

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**MARATHON COUNTY OFFICE AND TECHNICAL  
EMPLOYEES UNION AFSCME LOCAL 2492-E**

Involving Certain Employees of  
**MARATHON COUNTY**

Case 326  
No. 68173  
ME(u/c)-1251

**Decision No. 20999-F**

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**Appearances:**

**John Spiegelhoff**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9<sup>th</sup> Street, Merrill, Wisconsin 54452, appearing on behalf of Marathon County Office and Technical Employees Union, AFSCME Local 2492-E.

**Frank A. Matel**, Employee Resource Director, Marathon County Courthouse, 500 Forest Street, Wausau, Wisconsin, 54403-5568, appearing on behalf of Marathon County.

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

On July 28, 2008, Marathon County Office and Technical Employees Union, AFSCME Local 2492-E filed a petition with the Wisconsin Employment Relations Commission to determine whether certain employees of Marathon County should be included in a non-professional employee bargaining unit represented by Local 2492-E. Prior to a hearing, the parties reached agreement on the bargaining unit status of all positions with the exception of the Jail Program Coordinator.

The County, contrary to Local 2492-E, asserts Jail Program Coordinator is a professional employee who therefore cannot be included in the non-professional employee Local 2492-E unit.

No. 20999-F

The hearing on the petition was held in Wausau, Wisconsin on October 7, 2008, before Commission Examiner Michael R. O'Callaghan. The parties orally argued the matter at the conclusion of the hearing and the record was closed upon receipt of the hearing transcript on October 28, 2008.

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 the County, is a municipal employer which provides services to County residents, including operating a jail to house persons awaiting court appearances or serving criminal sentences. The County's operation of the jail includes a Huber Release program to allow certain inmates to leave the jail for employment, schooling, or approved services.

2. Marathon County Office and Technical Employees, AFSCME Local 2492-E, hereinafter the Union, is a labor organization serving as the collective bargaining representative of a bargaining unit of County employees described in the parties' 2006-2008 contract as:

...all regular full-time and regular part-time nonprofessional employees in the employ of Marathon County pursuant to the Wisconsin Employment Relations Commission Decision No. 20999, Case LXXXIII, No. 31883, ME-2242 for the purpose of conferences on wages, hours, and conditions of employment. Employees expressly excluded from representation includes confidential, supervisory and managerial employees, elected officials and all other represented employees of Marathon County.

3. The incumbent Jail Program Coordinator, Ronda Zastrow, has been employed in that position since May 11, 2004. Prior to that time, Zastrow was employed through NorthCentral Technical College as a Career Decisions Instructor working at the County jail. Before hiring Zastrow as a Jail Program Coordinator, the County did not post the position or interview candidates. Zastrow continues to be employed in the instructional position with the College in addition to her employment for the County as Jail Program Coordinator.

4. Zastrow has a bachelor's degree in psychology from the University of Wisconsin-Madison, with a certificate in criminal justice.

5. The position description submitted at hearing for the Jail Program Coordinator is as follows:

Marathon County Jail Program Coordinator

- Conduct Work Search Sessions
- Review inmate request forms to set up daily meetings.
- Inform inmates of all rules of Huber/work search.
- Briefly interview inmates to assess needs, skills, goals, etc.
- Determine places to apply, time/date, and mode of transportation.
- Contact employers regarding arrival and departure times of interviews prior to appointment and issue appropriate pass.
- Maintain inmate files including frequency, locations, and employment.
- Document work searches, employment status, interviews, Attic appointments, various other appointments.
- Collect statistical information on meetings, clients, and outcomes of the work search program.
- Allow inmates to use the telephone to contact employers regarding hiring status or to follow up on an application/resumé.
- Allow inmates to use the telephone to set up current employment or contact past employers about rehire.
- Allow inmates to use the telephone to set up appointments with their job center and social service workers as well as counselors and treatment providers.
- Issue passes for the above and verify appointments prior to and possibly after the pass is issued. Review carbon copies of all passes to verify whereabouts.
- Report deviations to the supervisor, issue verbal warning or loss of privileges including generating an incident report and notifying all involved parties (Huber officer, inmate, probation officer, employer, treatment facility, etc.)

