

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL 40

Involving Certain Employees of

MARATHON COUNTY

Case 52
No. 50136
ME(u/c)-3370

Decision No. 19129-G

Appearances:

Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin, appearing on behalf of Marathon County Professional Employees Courthouse and Affiliated Departments, AFSCME, Local 2492-D.

Frank A. Matel, Personnel Director, Marathon County Courthouse, 500 Forest Street, Wausau, Wisconsin, appearing on behalf of Marathon County.

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

Wisconsin Council 40 filed a petition on January 16, 2003, with the Wisconsin Employment Relations Commission seeking to exclude Shelter Home Youth Workers from an existing bargaining unit of Marathon County employees which it represents.

Hearing in the matter was held in Wausau, Wisconsin, on November 18, 2003, before Examiner Lauri A. Millot, a member of the Commission's staff. Wisconsin Council 40 argued that they are not professional employees and, therefore, should be excluded from the professional employee bargaining unit. Marathon County took no position on the petition. The parties made oral argument at the conclusion of the hearing.

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

FINDINGS OF FACT

1. Marathon County, hereinafter County, is a municipal employer with its offices located at 500 Forest Street, Wausau, Wisconsin. The County provides governmental services to the citizens of Marathon County.

2. The Marathon County Professional Employees Courthouse and Affiliated Departments, AFSCME Local 2492-D, hereinafter Local 2492-D, is a unit of professional employees that included the Shelter Home Youth Workers. The labor agreement between Local 2492-D and the County for the time period January 1, 2003, to December 31, 2005, for 2492-D includes the following:

Article 1 – Recognition

. . .

(Effective 1/1/03 the Workers will be excluded from this bargaining unit. The County agrees that it will support relocating these positions into the Office and Technical Employees Union, Local 2492-E.)

3. The Marathon County Office and Technical Employees Union, Local 2492-E hereinafter Local 2492-E, is a unit comprised of office, technical and other non-professional employees that work in the Courthouse and Sheriff's Department. Local 2492-E reached a tentative agreement with the County on April 4, 2003, on a 2003-2005 labor agreement. Included in the tentative agreement was the relocation of the Shelter Home Youth Workers into the Local 2492-E bargaining unit. Local 2492-E did not ratify the tentative agreement due, at least in part, to the proposed inclusion of the Youth Workers.

4. In addition to the bargaining units referenced in Findings of Fact 2-3, there are bargaining units of Social Services paraprofessionals, Highway Department employees, Parks Department employees, Health Department professionals, and Library employees in Marathon County.

5. The current job description for the Shelter Home Youth Worker revised during November, 2003, reads as follows:

Definition of Class

This is responsible work interacting with Shelter Home residents and supervising their daily activities and behaviors. Work is performed in accordance with established procedures with some degree of independent action in methods and techniques used. Work originates from the referral of adolescents to the Shelter Home. Supervision is received from the Shelter Home Unit Supervisor who reviews incident reports and observes employees relating to residents. Work involves some contact with residents' parents or guardians, law enforcement agencies, Social Services, school personnel, and Intake/Dispositional staff.

Examples of Work Performed

Supervises Shelter Home residents in daily activities such as academic studies, assigned tasks, entertainment, and in their relationships with other residents.

Counsels residents regarding behavior and personal problems.

Maintains daily records regarding behavior of each resident; completes reports describing significant behavior incidents.

Assists Unit Supervisor with situations requiring emergency action or treatment; notifies youth's parents or guardian when such action or treatment is necessary.

Completes intakes and discharges of Shelter Home residents; may assist in initial interview with youth and parents or guardians.

Completes data entry of Shelter Home activities.

Interacts with other Youth Workers to share observations and knowledge of residents and to maintain consistent behavior towards residents.

May transport residents for medical care, court appearances, and other necessary appointments.

Performs related work as assigned.

Knowledge, Skills, and Abilities

Ability to assess behaviors observed and to deal with pressure situations in a logical and calm manner.

Ability to establish rapport with young adults of various backgrounds and behaviors.

Ability to represent a positive role model for young adults.

Ability to express self clearly both orally and in writing.

Ability to learn data entry procedures.

Ability to establish and maintain effective working relationships with fellow employees.

Qualifications

High school graduation or equivalent and one year's work experience required working with adolescents in an institutional, foster care/group home, or education environment; OR equivalent combination of education and experience. Bachelor's degree in Sociology, Psychology, Social work, Criminology, or Secondary Education desirable. Must also possess a good reputation and background that will withstand an extensive investigation.

Occupational Exposure

This classification may have occupational exposure to bloodborne pathogens. See the Marathon County Sheriff's Department Exposure Control Plan for more specific information.

