

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**TREMPEALEAU COUNTY COURTHOUSE EMPLOYEES,  
LOCAL 382, AFSCME, AFL-CIO**

Involving Certain Employees of  
**TREMPEALEAU COUNTY**

Case 12  
No. 58446  
ME-1002

**Decision No. 18380-D**

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Appearances:

**Mr. Daniel R. Pfeifer**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 18990 Ibsen Road, Sparta, Wisconsin 54656-3755, appearing on behalf of Trempealeau County Courthouse Employees, Local 382, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Victoria L. Seltun**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin, 54702-1030, appearing on behalf of Trempealeau County.

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

On January 11, 2000, Trempealeau County Courthouse Employees, Local 382, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of Trempealeau County employees by including the Victim Witness Coordinator.

John R. Emery, a member of the Commission's staff, conducted a hearing on August 15, 2000, in Whitehall, Wisconsin.

Dec. No. 18380-D

Local 382 contends that the Victim Witness Coordinator is properly included in an existing bargaining unit comprised of all County Courthouse employees including professional employees and excluding supervisory, confidential, casual employees and elected officials. Trempealeau County contends that the Victim Witness Coordinator is a managerial employee and, therefore, should be excluded from the bargaining unit.

The County's brief was filed on September 18, 2000. The Union's brief was filed on December 6, 2000, whereupon the record was closed.

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

### **FINDINGS OF FACT**

1. Trempealeau County, herein the County, is a municipal employer with offices at Main Street, Whitehall, Wisconsin.

2. Trempealeau County Courthouse Employees, Local 382, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices located at 18990 Ibsen Road, Sparta, Wisconsin that serves as the collective bargaining representative of certain County employees.

3. Prior to January 1, 2000, the County maintained a full-time bargaining unit position designated as Legal Secretary/Victim Witness Coordinator, which was under the supervision of the District Attorney. Since 1993, the position has been filled by Debra Garson. While in that position, Garson devoted approximately 35% of her time to her duties as Legal Secretary and 65% of her time to her duties as Victim Witness Coordinator. Prior to 1993, Garson worked for the County as a full-time Legal Secretary, also a bargaining unit position. While serving in the dual Legal Secretary/Victim Witness Coordinator position, Garson's job description regarding Victim Witness services included the following duties:

. . .

- Develop a knowledge of all victim/witness services which may be available and refer persons as needed.
- Maintain contact with victims and witnesses in criminal cases.
- Provide support services as needed.
- Explain court procedures, the reasons for court appearances and other things requested of victim or witness.

- Determine the amount of restitution required and prepare the Restitution Order for the Court.
- Assemble the required information for and prepare required reports in connection with victim/witness services.

4. On November 16, 1999, the Trempealeau County Board of Supervisors adopted a resolution creating a Victim Witness Services Program to better effectuate the requirements of Chapter 950, Wisconsin Statutes, regarding the rights of victims and witnesses of crime. The Board designated the position of Victim Witness Coordinator as a full-time, non-bargaining unit position answerable to the County Board Executive Committee, and appointed Garson thereto, effective January 1, 2000.

The job description for the position, developed by Garson and the County Personnel Director contemporaneously with creation of the position, provides in pertinent part:

. . .

**Essential Duties and Responsibilities:**

**The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.**

Provides information regarding criminal court process and juvenile court process to crime victims/witness; provides crime victims/witnesses with information regarding the progress of their case and provides and coordinates services and support to crime victims/witnesses.

Explains criminal court process and juvenile court process to victims/witnesses. Advises crime victims/witnesses of case details such as charges, penalties available, bond conditions, court dates and changes, subpoenas and case disposition. Provides written notice of all court hearings to crime victims. Advises victims of decisions not to prosecute.

Assists victims with applying for compensation from the Crime Victim Compensation Program, completing restitution requests and victim impact statements. Advises victims of available services and resources. Refers clients to appropriate agencies such as counseling services, support groups, therapy, etc. Notifies critical incident stress management team of victim needs. Assists victims and witnesses in obtaining witness fees.

Escorts victims and witnesses to court proceedings. Arranges/provides transportation when necessary. Intercedes with employers on behalf of victims/witnesses for court appearances and other matters.

Assists victims in obtaining Injunctions and Restraining Orders.

Arranges for the return of property from law enforcement agencies to victims/witnesses in a timely manner.

