates in this more narrow shared purpose than do the Courthouse unit employees- including those “clerical” Forestry Department employees included in said unit.

As to Factor 2, Stuhr credibly testified that she spends 25% percent of her work time engaged in outdoor activities related to inspecting trail improvements and project planning. These activities are consistent with the type of outdoor work that comprises a significant portion of the work day for the other Forestry Department employees. There is no evidence in the record of Courthouse unit employees having similar outdoor duties. It is likely that some Courthouse employees have similar planning/coordination duties and skills as does Stuhr and obviously some Courthouse employees share the duties and skills she uses when performing her Office Manager responsibilities. On the other hand, the Forestry unit includes the Highway Department Office Manager.

As to Factor 3, the Trail Coordinator/Office Manager works the same hours as other employees of the Forestry Department who are in the Forestry unit, a schedule distinct from that of employees in the Courthouse bargaining unit. Her wage rate fits within the range of either bargaining unit.

As to Factor 4, the Forestry Administrator, Joe Vairus, supervises every employee of the Forestry Department, including the Trail Coordinator/Office Manager. Vairus does not presently supervise anyone in the Courthouse unit-but did supervise Stuhr when she held the Office Manager/Secretary and Administrative Assistant positions in the Courthouse unit and presumably will supervise the incumbent(s) in said position(s) if they are filled in the future.

As to Factor 5, all Forestry Department employees (except for any future incumbents in the two vacant positions Stuhr previously held) have a separate work place from Courthouse unit employees. Importantly Stuhr also regularly works in the county forests like other Forestry Department employees (except for any future incumbents in the two vacant positions Stuhr previously held) and unlike any Courthouse unit employees.

Considering the evidence as to Factors 1-5 above, we conclude that Stuhr has a stronger community of interest with the employees in the Forestry unit than with those in the Courthouse unit. As was true for our analysis of why she is not a “clerical” employee, it is the Trail Coordinator portion of her position which links her “community of interest” more closely

in terms of duties and work location to Forestry unit employees than to those employees in the Courthouse unit.

Thus, although it is a close question, inclusion of the Trail Coordinator/Office Manager in the Forestry unit continues to be the most appropriate unit placement.

Dated at Madison, Wisconsin, this 11th day of December, 2008.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

