

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

NORTHERN PINES UNIFIED SERVICES CENTER

Case I  
No. 25117 ME-1735  
Decision No. 17590

Mr. Robert D. Chabot, Representative, and Mr. William R. Sample, Director of Member Services, Employers Industrial Relations Council, appearing on behalf of the Municipal Employer.

Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO having, on September 12, 1979, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election, pursuant to Section 111.70(4)(d) of the Municipal Employment Relations Act, among certain employees of the Northern Pines Unified Services Center to determine whether said employees desire to be represented by said Union for purposes of collective bargaining, and a hearing on said petition having been held at Barron, Wisconsin on October 24, 1979, before Dennis P. McGilligan, a member of the Commission's staff; and the Commission having considered the evidence and arguments of the parties, makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

6. That further during the course of said hearing the parties agreed that certain positions, and the individuals occupying same, be included in the proposed bargaining unit or units as follows: Bookkeeper, Volunteer Coordinator and Outreach Counselors; and that the parties also agreed that certain positions, and the individuals occupying same, be excluded from any bargaining unit or units as follows: Senior Counselor, Business/Fiscal Manager, Administrative Secretary, Office Manager, Developmental Disabilities

Services Coordinator, Mental Health Coordinator, Alcohol and Drug Coordinator [sic] and Program Director.

7. That the only issue in dispute between the parties in the instant matter is whether an individual by the name of Allen Maxwell, who provides on-call counseling services to the Municipal Employer, should be included or excluded from the bargaining unit; that the Union argues that the on-call position in question is a regular part-time position which should be included in the bargaining unit; and that the Municipal Employer argues that the person in question is an independent contractor and therefore should be excluded from the bargaining unit.

8. That the Municipal Employer does not exert substantial control over the work function of the on-call position in dispute occupied by Allen Maxwell; that because the Municipal Employer does not exert substantial control over the manner and means by which Allen Maxwell performs his job Maxwell acts as an independent contractor regarding same.

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

#### CONCLUSIONS OF LAW

1. That all non-professional employees of Northern Pines Unified Services Center excluding managerial, confidential and supervisory employees and Psychiatrists constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That all professional employees of Northern Pines Unified Services Center excluding managerial, confidential and supervisory employees and Psychiatrists constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

3. That should a majority of the eligible employees in the unit described in paragraph 2, supra, vote, in an election conducted by the Wisconsin Employment Relations Commission, to be included in a single unit with the employees in the unit described in paragraph 1, supra, then all professional and non-professional employees of Northern Pines Unified Center excluding managerial, confidential and supervisory employees and Psychiatrists may constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

4. That the Municipal Employer does not exert sufficient control over the work function of the on-call position in question occupied by Allen Maxwell to establish an employer/employee relationship, and, therefore, said individual is an independent contractor and not a "municipal employee" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act, and in said regard, is hereby excluded from the aforementioned bargaining unit(s).

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

#### DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this directive in the following voting groups for the following stated purposes:

##### Voting Group No. 1

All non-professional employees of Northern Pines Unified Center excluding managerial, confidential and supervisory

employees and Psychiatrists who are employed on February 8th, 1980, except such employees as may prior to the election quit their employment, or be discharged for cause for the purpose of determining whether a majority of such employees desire to be represented by Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO, for the purposes of collective bargaining with Northern Pines Unified Services Center on questions of wages, hours and conditions of employment.

Voting Group No. 2

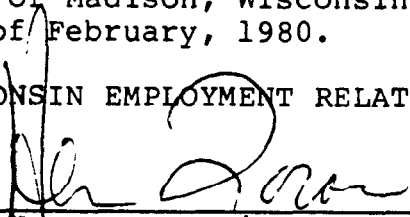
All professional employees of Northern Pines Unified Services Center excluding managerial, confidential and supervisory employees, who are employed on February 8, 1980, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining:


- (1) Whether a majority of such employees voting desire to be represented by Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO, for the purposes of collective bargaining with Northern Pines Unified Services Center on questions of wages, hours and conditions of employment; and
- (2) Whether a majority of the eligible employees in said voting group desire to be included in a single bargaining unit with employees in Voting Group No. 1.

Given under our hands and seal at the City of Madison, Wisconsin this 8th day of February, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

The only issue in dispute is whether the on-call position occupied by Allen Maxwell is included or excluded from the aforementioned bargaining unit(s). The Municipal Employer argues that the person in question is an independent contractor and therefore should be excluded from the bargaining unit. The Union maintains that said person is a regular part-time employee and should be included in the bargaining unit.

