

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WOOD COUNTY COURTHOUSE,	:	
SOCIAL SERVICES, AND UNIFIED SERVICES	:	Case 84
EMPLOYEES, LOCAL 2486, AFSCME, AFL-CIO	:	No. 45724 ME-497
	:	Decision No. 26227-B
Involving Certain Employes of	:	
	:	
WOOD COUNTY	:	
	:	

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, for the Union.
Mr. Douglass F. Maurer, Personnel Director, Wood County, P.O. Box 8095,

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

Wood County Courthouse, Social Services and Unified Services Employees, Local 2486, AFSCME, AFL-CIO, on May 1 and May 10, 1991 filed petitions requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit of certain employes of Wood County to determine whether certain employes should be included in said unit. 1/ Hearing in the

1/ Prior to the hearing, the Union withdrew its petition as to the position of Entrance/Exit Program Manager. At the hearing, the parties voluntarily resolved another portion of the petition by entering into the following stipulation:

. . . in the event that the Union files an election petition regarding professionals employed by Wood County who are employed at the Norwood Health Center and should these employees voted by majority vote to be represented by the Union, they will be accreted into the petitioned unit. The eligibility list reads as follows:

Continued

1/ Continued

- Social Worker - Admissions Unit - Incumbent Debbie Mientke
- Social Worker - Admissions Unit (50%) - Incumbent Collette Zunk
- Social Worker - Long Term Care - Incumbent Daryl Rosche
- Assistant Service Chief - Incumbent - Scott Milach

matter was held on September 17, 1991 in Wisconsin Rapids, Wisconsin before Examiner Jane B. Buffett, a member of the Commission's staff. A transcript of the proceedings was received on September 25, 1991. The parties submitted briefs by October 28, 1991. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin.

2. Wood County, herein the County, is a municipal employer and has its offices at 400 Market Street, Wisconsin Rapids, Wisconsin.

3. The Union is the certified, exclusive bargaining representative of County employes in the following unit:

Education Training Center Coordinator - Incumbent Ellen
Rogers

No. 26227-B

. . . all regular full-time and regular part-time professional employes of Wood County employes in the Department of Social Services, Unified Services, Public Health, Systems, Zoning, District Attorney and Child Support, excluding supervisory, managerial and confidential employes and public health nurses. 2/

4. The County offers assessment and counseling for persons with substance abuse problems, with offices at both Marshfield and Wisconsin Rapids. The Marshfield office has a Program Manager/Counselor and the Wisconsin Rapids office has a Program Manager. On May 1, 1991, the Union petitioned the Commission to clarify the bargaining unit to include these two positions. The County opposed their inclusion on the grounds that they are supervisory employees and therefore are properly excluded.

5. Carol Pollnow has held the position of Alcohol and Other Drug Abuse (AODA) Program Manager/Counselor at the Marshfield office of the Wood County Human Services Center for approximately six years. She directs the work of one other counselor and a secretary. Approximately 60% of her time is devoted to face-to-face contact with clients in either assessment, individual counseling or group counseling. Most of the remainder of her time is spent in paperwork related to the services provided to clients. Overall, she provides approximately the same amount of client services as the second counselor in the office although she provides more client assessment and less counseling than the other counselor.

6. On an average, approximately 5% of Pollnow's time is spent in personnel matters, but this portion of her time increases when a new counselor is being hired and trained. During Pollnow's tenure, five counselors have been hired. The hiring process has been conducted jointly between Pollnow and her supervisor, Charlotte Smith, Community Services Manager. Both Pollnow and Smith screen applications, prepare questions, conduct interviews and discuss the candidates. Since Smith does not provide AODA counseling and is ordinarily in the AODA office only one hour a week, she relies upon Pollnow's expertise in AODA and Pollnow's opinion as to who would fit into the office. Conclusions as to who should receive the offer of employment are mutually agreed upon by Smith and Pollnow. Two exceptions to this procedure occurred during the hiring of the last-hired counselor when Pollnow was aware of the availability of a suitable counselor who was then interviewed as the sole candidate on the strength of her recommendation, and the selection of a transfer applicant for the position of secretary when the decision was based on Pollnow's recommendation that the most senior applicant would not fit into the office and was therefore passed over for a more junior applicant. When additional temporary help is needed, Pollnow informs Smith who arranges for the temporary employees. Smith meets with the staff of the Marshfield AODA office one hour a week. At these meetings, time cards and leave slips, initially signed by Pollnow receive final approval from Smith who then transmits them for processing. Authorization to earn compensatory time must be granted by Smith. When a conflict between vacation requests arose, Smith resolved the matter. On that occasion, when both Pollnow and the secretary had requested vacation for the time period, Smith denied the secretary's request for leave. At these meetings, Smith also discusses policies and procedures with the staff and approves or disapproves their requests to attend conferences and training opportunities.

2/ Wood County, Dec. No. 26227-A (WERC, 12/89).

