

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

MARQUETTE COUNTY

Case XI
No. 25631 ME-1791
Decision No. 17682-A

No. 17681-A
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3. That at all times material herein, the Union has been, and is, the certified collective bargaining representative of all regular full-time and regular part-time employees of the Marquette County Courthouse including Emergency Medical Services, District Attorneys Office, Deputy Register of Deeds, Deputy County Treasurer, Deputy Clerk of Courts, janitors, Zoning, Unified Services Board, Extension Office, County Nurse's Office, Conservation Office and Commission on Aging, but excluding all supervisory, confidential, managerial and professional employees, law enforcement employees with power of arrest, employees of the County Social Services Department and employees of the County Highway Department; that, at all times material herein, the Union has been, and is, the certified collective bargaining representative of all regular full-time and regular part-time employees of the Marquette County Social Services Department, including professional employees, excluding supervisory, confidential and managerial employees, employees of the County Sheriff's Department, employees of the County Courthouse and related departments, and employees of the County Highway Department; that when the County and the Union stipulated to the elections which led to the Union's being certified as the collective bargaining representative of the foregoing bargaining units, they agreed that the Program Director of the Unified Services Board would be allowed to vote in the Courthouse unit subject to the County's right to challenge the Program Director's ballot; that the County did so challenge said ballot but as the outcome of said challenge would not have affected the final result of the representation question, the Commission made no ruling on the Program Director's status; that the instant proceeding was initiated by petitions from both the County and the Union requesting the Wisconsin Employment Relations Commission to determine whether the present occupant of the position of Program Director of the Unified Services Board, Amelia Wolvin, is or is not a supervisor or a managerial employee; and that at the hearing which followed said petitions, the County and the Union agreed that if the Commission determines that the Program Director should be included in a bargaining unit, the Commission should also determine whether the position will be placed in either the Courthouse or Social Services bargaining unit.

4. That the Unified Services Program in Marquette County provides statutorily mandated services to mentally ill, developmentally ill, alcoholic or drug dependent persons in Marquette County; that said services are provided through a Community Board which contracts out to various social service agencies, organizations or institutions; that the Community Board, which consists of three Marquette County Board supervisors and six citizens, has assigned to it a Program Director and a clerical employee; that Program Director Wolvin has held that position since the 1974 commencement of a Unified Services Program in Marquette County; that Wolvin possesses a Master's Degree in counseling and has experience in social work and counseling; that as Program Director, Wolvin prepares a statutorily mandated annual plan and budget which is reviewed, amended and approved by the Community Board; that the preparation of the foregoing basically involves the completion of forms supplied by the State of Wisconsin which include detailed instructions as to their completion; that while Wolvin keeps the Community Board informed as to new State service requirements, the Board retains the exclusive authority to determine when and if to implement such services; that aside from reporting statutory requirements, Wolvin has not made policy recommendations to the Community Board regarding the initiation or alteration of a program or service; that Wolvin surveys various social service agencies and organizations as to what services at what cost they could provide and relays said information to the Community Board with recommendations as to the agency with which the Board should contract for services; that said recommendations are based upon her professional expertise as a social worker and counselor; that after the Community Board decides to contract for services, Wolvin prepares a contract for said services which is then signed by the Community Board Chairman; that Wolvin coordinates client referrals to appropriate service providers and maintains records on the clients served by Board programs; and that Wolvin's monthly salary is approximately \$100 less than that of the Director of the Department of Social Services and \$150 a month more than that of the Social Worker II's employed in the Social Services Department.

5. That Wolvin spends about 1 to 1-1/2 hours per day assigning and directing the work of the clerical employee assigned to the Community Board; that while Wolvin had some participation in the placement of the incumbent employee in the secretarial position, she has never had occasion to discipline or effectively recommend the disciplining of the secretary; that Wolvin's recommendation that the secretary be promoted was not accepted by the Community Board; that the secretary has been transferred to other work assignments without Wolvin's permission; that the secretary and Wolvin essentially coordinate their vacations to insure that the office is covered and that, while Wolvin approves the secretary's sick leave requests, both Wolvin and the secretary fill in their own attendance sheets for the County Clerk's payroll office.

6. That Wolvin does not have either sufficient participation in the formulation, determination, and implementation of management policy or sufficient authority to commit the employer's resources to make her a managerial employee.

7. That Wolvin does not exercise supervisory responsibilities in sufficient combination or degree to make her a supervisory employee.

8. That Wolvin's duties, responsibilities and training make her a professional employee who shares a community of interest with professional employees functioning as social workers within the Social Services bargaining unit.

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 Marquette County Unified Services Program Director, Amelia Wolvin, is a professional employee within the meaning of Section 111.70(o)(1) of the Municipal Employment Relations Act, who is therefore most appropriately included in the existing Social Services bargaining unit represented by General Teamsters, Warehouse and Dairy Employees Union Local 126.