Prior to the November 2003 revision of the job description, the County qualifications for the Youth Worker were as follows:

Bachelor's degree in Sociology, Psychology, Social Work, Criminal Justice, or Secondary Education required; OR four years experience required working with adolescents in an institutional, foster care/group home, or educational environment; OR equivalent combination of education and experience.

Also required is a good reputation and background which will withstand pre-appointment investigation and a caregiver background check.

Currently all six Youth Workers hold a Bachelor's Degree.

6. The County Juvenile Detention Facility contains both the non-secure shelter home and the secure detention center. The Facility has one entrance that is shared by the shelter home and detention facility. Upon entrance to the Facility, the shelter home is located to the right and the detention center is located to the left; each of which is separated from the shared entrance by doors. The detention center doors are secure while the shelter home doors are not locked.

The shelter home is staffed by the Youth Workers while the secure detention center utilizes Corrections Officer/Juvenile Detention Officers who are included in the Local 2492-E unit.

The shelter home provides residential confinement services for a maximum of eight juveniles, ages 10 to 17, ordered confined by court order and/or a temporary physical custody initiated by a social worker. The length of stay of juvenile residents ranges from one and one-half days to 30 days. The shelter home has eight individual resident rooms, one common day room and a classroom.

7. The Shelter Home Youth Worker is a full-time, 40-hour per week position within the County Sheriff's Department. The work hours vary depending upon the employee's schedule. The six current Youth Workers work a four days on/two days off schedule and are assigned on a rotational basis to one of the following three shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. The 2003 hourly wage rate for the Youth Worker position was \$15.82. The Youth Workers are supervised by a unit supervisor and the Juvenile Detention Facility Superintendent, Ms. Chris Anklam.

8. Youth Workers process intakes and releases of juveniles that have been identified as runaways and delinquents. Completion of an intake includes the taking of a photograph; conducting a pat-down search; obtaining relevant information including name, aliases, height, weight, school, reason for assignment to the shelter home; and completion of a medical questionnaire. The Youth Worker is present when the County Social Worker meets with the juvenile. The Social Worker prepares a case plan for the individual juveniles.

The Youth Workers supervise resident behavior and implement a four level system that grants or takes away privileges depending upon juvenile adherence to the shelter home rules. Resident juveniles are awarded points based on hygiene and interaction with residents and staff. The Youth Workers have limited independent authority to deviate from the behavior modification level system, although they independently assess juvenile behavior and determine whether it is in compliance or non-compliance with the established rules.

Youth Workers have limited discretion in determining juvenile resident activities. Management determines and schedules programming activities for juveniles for a few after-school periods per week, a few week day evenings and during weekends. Youth Workers determine whether the juveniles may go outside and play basketball; may go to the recreation room and play pool; may play board games, or card games or may watch a video during the time period between completing their homework and the beginning of a planned activity.

Youth Workers do not have any involvement in determining the length of stay for juveniles at the shelter home. Youth Workers do not determine when and whether a resident will receive a meal.

Youth Workers complete incident reports for infractions that rise to the level of an "incident" such as juveniles running away from the facility or use of drugs at the facility. The Shelter Home Supervisor approves the penalty for incidents.

Youth Workers input the daily and hourly activities of resident juveniles into a software system.

10. The job description for the Corrections Officer/Juvenile Detention Officer as revised in August 2002, reads as follows:

Definition of Class

This is responsible work ensuring that secure, safe, and sanitary conditions exists (sic) in the daily operation of the County Adult or Juvenile detention facility.

Work of this class involves varied duties and assignments including floor, program/visitation, housing control, central control, booking, escort/transportation, and huber/home (sic) monitoring. Work is performed in accordance with established policies and procedures. Employees will need to exercise some independent judgment when monitoring inmate behavior. Decisions are usually limited to interpretation of rules and an immediate supervisor is available for consultation or may be contacted if necessary. No supervision is exercised over other employees but may involve supervision of inmate work. Direct supervision is received from supervisors or higher ranking officers. Work is reviewed by observance and inspection of compliance with established rules and procedures. Work may be performed on a rotating shift basis. Work involves an element of danger.

Examples of Work Performed

Performs varied job assignments as required including floor officer, housing control officer, Huber officer, central control officer and booking officer. Examples of duties follow:

Maintain security of adults or juvenile inmates and facility involving both direct inmates supervision and periodic checks of all blocks.

Completes population records, security logs, and incident reports as needed.

Ensures inmates are following facility policies; completes cell searches as necessary; reports any discrepancies to supervisor for disciplinary review.