7. Pollnow has never disciplined employes and does not have the authority to do so. Pollnow evaluates the secretary and the other AODA counselor in the Marshfield office, but Smith must see and initial these evaluations before they are presented to the employe. Smith has never changed an evaluation written by Pollnow, but on one occasion she cautioned Pollnow regarding the ramifications of an evaluation. When a problem of suspected sick leave abuse occurred, Pollnow raised the issue with Smith who then took actions which culminated in the employe's resignation. When Pollnow recommended that the secretary be raised to a higher classification, Smith disagreed with Pollnow, asserting the secretary did not perform the duties of that higher classification, but she forwarded the recommendation to the Deputy Director who did not approve of the reclassification. When the secretary filed a grievance against Pollnow, Pollnow did not act on it herself, other than to forward the grievance to Smith. Generally, neither Pollnow nor Smith receive grievances at the first step of the grievance procedure which provides for a meeting with the department head. Pollnow's annual salary is \$26,562, and the annual salary of the other counselor at the Marshfield office is \$23,112.

8. At the time of the hearing, Stephen Zohimski has been AODA Program Manager in the Wisconsin Rapids office for three months. He directs the work of two other AODA counselors. Ninety-nine percent of his time is spent in the provision of client services. At weekly meetings with Zohimski, after the pending cases have been discussed, the counselors discuss and arrange their vacation plans so that the needs of active cases are accommodated. Counselors intending to take compensatory time notify Zohimski ahead of taking such time and Zohimski must sign the counselors' time cards. Zohimski's superiors have told him he will be responsible for performing the counselors' annual evaluations. He was not told of other supervisory responsibilities. He runs the office by using a team method, allowing free rein to the other two counselor within the guidelines of agency policy. Case assignments are based on availability of the counselors. Deputy Director for Human Services Thomas Kuckkahn meets with Zohimski once a week. Kuckkahn meets occasionally with the three counselors to discuss the department from his perspective of knowing statistics of client services and revenue. In the future, when counselors need to be hired for the Wisconsin Rapids office, Zohimski will screen applicants and perform the initial interviews, but the final interviews will be jointly held by Zohimski and Kuckkahn. Zohimski has authority to issue oral reprimands, but more serious disciplinary actions will be taken by Kuckkahn after consideration of Zohimski's recommendation. Zohimski's annual salary is \$24,440. The annual salary of the more highly-paid of the two other counselors is \$23,535.

9. Zohimski's predecessor approved reclassification requests, and requests for training and conference opportunities that were sometimes also signed by his superior. Zohimski himself has asked for a training opportunity for all three counselors and was told by Human Services Director Paul Mulholland that one counselor should remain in the office.

9. The incumbent of the position of AODA Program Manager/Counselor at the Marshfield office does not possess supervisory authority in sufficient combination and degree as to be a supervisory employe.

10. The incumbent of the position of AODA Program Manager at the Wisconsin Rapids office does not possess supervisory authority in sufficient combination and degree as to be a supervisory employe.

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

CONCLUSIONS OF LAW

1. The incumbent of the position of AODA Program Manager/Counselor at the Marshfield office of the Wood County Human Services Center is not a supervisory employe within the meaning of Sec. 111.70(1)(o)(1), Stats, but is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is appropriately included in the collective bargaining unit represented by the Union.

2. The incumbent of the position of AODA Program Manager at the Wisconsin Rapids office of the Wood County Human Services Center is not a supervisory employe within the meaning of Sec. 111.70(1)(o)(1), Stats, but is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is appropriately included in the collective bargaining unit represented by the Union.

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

ORDER 3/

1. The position of AODA Program Manager/Counselor at the Marshfield office of the Wood County Human Services Center shall be, and hereby is, included in the bargaining unit represented by the Union.

3/ 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.

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1/ Continued

(a) Proceedings for review shall be instituted by serving a petition therefore 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.

2. The position of AODA Program Manager at the Wisconsin Rapids office of the Wood County Human Services Center shall be, and hereby is, included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of
Madison, Wisconsin this 6th day of May, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner

WOOD COUNTY

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

POSITIONS OF THE PARTIES

The Union

The Union asserts the Program Managers/Counselors do not fulfill sufficient supervisory functions to be considered supervisors. Although the Program Managers participate in the hiring process, the ultimate decisions are made by the Director, Deputy Director and Community Supervisor. The program manager's authority to make oral reprimands without the authority to independently issue additional discipline does not make them supervisors. The evaluations the Program Managers conduct are not meaningful and therefore do not indicate supervisory authority, and finally, the fact that these employees spend 90 to 99% of their work time performing work similar to that of the employees they allegedly supervise indicates that they are not supervisors and should therefore should not be excluded from the bargaining unit.

The County

The County points to several indications of supervisory activities in support of its position that the Program Managers are supervisory and should continue to be excluded from the bargaining unit. It points to their involvement in hiring, reviewing position descriptions, evaluation, approving time cards, approving training and recommending reclassifications. It asserts the documentary evidence in the case supports its position. It discounts the agency practice of having grievances settled by the Deputy Director as not an indication of any lack of supervisory authority by the Program Managers and similarly discounts the fact that the new Director and Deputy Director have not, prior to the date of the hearing, discussed the full extent of his supervisory authority with the new Program Manager at Wisconsin Rapids.

DISCUSSION

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In determining supervisory status, the Commission gives consideration to the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;

2. The authority to direct and assign the work force;

3. The number of employes supervised, and the number of other persons exercising greater, similar or less authority over the same employes;

4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her supervision of employes;

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;

6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and

7. The amount of independent judgment exercised in the supervision of employes. 4/

Not all of the above factors need be present for a position to be found supervisory. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employe occupying the position is supervisory.

A. Program Manager/Counselor at the Marshfield Office

The overwhelming majority of Pollnow's time, 95%, is spent providing services to clients in the same general manner as does the second counselor in the office. She does not have authority to discipline the other counselor or the secretary. When Pollnow believed an employe's conduct might require disciplinary action, she referred the problem to her supervisor, Community Services Manager Charlotte Smith. She asked Smith to address the suspected sick leave abuse issue. The confrontation between Smith and the employe led to the employe's resignation without further action from Pollnow. Additional supervisory functions such as the final approval of leave time, compensatory time and approval for conferences and training opportunities are performed not by Pollnow but by Smith. It was Smith who resolved the dispute between Pollnow and the secretary over a desired vacation time. Pollnow lacks the authority to effectively recommend promotions as shown by the rejection of her recommendation that the secretary be reclassified. It is Smith who obtains the temporary help when it is needed.

While this evidence regarding discipline and approval of hours of work is clear-cut, the evidence regarding evaluations is more ambiguous. Pollnow writes the evaluations, but they are reviewed by Smith before being given to the affected employe. Although Smith has never changed an evaluation, she has given a strong caution to Pollnow regarding the content of one evaluation.

The strongest supervisory element of this position is Pollnow's participation in hiring decisions. Although in the most usual course of events,

4/ Portage County, Dec. No. 6478-D (WERC, 1/90); Town of Conover, Dec. No. 24371-A (WERC, 7/87).

Pollnow and Smith cooperate in the hiring process, on two occasions, the hiring of the last-hired counselor and the selection of a transfer applicant for the secretary position, Pollnow played a more significant role. In the case of the secretary, Smith accepted Pollnow's estimation of the personality that would best "fit in" to the office. In the case of the counselor, a replacement was needed quickly and Pollnow's knowledge of an available counselor who would be appropriate caused Smith to accept Pollnow's judgment.

On balance, even considering the two hiring incidents, we find that Pollnow's lack of authority to discipline, to grant leave time, compensatory time and training opportunities, to fill temporary work needs, and to promote, and the limitation of her authority in evaluating employes along with the fact that all but 5% of her time is spent in the provision of services, indicate that she is not a supervisory employe.

B. Program Manager at the Wisconsin Rapids Office

Reviewing what Zohimski was told by his superiors regarding the authority he has over the other two counselors, and the amount of authority he has exercised to date, leads to the conclusion that he is not a supervisor. This conclusion is also buttressed by Zohimski's testimony that he does not have the authority to perform many of the duties that are consistent with a supervisory finding.

His approach to running the department makes such matters as leave time decisions the result of consensual discussions. While a "team approach" to personnel supervision is not inconsistent with effective supervision, we believe Zohimski's actions to date do not warrant supervisory status for him. He himself has not been told he has the authority and responsibility to discipline the other two counselors and Deputy Director Kuckkahn understands that Zohimski will only have authority to issue oral reprimands. Although Zohimski will perform an annual evaluation for the two other counselors, and when those positions become vacant he will participate in the hiring process through performing the initial screening, the extent of influence he will have in the ultimate selection is unclear.

While the exhibits generated by Zohimski's predecessor are noteworthy, they do not provide a complete picture of his functioning. Further, it is apparent to us that the newly hired Deputy Director of Unified Services, Kuckkahn, will be exercising a significant amount of control over the Outpatient Alcohol and Drug Program.

We acknowledge that some indicia of supervisory status are present. However, we do not find the possession of these indicia by an employe who spends 99% of his time in the provision of services to clients to be sufficient to result in the conclusion that Zohimski is a supervisor. Zohimski is functioning as a lead worker and supervising an activity rather than employes.

Inasmuch as the incumbents of both of these positions do not possess supervisory authority in sufficient combination and degree to be considered supervisors, we find that they are employes within the meaning of MERA and as such are properly included in the bargaining unit.

Dated at Madison, Wisconsin this 6th day of May, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
A. Henry Hempe, Chairperson

Herman Torosian, Commissioner

William K. Strycker, Commissioner