Provides registration cards and explains the procedure to victims for the following programs: PENS – Parole Eligibility Notification System, VINE – Victim Information and Notification Everyday, SORP – Sex Offender Registry Program, VANS – Victim Appellate Notification Services, Juvenile Release Notification, Chapter 980 – Sexually Violent Persons, Not Guilty of [sic] Reason of Mental Defect.

Assists prosecutor with court proceedings.

Provides Probation Agents with defendant/victim background information.

Participates as a trainer for the Juvenile Victim Offender Mediation Program.

Coordinates victim statements at sentencing hearings.

Prepares and submits annual report to the Office of Crime Victim Services.

Prepares and submits semi-annual reimbursement reports for the Office of Crime Victim Services.

Develops, recommends and administers department budget. Approves expenses, reviews expense reports, and prepares vouchers.

Develops department policies and procedures to ensure compliance with county ordinances, and state and federal laws, rules and regulations.

Provides education and training sessions to related agencies.

Performs public relations activities regarding the Victim Witness Services Program.

Prepares and submits resolutions to the County Board.

Serves as a member of victim/witness related groups such as the Domestic Abuse Task Force, Violence Against Women Committee, Batterer's Education Oversight Committee, Sex Offender Registry and Notification team, Rehabilitation Review Panel, etc.

Attends workshops, seminars and conferences.

Opens and reviews mail. Answers telephone.

Orders office supplies and prepares vouchers for payment.

. . .

5. The County subsequently advised the Wisconsin Department of Justice, Office of Crime Victim Services of its decision to segregate the Victim Witness Services Program from the District Attorney's office and was advised by Christine Nolan, Victim Assistance Administrator of the Office of Crime Victim Services, that a memorandum outlining the conditions of the transfer would need to be filed with her Office prior to January 1, 2000 to assure compliance with the provisions of Chapter 950. Accordingly, on December 27, 1999, the County Board Chairman, the District Attorney and Garson executed a Memorandum of Understanding setting forth the conditions under which the Victim Witness Coordinator was to operate, as follows:

#### **MEMORANDUM OF UNDERSTANDING**

Lyle Anderson, Chairman of the Trempealeau County Board of Supervisors, Peter Gierok, Trempealeau County District Attorney and Debra Garson, Trempealeau County Victim Witness Coordinator do hereby agree as follows:

1. On November 16, 1999 the Trempealeau County Board of Supervisors approved a resolution increasing the Victim Witness Coordinator position from 65% to 100%; a full time non-union position answerable to the Executive Committee. This change is effective January 1, 2000.
2. The Victim Witness Coordinator's office shall be located within the District Attorney's Office in the room currently designated as the victim witness waiting room.
3. The District Attorney's Office has various responsibilities listed at Wis. Stats. 950.08(2r) 971.095, 971-17(4m)(b), 972.14(3)(b), 938.25(2m), 938.265, 938.346(1m) and 938.51(2). Said responsibilities are hereby delegated to the Victim Witness Coordinator.

4. In order to fulfill the said delegated duties, the DA secretary will provide the Victim Witness Coordinator with all new referrals that require services, along with copies of all hearing notices as they are scheduled.
5. To further fulfill the heretofore stated delegated duties, the Victim Witness Coordinator will have access to all information and case files, in the District Attorney's Office, which pertain to crime victims.
6. The Victim Witness Coordinator will be allowed to take DA files into her office to work on and will return them to the DA office in a timely manner. The Victim Witness Coordinator shall continue the current notification procedure wherein copies of all notices and documents will be kept in the Victim Witness file inside the DA's case file, along with records of phone calls and personal contacts between the Victim Witness Coordinator and crime victims.
7. The Victim Witness Coordinator will provide the services heretofore delegated. This includes, but may not be limited to, notice of all hearings, notice of all rights, notice of decision not to prosecute, notice of decision not to file a delinquency, Victim Impact Statements, gathering of restitution information, employer intercession, court accompaniment, referrals to appropriate agencies and service providers and right to confer.
8. If a dispute should arise regarding the administration of the program, the District Attorney and the Victim Witness Coordinator shall first attempt to resolve the problem. If a resolution can not be reached, the Trempealeau County Executive Committee and/or the Office of Crime Victim Services may be asked for assistance in resolving a dispute.
9. The Victim Witness Coordinator shall forward victim's concerns to the DA's Office both verbally and in writing as the case warrants.