The test of whether a person is an employee or independent contractor is that of the "right of control." Essentially, a person is an employee rather than an independent contractor if the employer for whom the services are performed reserves the right to control the manner and means by which the job is accomplished. 1/ In applying the above test to the facts of a particular case, the Commission has looked to the amount of control exercised by the employer over the person involved in the manner and means used to carry out the job function. 2/ Consequently, where an employer exerted substantial control over the work functions the Commission has found persons to be employees rather than independent contractors. 3/

In the instant case the Municipal Employer is responsible for the provision of on-call counseling services. The Municipal Employer has contracted with four individuals, including Allen Maxwell, the person in question, to provide this service. The on-call counseling service must deal with patients who come to the hospital or other crises that occur outside of the hospital between the hours of 5:00 p.m. and 8:00 p.m. seven days a week. The persons who provide the on-call counseling services consult and/or advise prospective patients who might be admitted to the hospital for either chemical dependency problems, mental health problems or development disability problems or some combination thereof. They may do an interview to assess the situation, or do a mental status exam and medical history and then relay that information to the doctors who rely on the information in deciding whether to admit prospective patients.

Allen Maxwell, like the other individuals who provide on-call counseling service, works one week a month covering the hours noted above. 4/ He is paid in a different manner than other employees. 5/

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1/ Rugene, Inc. (5786) 8/61. See also Prigge's Chartered Buses, Inc. (8061) 6/67; Florence County Joint School District No. 1 (6143) 10/62; Milwaukee Board of School Directors (8901) 2169 (Aff. Dane Co. Circ. Ct. 6/70).

2/ Chuck Wagon Industrial Catering Service (7093-B) 8/66.

3/ Rocky Rococo Corp. (13415) 3/75.

4/ Although the Municipal Employer makes reference in its brief to the exclusion of all on-call counselors, the only person in dispute in the instant case is the above-named individual. The other three individuals who provide on-call counseling service also work full-time for the Municipal Employer. The parties stipulated that two of them--John Lapcewich and Larry Howell--in their capacities as Inpatient Evaluator and Mental Health Counselor respectively are included in the appropriate bargaining unit(s) and therefore eligible to vote in the aforesaid elections. The parties omitted a Dr. Asp from the list of eligibles as he occupies the supervisory position of Chemical Dependency Coordinator for the Municipal Employer.

5/ Maxwell is paid \$4,000 annually in monthly installments and from a separate account than most other employees for his work.

He receives no other benefits and is not covered by the personnel policies of the Municipal Employer. The on-call counselors worked out their own job schedule. 6/ Within the period of time that he is responsible for, Maxwell makes his own decisions regarding the actual hours that he would have contact with a client. Maxwell may do his work at his home, over the phone or at the clinic. He does not report on a regular basis to the Municipal Employer nor does he attend staff meetings. 7/ Maxwell fills out a log everytime he is called which is the main reporting vehicle to the Municipal Employer. However, this is reviewed by the Municipal Employer only on a periodic basis. There is no indication in the record that Maxwell is evaluated or supervised on a regular basis by the Municipal Employer. In sum, Maxwell acts pretty much on his own in carrying out his duties to provide on-call counseling services to the Municipal Employer.

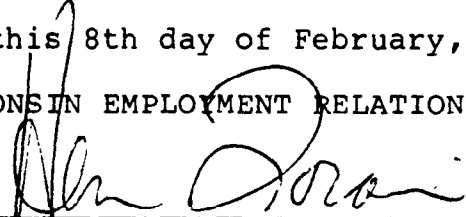
Based on all of the above, the Commission finds that the Municipal Employer does not exert sufficient control over the work function of Allen Maxwell as he carries out his job of providing on-call counseling services to establish an employer/employee relationship, and therefore, Allen Maxwell in his position acts as an independent contractor and is properly excluded from the aforementioned bargaining unit(s).


There is attached hereto, and marked Appendix "A", lists of employees eligible to vote in the two voting groups. Said lists include employees employed as of October 24, 1979. If individuals have been hired since that date, and prior to the eligibility date, to fill otherwise eligible positions, the names of said individuals will be added to the proper eligibility list.