Delivers meals, prescribed medications, linens, mail and canteen items to inmates.

Escorts inmates to various areas of facility for attorney and probation visits, sick call, and various programs. Escorts inmates outside of facility for court appearances, doctor's appointments, HCC, etc.

Operates all electronically controlled doors within facility. Monitors closed circuit cameras and alarms. Dispatches staff to areas of need within the facility.

Monitors vehicles entering secure garage and visitors in the secure area.

Operates the TIME systems computer plus other equipment in central control. Ensure security of the central control area.

Receives arrested, detained, or sentenced persons and properly books all incarcerated inmates in accordance with established procedures.

Completes required documentation before releasing inmates; processes any bonding.

Monitors arrival and departure time of huber (sic) inmates. Ensures returning inmates are properly searched.

Performs related work as required.

Knowledge, Skills, and Abilities

Knowledge of departmental rules, regulations, plus statutes pertaining to the custody/discipline of adult or juvenile inmates and operation of the assigned facility after appropriate training period.

Working knowledge of police arrest procedures. Working knowledge of juvenile intake procedures.

Ability to detect and recognize potential hazards and dangers to the security and safety of inmates or the facility.

Ability to deal firmly with potentially dangerous persons and yet maintain an awareness of their personal needs.

Ability to maintain a calm demeanor under highly emotional and stressful situations.

Ability to reason and act quickly and appropriately in emergency situations.

Ability to observe and accurately interpret inmate mental/physical conditions and behavior.

Ability to deal firmly, yet tactfully, with the general public, including lawyers, doctors, law enforcement officers, inmates' families, etc.

Ability to understand and effectively implement oral and written instructions.

Ability to maintain accurate records.

Ability to learn use of computer terminal.

Ability to operate all communications and emergency equipment available in the facility.

Qualifications

High school graduation or equivalent preferred. Applicant must have *one* of the following:

- One year's work experience involving direct care and safety of inmates in a correctional setting, residents in a group/shelter home, or patients in a secured institutional facility;
- OR one year law enforcement experience;
- OR equivalent combination of related education and experience.

Must possess a good reputation and background that will withstand pre-appointment investigation. Current Wisconsin Jail Officer or Juvenile Detention Officer certification is a plus.

Ability to speak, interpret, and write the Hmong language is not required but will be given credit in evaluating applications.

Necessary Special Qualifications

Valid driver's license. Court Officer position requires driving record that meets County standards.

. . .

11. The Correction Officer/Juvenile Worker, hereinafter CO/JW, is a full-time, 40-hour per week position. The work hours vary depending upon the employee's schedule. CO/JWs work a four days on/two days off schedule and are assigned to the following rotational shifts: 7:00 a.m. to 3:00 p.m.; 3:00 p.m. to 11:00 p.m.; and 11:00 p.m. to 7:00 a.m. The 2003 hourly wage rate for the CO/JW ranged from \$13.56 per hour at Step A to \$16.95 per hour at Step D. Like Youth Workers, the CO/JWs are supervised by the Juvenile Detention Facility Superintendent, Ms. Chris Anklaam.

The major responsibility of the CO/JW is to maintain the safety and security of the detention facility by monitoring juvenile inmate behavior. The CO/JW identifies appropriate and inappropriate behavior and imposes a penalty for inappropriate behavior. CO/JWs have the authority to lock a juvenile inmate in a cell for misbehavior, whereas the same behavior in the shelter home would result in placing the resident at the "O" table.

12. Youth Workers and CO/JWs jointly attend 16 annual hours of County provided training in compliance with State standards. Training topics have included drug identification, CPR, and safe child restraint.

13. The work of a Shelter Home Youth Worker does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study.

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

CONCLUSIONS OF LAW

1. The Shelter Home Youth Workers are not professional employees within the meaning of Sec. 111.70(1)(L), Stats., and therefore are not appropriately included in the Local 2492-D professional employee bargaining unit.

2. The Shelter Home Youth Workers share a sufficient community of interest with the Correctional Officer/Juvenile Workers to be appropriately included in the Local 2492-E bargaining 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 Shelter Home Youth Workers in Marathon County are hereby included in the Local 2492-E bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of May, 2004.

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

Marathon County

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

DISCUSSION

This case presents us with a unique set of facts. The union representing the professional employee Local 2492-D bargaining unit wants to exclude the Shelter Home Youth Workers because they are not professional employees, while Local 2492-E representing a unit of non-professional employees is unwilling to voluntarily add these positions to that unit. All parties ask that we determine which bargaining unit should include the Youth Workers.

The unit represented by Local 2940-D is limited in its Recognition Clause to professional employees. Thus, we will first address whether the Youth Workers are professional employees. If we find that they are not professional employees, they are excluded by definition from the professional employee unit and the issue becomes what is the appropriate unit placement for these employees.

Are Shelter Home Youth Workers professional employees?

When determining whether an employee is a professional employee, we apply Sec. 111.70(1)(L) Stats., which defines the term "professional employee" as follows:

1. Any employee engaged in work:
 - a. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process;
- or . . .

As reflected in the statutory language quoted above, all four components of the statutory definition must be met by the work in question in order to find that the Youth Workers are professional employees. Assuming for purposes of analysis that the work in question meets the requirements of Sec. 111.70(1)(L)1.a., b. and c., Stats., we conclude that Youth Workers are not professional employees because their work does not satisfy the fourth component found in Sec. 111.70(1)(L)1.d., Stats., i.e. the work does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study.

The Commission has consistently held that the requirements of Sec. 111.70(1)(L)1.d., Stats., are met only by a four year specialized degree. VILLAGE OF ASHWAUBENON, DEC. NO. 23745-C (WERC, 8/02); GREEN LAKE COUNTY, DEC. NO. 24955-B (WERC, 3/96). Here, while both the job description and the testimony of the Facility Superintendent confirm that such a degree is desirable for the work in question, and while currently all six Youth Workers hold a BA degree, the record as a whole establishes that the required knowledge is customarily acquired through work experience with adolescents rather than from a four-year specialized degree.

Therefore, we conclude the Shelter Home Youth Workers are not professional employees and are therefore excluded from the Local 2492-D unit.

What is the Appropriate Unit Placement for the Shelter Home Workers?

Since it is not appropriate to include the Youth Workers in the Local 2492-D unit, we turn to a determination of what is an appropriate bargaining unit placement for these positions.

When determining issues of unit placement, we consider the following factors:

1. Whether the employees share a "community of interest" with other employees.
2. The duties and skills of the employees as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of the employees as compared to the wages, hours and working conditions of other employees.
4. Whether the employees share separate or common supervision with all other employees.
5. The degree to which the employees have a common or exclusive workplace.
6. Undue fragmentation of bargaining units.
7. Bargaining history. 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 employees share similar interests, usually — though not necessarily — limited to those interests reflected in Factors 2 - 5. This definitional duality is of long standing and has received the approval of the Wisconsin Supreme Court. *ARROWHEAD UNITED TEACHERS V. WERC*, SUPRA.

Factor 6 reflects the statutory directive in Sec. 111.70(4)(d)2.a., Stats., that we maintain "as few collective bargaining units as practicable in keeping with the size of the total municipal work force."

Factor 7 — bargaining history — involves an analysis of the way in which the work force has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. *MARINETTE SCHOOL DISTRICT*, DEC. NO. 27000 (WERC, 9/91).

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all criteria deserve the same weight and each case shall be evaluated on a case-by-case basis. *MARINETTE COUNTY*, DEC. NO. 26675 (WERC, 11/90).

When "community of interest" is viewed from the Factor 1 perspective of "common purpose," we find that the Shelter Home Youth Workers and the Correctional Officers/Juvenile Workers in the Local 2492-E unit share the common purpose of providing services and supervision to juveniles.

To the extent that a "community of interest" analysis reflects an overall consideration of Factors 2-5, the job descriptions and testimony of Superintendent Anklam establish that the Youth Workers and the CO/JWs have similar responsibilities, similar duties and work the same rotational three shift per day schedule. There are some differences in wages, but fringe benefits are comparable. Both positions work in the same facility and are ultimately responsible to Superintendent Anklam who supervises both the shelter home and the detention center.

Factor 6 reflects the statutory mandate against undue fragmentation found in Sec. 111.70(4)(d)2.a., Stats., but does not come into play here because no party is asking that we consider creation of an additional unit. As to Factor 7, bargaining history, the prior inclusion of the Youth Workers in the professional unit is not probative because the Youth Workers' non-professional status precludes their continued inclusion in that unit. The bargaining history reflected in Findings of Fact 2-3 regarding support for inclusion in the Local 2492-E bargaining unit suggest that the union leadership and the employer had some sense that these employees appropriately belonged in unit E, but that the unit membership had misgivings.

Considering all of the foregoing, we conclude that Factors 1-5 and to a limited extent Factor 7 support inclusion of the Youth Workers in the Local 2492-E unit that already includes the Correctional Officers/Juvenile Workers. Therefore, we have so ordered inclusion of the Youth Workers in that unit.

Dated at Madison, Wisconsin, this 18th day of May, 2004.

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