

5. That Wasson and the County contend that the position of Chemical Dependency Counselor is professional in nature; and that the Union maintains that the position is properly classified as non-professional and included in the bargaining unit referred to in Finding of Fact 2.

6. That in St. Croix County (Health Care Center), Dec. No. 14518 (WERC, 4/76), the Commission found, inter alia, that the position of Chemical Dependency Counselor was not a professional employe as set forth in MERA, and consequently included said position in the non-professional bargaining unit referred to in Finding of Fact 2.

7. That the County employs seven Chemical Dependency Counselors, also known as AODA (Alcohol and Other Drug Abuse) counselors, who assist those affected by alcoholism or chemical dependency from the beginning of the treatment process through recovery; that two of these individuals provide inpatient care while five provide outpatient care; that these counselors orient and assess clients admitted to the Health Care Center's Alcohol and Other Drug Abuse (AODA) program and counsel them on either an individual, group or family basis; and that the counselors evaluate clients by collecting, organizing and analyzing information about them from records, tests, interviews and professional sources, determine their method of treatment and review their progress.

8. That the position's job description specifies the following regarding qualifications for the position:

REQUIRED QUALIFICATIONS:

1. High School diploma or equivalent.
2. Certified by the Wisconsin Alcoholism and Drug Counselor Certification Board or have:
 - a) minimum training required for counselor certification from a recognized training program; or
 - b) have a counselor certification development plan approved by the Wisconsin Alcoholism and Drug Counselor Certification Board.

that five of the seven counselors have college degrees, with Wasson having a Master's Degree in Rehabilitation Counseling; that because Wasson has a Master's Degree, he has been designated as the public speaker and community outreach person and spends 80% of his time doing this type of work; that all seven counselors are either certified by the Wisconsin Alcoholism and Drug Counselor Certification Board (WADCCB) or have a certification development plan on file with the Board (meaning they are working toward certification); that the requirements for certification by the Wisconsin Alcoholism and Drug Counselor Certification Board (WADCCB) are A) Experience: two years supervised full-time counseling experience as an alcohol counselor and 1000 hours spent in direct client counseling within the last five years and B) Education and Training: 180 hours of training and education and 220 hours of supervised practical training in the 12 core functions (i.e. screening, intake, orientation, assessment, treatment planning, counseling, case management, crisis intervention, client education, referrals, reports and recordkeeping and consultation); and that certification by the WADCCB demonstrates technical knowledge and competence in the field, is accepted reciprocally in states in addition to Wisconsin and meets the standards for state accreditation and third party payments.

9. That the Wisconsin Administrative Code, H.S.S. 61.51(9) and 61.06(14) identify alcohol and other drug abuse (AODA) counselors as "mental health professionals" and that 61.06(14) provides that:

An alcohol and other drug abuse counselor shall be certified by the Wisconsin alcoholism and drug abuse counselor certification board, inc. (this includes counselors certified as alcoholism counselors, drug counselors, or alcohol and other drug abse counselors). Non-certified counselors may be

employed on the basis of personal aptitude, training and experience if they:

- (a) Complete a suitable period of orientation;
- (b) Have a counselor certification development plan which is approved by the certification board; and
- (c) Are provided with ongoing clinical consultation from a certified alcohol or other drug abuse counselor.

10. That although the duties of the Chemical Dependency Counselor are predominately intellectual and varied in character, involve a measure of discretion, requires use of independent judgment, and cannot be standardized over a given period of time, the position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

CONCLUSION OF LAW

That the occupants of the position of Chemical Dependency Counselor are not professional employes within the meaning of Sec. 111.70(1)(L), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

The petition for election is dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(Footnote 1 continued on Page 4)

(Footnote 1 continued)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

ST. CROIX COUNTY (HEALTH CARE CENTER)

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

DISCUSSION

Section 111.70(4)(d)2.a., Stats. provides that "the Commission shall not decide, however, that any unit is appropriate if the unit includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit." Through their election petition, the Chemical Dependency Counselors seek to end their representation by AFSCME in the non-professional unit based upon a contention that they are professional employees who have not voted for inclusion in said unit.

Section 111.70(1)(L), Stats., defines the term "professional employe" as follows:

1. Any employe 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. Any employe 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 himself to become a professional employe as defined in subd. 1.

The Commission has held that the above definition does not limit professional employes to only those possessing college degrees ^{2/} and has followed said explicit criteria of MERA and not determined professional status solely on the basis of state certification and licensing. ^{3/}

we have addressed the question of the professional status of Chemical Dependency Counselors in St. Croix County before. In that decision ^{4/} we stated:

responsible for the progress of the patients. He communicates with psychiatrists, psychologists, medical doctors, and clergymen concerning patients' progress. The position requires a one-year internship training program, which is not primarily academic in nature, or related to a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital. Interns are taught professional reading, interviewing, group therapy, and lecturing. Former patients have acted as Counselors and the testimony indicated that persons affected by chemical dependency in the past are desirable candidates for such positions, although counselors must have two years of sobriety. The evidence persuades the Commission that the position of Chemical Dependency Counselor does not fall within the definition of "professional employes" as set forth in MERA, and consequently said position is included in the unit.

This decision cited Rock County, 5/ where an identical conclusion had been reached regarding AODA Counselors. The Petitioner urges the Commission to review these two decisions in light of alleged changed circumstances and reach the opposite conclusion here.

We are satisfied that the basic job duties of the Chemical Dependency Counselors/AODA Counselors have not changed since the above decisions were issued. The main duty of the individuals filling the position is to assist those affected by alcoholism or chemical dependency from the beginning of the treatment process through recovery, just as it always has been.

What has changed though in recent years is that alcoholism counselors have, as a whole and through the Wisconsin Association of Alcoholism and Drug Abuse Counselors (WAADAC) attempted to upgrade the standards and status of their position. For example, when the previous St. Croix County and Rock County decisions were issued, there apparently was no state certification program for alcoholism counselors in existence. Now, though, there is a certification process whereby the Wisconsin Alcoholism and Drug Counsel Certification Board (WADCCB) provides voluntary certification for alcoholism counselors who have completed a specified training period and the requisite job experience. Another aspect that has changed since the St. Croix County and Rock County decisions were issued is that then it was apparently common for former patients to act as counselors. Now, although many AODA counselors are recovering individuals, the Wisconsin Association of Alcoholism and Drug Abuse Counselors (WAADAC) contends that those individuals receiving certification are less and less representative of the "former patient" population. Moreover, the Wisconsin Department of Health and Social Services now identifies AODA Counselors as a "mental health professional".

In our opinion, these changes since the original St. Croix County and Rock County decisions, though noteworthy, are insufficient to warrant reversing our previous conclusion that Chemical Dependency Counselors are not professional employes under MERA. Foremost in reaching this conclusion is the fact that the job duties for the position have not changed since those original decisions. While the Chemical Dependency Counselors now have a certification process and a majority of those employed here possess college degrees, the position's job description does not require a college degree or the extended period of study contemplated by MERA for a professional employe. Therefore, we conclude that the position's duties do not require the sort of advanced study in a specialized field referred to in the statute.

5/ Rock County, Dec. No. 13131 (WERC, 11/74).

Given our conclusion that the position of Chemical Dependency Counselor does not meet the statutory criteria established for professional employes in Sec. 111.70(1)(L)1.d., Stats., we have dismissed the petition for election.

Given under our hands and seal at the City of
Madison, Wisconsin this 4th day of August, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld /s/
Stephen Schoenfeld, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

Danae Davis Gordon /s/
Danae Davis Gordon, Commissioner