Dated: <u>12-21-99</u>	<u>Lyle Anderson /s/</u> Lyle Anderson, Chairman, Trempealeau County Board of Supervisors
Dated: <u>12-27-99</u>	<u>Peter Gierok /s/</u> Peter Gierok, District Attorney
Dated: <u>12-27-99</u>	<u>Debra Garson /s/</u> Debra Garson, Victim Witness Coordinator

6. The Victim Witness Services Program is a one person department, with a 1999 – 2000 budget of \$41,414.67. Of that amount, \$35,724.67, or 86%, consisted of the Coordinator's salary and benefits and \$3900.00, or 9%, consisted of regular office expenses, such as office supplies, equipment repair, telephone service, postage, etc. The balance represented discretionary funds, allocable to such items as organizational memberships, seminar and workshop registrations, travel, lodging and meal expenses. For 2000-2001, the proposed budget for the Victim Witness Services Program was approximately \$50,000, with the funds being allocated in roughly the same proportion as in 1999-2000.

The Victim Witness Coordinator has total spending control over those amounts in her budget not comprising part of her compensation, and may allocate those monies as she chooses, with the proviso that any single expenditure in excess of \$500 must have the prior approval of the Executive Committee, a restriction which applies to all department heads within the County. Prior to January 1, 2000, any spending by the Victim Witness Coordinator required prior approval by the District Attorney.

7. The Victim Witness Coordinator is directly under the authority of the Executive Committee of the County Board, without any intermediate level of supervision, as is the case with other County department heads. The Committee does not engage in day-to-day supervision of the Coordinator. The Coordinator submits monthly activity reports, and meets with the Committee occasionally on an as-needed basis. She sets her own daily schedule and schedules her own vacations. She also determines the workshops and seminars she wishes to attend to expand her knowledge and expertise.

8. The Coordinator is responsible for developing policies and procedures for the Victim Witness Services Program to comply with the provisions of Chapter 950, Wisconsin Statutes. Garson has created various forms, brochures, impact statements, etc., which are used in the Victim Witness Services Program, but had not yet developed any policy initiatives at the time of hearing. Under Chapter 950, counties are eligible for reimbursement of up to 90% of the cost of operating a victim/witness program, but must offer a specific range of services and report annually to the Office of Crime Victim Services within the Department of Justice on the progress of the program. Further, the County must file claims semi-annually to obtain the reimbursement with the amount of reimbursement being determined by compliance with the agency's requirements and the availability of funds. These tasks are the responsibility of the Coordinator. In 1999-2000, the County received \$28,990.27 in reimbursement funds from the Department of Justice, which represented 70% of the annual budget of the Victim Witness Services Program.

Garson attends quarterly meetings of the Office of Crime Victim Services and serves as a regional representative on that agency's board of directors. Further, she chairs the Trempealeau County Domestic Abuse Policy Committee, which includes representatives from the District Attorney's office, the County Sheriff's Department and other law enforcement and social services agencies from throughout the County.

9. Debra Garson participates to a sufficient degree, in the formulation, determination and implementation of management policy and in the allocation of County resources to be a managerial employee.

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

**CONCLUSION OF LAW**

1. Debra Garson, the incumbent Victim Witness Coordinator, is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee under Sec. 111.70 (1)(i), Stats.

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

**ORDER CLARIFYING BARGAINING UNIT**

The Victim Witness Coordinator shall continue to be excluded from the bargaining unit referenced in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 6<sup>th</sup> day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner



TREMPEALEAU COUNTY

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

**POSITIONS OF THE PARTIES**

**The Union**

The single issue in the case is whether the Victim Witness Coordinator is a managerial employee. Under WERC caselaw such as MARINETTE COUNTY (PINE VIEW HEALTH CARE CENTER), DEC, NO. 26154-B, (WERC, 3/92), a managerial employee must, to a significant degree, participate in the formulation, determination and implementation of management policy, or have effective authority to commit the employer's resources. This employee has neither.

The Victim Witness Services Program has a small budget, most of which comprises the wages and benefits of the Coordinator. Preparation of the budget is *pro forma*, and any subsequent changes must be approved by the Executive Committee. Further, the Coordinator is not involved in significant policy decisions. The exhibits offered by the County constitute forms and brochures created to obtain or provide information from the victims and witnesses who are involved with the Program. These are work product rather than policy. On this record, the Commission cannot and should not find that the Coordinator is a managerial employee. To do otherwise would signal to employers that to remove employees from bargaining units all that is necessary is to place them in separate one-person departments.