- Set inmates up with community service, Attic treatment, NCHC treatment, SAFE Program (Family Resource Center), child care, and school at NTC, Salvation Army, area high schools, and/or UWMC. Maintain a waiting list if no room in school is available.
- Retain frequent contact with all above parties as well as area employers for positive communication.
- Coordinate above inmate schedules and make adjustments in the computer system when needed.
- Provide employers with information on Huber rules as well as required paperwork via mail or fax.
- Work with employers in setting up initial hire and/or making adjustments to current schedules.
- Provide employers with official inmate release dates to ensure paychecks are mailed to the jail until release.
- Look up past employer information online and relay information to the inmate.
- Send individuals to Neighbors Place/Goodwill/Salvation Army to get clothing for job/job seeking.
- Ensure the program schedule is accurate/current and well distributed.
- Update the “entire jail activities chart” frequently.
- Inform inmates of upcoming activities (school breaks, special program offerings, new classes, etc.) by posting flyers in blocks.
- Inform Huber officers of ongoing updates via e-mail.
- Attempt to maintain a current list of those companies hiring and post copies for inmates.
- Attend area job fairs and gather several applications to distribute.
- Send trustee community service forms to the clerk of courts office.

- Assist individuals during tax season.
- Assist inmates in registering to vote and submitting absentee ballots during election time.
- Review medical billing forms to determine appropriate payment status. Send billing forms to proper agencies.
- Enter information into juvenile and adult fingerprint cards.
- Update and distribute program provider guide.
- Update and coordinate recreation/law library schedule.
- Produced the “Successful Freedom” resource packet in connection with Dan Kohn of Greater Wausau Christian Services. Distribute packets to inmates in the jail and provide copies to the public on a regular basis.
- Set up start dates and monitor attendance of clients at AODA groups at Wausau Health Services.
- Communicate frequently with community service sites regarding inmate behaviors as well as scheduling special events or extended hours.
- Utilize relevant agency staff members to provide informational sessions for inmates at the jail. (Example: Equal Employment Opportunity Commission)
- Held (sic) informational meeting with Probation and Parole Department to inform them of processes within the jail and consequently work very closely with agents in monitoring activities and fulfilling probation ordered programs. Inform agents of inmate disciplinary orders.
- Work closely with social service agency in determining eligibility for child visitation/child care and arranging approved visitation sessions with social services, foster families, and/or the Family Resource Center.
- Complete child care questionnaire with inmates, inform inmates of child care rules, ensure birth certificates and work schedule copies are on file.

- Work closely with local treatment providers (Family Counseling Services, NCHC, private practice therapists, Wausau Health Services, Family Resource Center, SAFE at Peaceful Solutions, Elmergreen and Associates)
- Arrange appointments for inmates interested in pursuing educational goals at UWIVIC, NTC, and area high schools. Coordinate subsequent schedules and retain contact with school staff.
- Discuss job searching practices with social service child support staff for clients required to apply for work. Provide job search tracking sheets to agents and fax them completed forms from inmates.
- Devised (sic) a Huber review committee form and utilize this process when appropriate.
- Determine eligibility of AA/NA activities and contact probation agents when relevant.
- Provide educational staff with a report on underage youth and all inmates currently in the facility on a monthly basis for better recruitment of students;
- Maintain attending school list (outside the facility) continually.
- Exchange novels throughout the blocks and individuals on discipline.
- Issue passes for individuals to Neighbor's Place to obtain referrals for the Gift of Sight Program.
- Maintain orange sheets on all inmate activities and track on spreadsheet for weekly review.

6. There is no set work schedule for the Jail Program Coordinator. She submits timesheets for her work and is paid \$14.05 per hour. In September, 2008, the County informed her that she may work up to 30 hours per week.

7. Huber Release participants who wish to apply for passes to leave the facility make appointments for an initial meeting with Zastrow. She meets with them in order to inquire about their employment or educational goals, provide them with appropriate information packets, and inform them of social service providers that might be able to assist

them with various treatment needs. The length of these meetings varies depending on Zastrow's workload, but a five to ten minute meeting is typical. Inmates can request follow-up meetings with Zastrow as they continue their efforts toward employment, education, or treatment. Zastrow issues passes to leave the jail in accordance with the inmate's goals and jail rules. During follow-up meetings, Zastrow may inquire about the status of an inmate's job search and offer advice as to how to most effectively communicate with employers in interviews or letters. Rather than providing significant amounts of counseling in such meetings, she typically requests inmates to attend the class she teaches for the technical college where she is able to offer more one on one assistance.

8. Zastrow does not develop treatment plans for inmates who require such services. If a treatment plan is established by a treatment provider, Zastrow coordinates and oversees inmates' privileges to leave the jail facility to attend treatment appointments.

9. Zastrow occasionally denies certain types of requests from inmates, but others are granted as a matter of jail policy. Once classified as eligible for the Huber program by a Jail Classification Officer, if an inmate requests to go out on a job search and has had no disciplinary problems, it is jail policy to issue that inmate a pass. If an inmate requests a pass for other activities less directly related to employment or education, such as a haircut, Zastrow may deny that request based on her judgment of whether it is necessary.

10. Zastrow spends a significant amount of her work time communicating with community employers. This communication most often involves keeping employers updated on potential applicants and noting employer's requests, ensuring that Huber Release participants are complying with the terms of their passes, and assisting human resource departments with necessary paperwork. She is also the contact person responsible for notifying employers, schools, or treatment providers when Huber Release participants will be unavailable for appointments.

11. Zastrow participates in an ad hoc committee composed of jail employees to review inmate discipline following unauthorized use of passes or related infractions. She prepares written documentation of any infractions and provides this to the Jail Administrator. The ad hoc committee attempts to reach decisions by consensus and the Jail Administrator retains final authority on disciplinary decisions.

12. The work of the Jail Program Coordinator 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 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.

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

**CONCLUSIONS OF LAW**

1. The Jail Program Coordinator is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

2. Because the Jail Program Coordinator is a regular part-time nonprofessional employee of Marathon County, the Jail Program Coordinator is appropriately included in the Local 2492-E bargaining unit described in Finding of Fact 2.

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 Jail Program Coordinator is included in Local 2492-E bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 7th day of January, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Paul Gordon /s/

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Paul Gordon, Commissioner



**MARATHON COUNTY**

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

The issue in this case is whether the Jail Program Coordinator is a professional employee.

Section 111.70(1)(L), Stats. defines a “professional employee” as follows:

1. An employee engaged in work:
  - a. Predominantly 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

2. An employee who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
  - b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

The Union contends the Coordinator is not a professional employee because her work does not meet the requirements of Sec. 111.70(1)(L)1.b. and d., Stats. The County argues that the Coordinator’s work meets all of the requirements of Sec. 111.70 (1)(L) 1., Stats. We conclude that the Coordinator is not a professional employee because her work does not meet the knowledge requirements of Sec. 111.70(1)(L)1.d. Stats.

The incumbent in this position has a bachelor's degree in psychology and the County maintains that this degree, or one in a similar field, provides a Jail Program Coordinator with human behavior assessment skills that are required to perform the work in question. While we do not doubt that the incumbent's educational credentials positively affect her job performance, we conclude that the Coordinator's duties do not require specialized knowledge customarily obtained through a four year specialized degree in psychology or a related field.

As reflected in the Findings of Fact, the Jail Program Coordinator's work involves arranging opportunities for inmates to meet with potential employers, helping inmates develop interview skills, maintaining contact with interested employers, issuing and verifying appropriate use of jail passes, informing inmates of social service providers in the community that might be able to assist them, and participating in committee review of inmate discipline for unauthorized use of jail passes. These job responsibilities require effective organization, coordination, planning, and communication skills. However, these general skills are not customarily acquired in a specialized degree program but rather in a variety of other ways including life experience, a two year associate degree or a four year degree in any field.

The County asserts that the Jail Program Coordinator is consistently required to perform a diagnostic role in which she applies the knowledge of human behavior obtained in her psychology degree program to connect inmates with employment, educational, and social service opportunities. First, the record evidence establishes that the Coordinator does not provide direct educational or psychological services to inmates as part of her County employment. The initial meetings she conducts with Huber Release participants are typically only five to ten minutes in length and give the Jail Program Coordinator an idea of the participant's general employment or educational interests. During these initial meetings or follow-up appointments, she may also refer inmates to social service providers such as substance abuse assistance or psychological counseling. Although Zastrow communicates with treatment providers on a daily basis, she does so in logistical manner—ensuring that jail passes are used appropriately and effectively. Second, while her psychology degree may allow her to perform her job more effectively, the statutory question posed by Sec. 111.70(1)(L) 1.d. Stats. is whether the work in question requires knowledge of human behavior customarily acquired through a four year specialized degree. We conclude it does not.<sup>1</sup> As its title reflects, Zastrow's job is to coordinate employment, educational, and social service opportunities for inmates rather than to serve as a psychologist.

In reaching our conclusions, we have considered the County-presented evidence as to the Programs Manager-Detention Center in Kenosha County and the Program Coordinator in Douglas County. We begin by generally noting that it is difficult to gain a full understanding of a position's work based solely on a job description (even assuming the job description is

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<sup>1</sup> We acknowledge that our conclusion in this regard is at odds with the testimony of Jail Administrator Dickman. However, we are satisfied that the record evidence as to Zastrow's work, the knowledge required to perform that work and the customary manner in which such knowledge is acquired support our conclusion.

accurate) and that the professional employee status of these two positions has not been litigated. More specifically as to the Kenosha County position, the County's understanding is that the position is not included in a bargaining unit because it is held by a managerial and potentially a supervisory employee-statutory bases for exclusion which are not at issue here and are unrelated to professional employee status.<sup>2</sup> As to the Douglas County position, the County's understanding is limited to "this is a non-union position." In the absence of evidence as to why it is a "non-union position," the status of the Douglas County position is of no analytical value here. The County does note that both job descriptions include reference to a minimum qualification of a four year specialized degree. Without knowing the exact job responsibilities, we cannot know whether that minimum qualification would establish professional status under a Sec. 111.70(1)(L), Stats., analysis. However, it is important to note that both job descriptions also allow job experience to substitute for a four year specialized degree.

Our decision in this case is consistent with the following discussion in BARRON COUNTY, DEC. NO. 15711-F (WERC, 11/07) wherein we stated:

[T]he crux of the County's position is that while it may well be possible for someone without a four-year specialized degree to perform the work of the Payment Counselor position, employees with a four-year specialized degree perform the work more effectively, efficiently and independently. While this may be true, the statutory definition of a professional employee focuses on the knowledge required to do the work-not the knowledge required to do the work most effectively, efficiently and independently. Thus, we reject the County's contention that by requiring a high level of performance of Payment Counselor work, it can create a professional employee even though performance of the work itself does not require knowledge customarily acquired through a four-year specialized degree. In addition, assuming *arguendo* that independence or the ability to effectively deal with hostility are, as argued by the County, job related attributes/skills more likely to be possessed by employees with four-year degrees, those are examples of attributes/skills that are not acquired through a specialized degree but rather from a specific course or are manifestations of the discipline and diligence needed to pursue higher education in the manner necessary to acquire any four-year degree.

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<sup>2</sup>The existing record would not support either managerial or supervisory status for Zastrow.

For the forgoing reasons, we find that the Jail Program Coordinator is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats. and therefore is appropriately included in the same bargaining as all other regular full-time and regular part-time nonprofessional County employees represented by Local 2492-E.

Dated at Madison, Wisconsin, this 7th day of January, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Paul Gordon /s/

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Paul Gordon, Commissioner