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

That the position of Marquette County Unified Services Program Director be, and the same hereby is, included in the Social Services bargaining unit described in Finding of Fact 3, the description of which is hereby amended to read as follows:

All regular full-time and regular part-time employees of the Marquette County Social Services Department, including professional employees within said Department and the Unified Services Board, but excluding supervisory, confidential, and managerial employees, employees of the County Sheriff's Department, employees of the County Courthouse and related departments, and employees of the County Highway Department.

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

In this proceeding the parties seek to have the Commission determine whether the position of Program Director of the County's Unified Services Board is managerial or supervisory and, if neither, into which of two existing bargaining units the position should be placed.

The County argues that the incumbent Program Director is both supervisory and managerial. As to her supervisory status, it contends that she had a role in hiring the secretary whom she supervises; that she has authority to effectively recommend discipline of said employee; that she directs and assigns the secretary's work; that her pay level and time spent supervising are indicative of supervisory status; and that she possesses independent discretion to grant the employee's requests for time off. As to her managerial status, the County alleges that the Program Director is vitally involved in the policy making process of the Unified Services Program. It further argues that she is intimately involved in the implementation of said policy and possesses effective authority to commit the County's resources. The County additionally alleges that Section 51.42(6), Stats., which sets forth the powers and duties of the Program Director, should remove any doubt about the managerial status of the position. Finally, the County argues that if any doubt lingers about the incumbent's managerial or supervisory status, the position should be excluded due to the combination of the supervisory and managerial attributes of the position.

The Union contends that the Program Director is neither supervisory nor managerial. As to the allegation of supervisory status, it contends that the incumbents only supervisory role is that of assigning work on a routine basis to the one clerical employee. The Union argues that the Program Director played a minimal role in what essentially was the transfer of the secretary from the County Clerk's office to the Unified Services Program. It urges that the Program Director has never disciplined the secretarial employee. The Union further asserts that vacations, etc., are simply coordinated between the two Board employees and that they independently report their attendance record to the County Clerk for payroll purposes. It contends that on personnel policy questions the Program Director defers to the County Clerk who on occasion has unilaterally transferred the secretary to non-Board work and also directed the Program Director to speak to the secretary about malingering in the County Treasurer's office during work hours. As to the question of managerial status, the Union argues that the Program Director does not participate in the formulation of policy beyond contributing information she has gathered in her professional capacity. It notes that her recommendations to the Board on promotion of the secretary and even an extension of client services have been rejected. It asserts that her budget preparation is little more than the completion of detailed forms. The Union argues that she lacks authority to commit Board resources as service contracts must be signed by the Chairman of the Board. It contends that the incumbent's salary level is reflective of her professional skills as opposed to managerial responsibilities. The Union, therefore, urges that the Program Director is simply a professional employee lacking supervisory and managerial status.

When resolving questions of supervisory status, the Commission looks to a variety of factors including:

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 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 skill or 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.

Applying these factors to the Program Director position, the record depicts an individual who spends a small portion of her day routinely assigning work to a single employee, whose level of pay falls between that of the County's professional social workers and that of the supervisory/managerial Director of the Social Services Department, whose recommendation for promotion of her secretary fell on deaf ears and who apparently yields to the judgment and authority of the County Clerk on all but routine personnel matters. Indeed, although the Program Director was involved in the placement of the incumbent secretary into the Unified Services Program, it could well be argued that said placement was basically a transfer initiated by the County Clerk and acquiesced in by the employee. Given the foregoing the Commission concludes that the Program Director's duties and responsibilities do not warrant the conclusion that the position is supervisory.

Turning to the managerial issue, the Commission has determined that managerial status is related to an employee's participation in the formulation, determination and implementation of management policy and the effective authority to commit the employer's resources. 2/ While the evidence clearly establishes that the Program Director is responsible for the implementation of the Unified Services Program, it also appears that the Board retains tight control over actual policy decisions and expenditure of resources. The Program Director's budgetary functions appear to be largely dictated by statutory service requirements and even then are subject to Board reversal. Thus the role of Program Director during policy sessions seems primarily to be that of providing options and information as opposed to participating in the decision making process. Therefore it is concluded that the position is not managerial in nature.


Having concluded that the Program Director is neither supervisory nor managerial, there remains the question of which bargaining unit most appropriately should include said position. As the record clearly demonstrates that the position is professional in nature

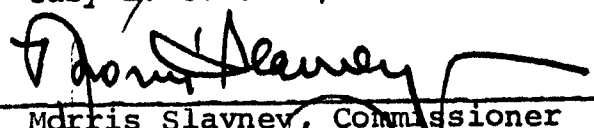
2/ City of Wausau (14807) 7/76.

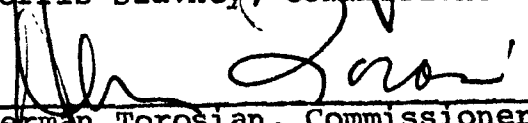
and vitally related to the provision of social services, it is concluded that the Social Services unit, which includes professional social workers, is the appropriate unit for the Program Director position instead of the courthouse unit which is devoid of professional employees.

Dated at Madison, Wisconsin this 25th day of September, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner