

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
ST. CROIX COUNTY	:	
Involving Certain Employes of	:	Case 80
ST. CROIX COUNTY	:	No. 37304 ME-2605
(HEALTH CARE CENTER)	:	Decision No. 23987-B
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Appearances:

- Mr. Thomas Koop, Labor Negotiator, St. Croix County, appearing on behalf of the County;
- Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, appearing on behalf of the Union.

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

St. Croix County having on September 19, 1986 filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit consisting of all regular full-time and regular part-time employes of the St. Croix County Health Care Center represented by St. Croix County Health Care Center Employes, Local 2721, AFSCME, AFL-CIO to exclude the position of Support Services Specialist on the basis of professional status; and hearing in the matter having been scheduled and postponed on several occasions pending efforts by the parties to voluntarily resolve the matter; and efforts of the parties having been unsuccessful in resolving the matter, hearing was held on March 18, 1987 at Hudson, Wisconsin by Raleigh Jones, a member of the Commission's staff; and the parties having filed briefs by May 15, 1987; and the Commission having reviewed the evidence and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That St. Croix County, hereinafter the County, is a municipal employer within the meaning of Sec. 111.70(1)(j), Stats., and has its offices at the St. Croix County Courthouse, Hudson, Wisconsin; and that among its functions it maintains and operates St. Croix Industries which is located on the grounds of the St. Croix County Health Care Center in New Richmond, Wisconsin.
2. That St. Croix County Health Care Center Employees, Local 2721, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization within the meaning of Sec. 111.70(1)(h), Stats., and has its offices at P. O. Box 68, Rice Lake, Wisconsin; and that the Union is currently the exclusive collective bargaining representative for a unit consisting of all regular full-time and regular part-time employes of the St. Croix County Health Care Center, excluding the administrators, assistant administrators, professional, supervisory, confidential and temporary employes of St. Croix County.
3. That St. Croix Industries is a sheltered workshop for the developmentally disabled that serves about 85 clients; that it is divided into two areas: the workshop area and the work activity area; that the work activity area contains the 25 clients at the lowest functioning level; and that it is the work activity area that is involved herein.
4. That in September, 1985, the County created a new position entitled Support Services Specialist for the work activity area; that this position is also known as a case manager; that this position was created because severely handicapped individuals were being released from a nearby state institution for the severely handicapped (Northern Center) and transferred to the care of the County; that in October, 1985, the County filled the new Support Services Specialist position; that in July, 1986, an Adult Day Care Center Instructor resigned from the work activity area, and this position was abolished and replaced with a second Support Services Specialist position; that the County has currently

filled this second Support Services Specialist position with a limited term employe (LTE), but contemplates making this LTE position into a permanent position; that the position of Support Services Specialist has not been included in the bargaining unit described in Finding of Fact 2 since it was created in September, 1985; that the Union was aware of the establishment of this position but never filed a unit clarification petition to include said position in the bargaining unit; and that on September 19, 1986, the County filed the petition herein to exclude said position from the bargaining unit on the grounds that it is professional, while the Union contends the position is not professional.

5. That the permanent Support Services Specialist position is currently filled by Phyllis Wojchik and that the LTE Support Services Specialist position is currently filled by Lisa Frank; that both of these positions involve the same work; that the Support Services Specialists are responsible for the daily programming for the clients in the work activity area; that this involves acting as case managers for the Support Services clients; that as case managers, they evaluate each of their clients, determine their areas of need, and develop and implement plans and programs designed to address these needs; that they work one on one with the clients and attempt to implement these plans and goals in small groups of clients; that they work with these small groups toward achieving a specific individual or group goal; that as an example, the Support Services Specialist may take a small group of clients out into the community in an effort to show and instill appropriate public behavior; that they attempt to improve the client's quality of life and functioning level through community awareness, socialization, pre-vocational training, recreation and leisure, domestic activities and health and safety; and that the Support Services Specialists spend half of their time on case management duties and half working with clients in small groups.

6. That prior to the creation of the Support Services Specialist position, all the case management duties described above were performed by Kathleen Hammer, the Assistant Director of St. Croix Industries; that at present, Hammer, Wojchik and Frank divide the case management duties among themselves with each being responsible for about eight clients.

7. That the Support Services Specialist job description states the following requirements for the position:

Qualifications:

The Support Services Specialist will have a minimum of a Bachelor's Degree in Vocational Rehabilitation Special Education, Psychology, Home Economics. Prefer two years working with adults who are developmentally disabled.

and that Wojchik has a Bachelor's Degree in vocational rehabilitation and Frank has a Bachelor's degree in speech therapy.

8. That the duties of the Support Services Specialist are predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance; that the character of the work and results accomplished cannot be standardized in relation to a given period of time; and that said position requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institute of higher education.

CONCLUSION OF LAW

That the occupants of the position of Support Services Specialist are 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 CLARIFYING BARGAINING UNIT 1/

That the position of Support Services Specialist be, and the same hereby is, excluded from the bargaining unit described in Finding of Fact 2, above.

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

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- 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.

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

(Footnote 1 continued on Page 4.)

(Footnote 1 continued from Page 3.)

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  
CLARIFYING BARGAINING UNIT

POSITIONS OF THE PARTIES

The County asserts that the position in question meets the statutory criteria under Sec. 111.70(1)(L) Stats. for professional employes and thus cannot be included in the non-professional AFSCME unit. AFSCME contends that the position is not professional in nature because the work is fairly routine and does not require a degree in a specialized field of study. AFSCME therefore urges the Commission to include the position in the non-professional unit.

DISCUSSION

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 advance 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.

All the criteria found either in subsection 1 or subsection 2 must be present in order to find that a particular employe is professional. 2/ However, the above definition of "professional" employe is not limited to employes personally possessing college degrees. 3/

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2/ Dane Co., Dec. No. 10492-D (WERC, 4/85); Milwaukee County, Dec. No. 14786-B (WERC, 4/80). See generally, City of Wauwatosa, Dec. Nos. 12032-C, 17241-17244 (WERC, 8/79); City of Cudahy, Dec. No. 19507 (WERC, 3/82); Blackhawk VTAE, Dec. No. 13460-A (WERC, 9/75) and Dane County, Dec. No. 21397 (WERC, 2/84), aff'd., Dane County v. WERC, Dec. No. 84 CV 1409 (CirCt Dane, 1/85).

3/ Dane Co., supra; Milwaukee County, Dec. Nos. 8765-E, 14786 (WERC, 7/76).

We are satisfied that the position of Support Services Specialist meets each of the requirements set forth in Subsection 1, above. The job description requires, and both incumbents possess, a specialized Bachelors Degree. Both of the Support Services Specialists share case management responsibilities with the Assistant Director of the sheltered workshop. In this capacity they evaluate their developmentally disabled clients, determine their areas of need and implement programs designed to address those needs. In our view, the incumbents must exercise independent judgment and discretion in performing these duties.

We have therefore concluded that the position of Support Services Specialist is professional within the meaning of the statute and that it therefore is excluded from the existing non-professional bargaining unit.

Dated at 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