Dated at Madison, Wisconsin, this 8th day of February, 1980.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Commissioner

  
Gary L. Covelli, Commissioner

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- 6/ This occurred prior to Maxwell joining the group and with little participation by representatives of the Municipal Employer.
- 7/ The four persons who counsel on an on-call basis meet for lunch once a month to discuss mutual problems but do not report as a group to the Municipal Employer regarding same.

# A

~~7/25~~ NORTHERN PINES UNIFIED SERVICES CENTER

DB 10/24/78

PROFESSIONAL STAFF

1. Linda Brekke Chemical Dependency Counselor
2. Mary Ann Charest Chemical, Dependency Counselor
3. Carol Christenson Mental Health Counselor
4. ~~Susan Clark~~ ~~Home Trainer Consultant~~
5. Donna Cordes Mental Health Counselor
6. Pat Cummings Inpatient Manager
7. Tommy Curler Chemical Dependency Counselor
8. Steve Finnegan Mental Health Counselor
9. Dan Haugen Inpatient Counselor
10. P. H. Heiser Psychiatric Social Worker
11. Kristin Herman Psychiatric Nurse
12. Marilyn Hickok Mental Health Counselor
13. Larry Howell ok Mental Health Counselor
14. Avon Karpenske Psychiatric Nurse
15. Marilyn Kile Psychiatric Social Worker
16. John C. Laney Psychologist
17. John C. Lapcewich<sup>ok</sup> Inpatient Evaluator
18. Allan Maxwell Chemical Dependency Counselor
19. ~~Paul Mladnich~~ ~~Chemical-Dependency-Counselor~~
20. Leroy Meyer C. D. Chron. Care & Vol. Coord.
21. Dan Odil Psychiatric Social Worker
22. Darlene Pederson Chemical Dependency Counselor
23. Sandra Radwanski Home Trainer Consultant
24. Thomas Ricci Psychiatric Social Worker
25. David Roseen Psychologist
- ~~B. H. Frederick~~ ~~Counselor~~
- ~~Violet Frederick~~ ~~Counselor~~
- ~~David B. Lenz~~
- ~~Shirley Curtis~~

Resigned

? in  
dignity

PROFESSIONAL STAFF continued

NP. 1924/7.

26. Gaylord Rous

Psychiatric Social Worker

27. Allen Rudd

Chemical Dependency Counselor

28. Charlotte Stack

Psychiatric Nurse

~~29. Mary Stearns~~ *Barkley Genter*

~~Project Coordinator~~ *(Protective Services)*

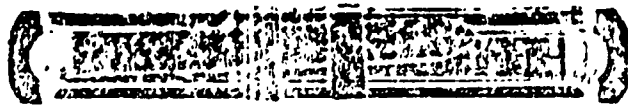
30. La Von Stuckmeyer

Chemical Dependency Counselor

31. Kurt Vuchetich

Information Specialist (Education)

EX 11 11



DB 10/24/79

NORTHERN PINES UNIFIED SERVICES CENTER

NON - PROFESSIONAL STAFF

- |                                |   |
|--------------------------------|---|
| 1. Linda Anderson              | Psychiatric Secretary/<br>Billing Clerk |
| 2. Mary Jo Bryce               | Billing Clerk                           |
| 3. Barbra Carsley              | Secretary/Receptionist                  |
| 4. Mary Donatelle              | Bookkeeper                              |
| 5. Mary Fredericks             | Secretary-Stenographer                  |
| 6. Kathleen Hustad             | Secretary/Receptionist                  |
| 7. Laurie Kieffer              | Secretary/Data Processor                |
| 8. Marcia Leach                | Outreach/Secretary Ashburn              |
| 9. Dorothy Mason               | Billing Clerk                           |
| <del>10. Willow Moseberg</del> | <del>Fiscal Manager</del>               |
| 11. Joyce Moravitz             | Case Records Secretary                  |
| x 12. Audrey Richards C.E.T.A. | Outreach Secretary                      |
| ( 13. Jeanna Schieffer         | Secretary/Receptionist                  |
| 14. Dorothy Skarbek            | Secretary/Receptionist                  |
| 15. Ginger Swanson             | Outreach Secretary                      |
| 16. Lori Stuntz                | Secretary/Stenographer                  |
| <del>17. Nellie Tosland</del>  | <del>Administrative Secretary</del>     |
| 18. Bill Frederick             | Custodial                               |
| 19. Violet Frederick           | Custodial                               |