**The County**

The Victim Witness Coordinator does qualify as a managerial employee under the test set forth in MARINETTE COUNTY (PINE VIEW HEALTH CARE CENTER), SUPRA. The Coordinator reports directly to the Executive Committee, without intermediate levels of supervision, attends regular meetings of the County management team and operates in all ways as do the other County department heads.

The Coordinator develops the department budget and has independent authority to spend the allocated funds as she determines. She operates one of the few stand-alone Victim Witness Services offices in Wisconsin. Since it is a one-person department, she is responsible for developing all management systems, determining how best to offer services to the public, and promulgating policies and procedures in order to do so. She develops policy for the County as chair of a County-wide Domestic Abuse Policy Committee, which includes other agency and law enforcement representatives. She is responsible for all necessary reporting to the State Office of Crime Victim Services and also for obtaining reimbursement from the State

for the costs of the program. If victim/witness services are not rendered appropriately, she may be held personally liable and fined or otherwise sanctioned under Chapter 950, Wisconsin Statutes.

The Coordinator does participate in the formulation, determination and implementation of management policy with respect to the Victim Witness Services Program to a "significant degree" and "at a relatively high level of responsibility." Under the Commission precedent set in MENOMINEE COUNTY, DEC. NO. 26983-B (WERC, 4/95) and SHAWANO COUNTY (MAPLE LANE FACILITY), DEC. NO. 20996-A (WERC, 1/84), the Coordinator should be considered a management employee and appropriately excluded from the bargaining unit.

### DISCUSSION

The issue before us is whether the Victim Witness Coordinator is a managerial employee. As we said in MENOMINEE COUNTY, DEC. NO. 26983-B (WERC, 4/95):

Managerial employees are excluded from the definition of municipal employees pursuant to Sec. 111.70(1)(i), Stats. The Commission has developed a definition of managerial status through case law in the absence of a statutory definition of a "managerial" employee. In determining whether a position is managerial, the Commission considers the degree to which the incumbent of the position actually participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer's resources. See, e.g., Milwaukee VTAE, Dec. No. 8736-B (WERC, 6/79); Northwood School District, Dec. No. 20022 (WERC, 10/82); Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92), and cases cited therein. The necessary level of managerial responsibility must be "at a relatively high level." As we stated in Marinette County (Pineview Health Care Center), Dec. No. 26154-B (WERC, 3/92):

To confer managerial status, an individual's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, *inter alia*, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. (Footnotes omitted).

Prior to January 2000, Debra Garson served as part-time Victim Witness Coordinator, under the supervision and authority of the District Attorney. In that capacity, she administered the victim and witness services mandated by Chapter 950, Wisconsin Statutes. That statute

imposes the responsibilities set forth therein upon the district attorney, or other official, of each county, empowered to prosecute criminal or delinquency cases, or upon another person designated by the district attorney to fill that role. Sec. 950.02(2m), Stats. In late 1999, the County Board determined to make the position autonomous, and to that end passed a resolution establishing an independent Victim Witness Services Program, with Garson as full-time Coordinator. As such, she is a salaried employee, who works independently of the District Attorney, sets her own schedule and determines her own activities. In December, Garson entered into a Memorandum of Understanding with the County Board and the District Attorney, delegating to her the statutory powers and responsibilities necessary to operate the program.

In her capacity as Victim Witness Coordinator, Garson has independent control over the Victim Witness Services Program. Within the framework of the statutes she implements, she develops policies and procedures to effectuate the purpose of her office. Furthermore, she acts as the County's representative, both as Chair of the County Domestic Abuse Policy Committee, which includes representatives from several local and county-wide law enforcement and social service agencies, and as a member of the State board of directors of the Office of Crime Victim Services.

There is no doubt that Garson is responsible for providing the services mandated by Chapter 950, Wisconsin Statutes. However, what persuades us that she is a managerial employee is the discretion she exercises when determining which of her Chapter 950 responsibilities will receive priority and emphasis. By making these discretionary judgments (which are reflected in how she allocates her time), we are satisfied that she effectively determines the level of services to be provided and thereby exercises significant managerial authority.

Given the foregoing, we are persuaded that Victim Witness Coordinator Debra Garson is a managerial employee and, therefore, is properly excluded from the bargaining unit.

Dated at Madison, Wisconsin this 6<sup>th</sup> day of April, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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