

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN COUNCIL 40, AFSCME, AFL-CIO

Involving Certain Employes of

MANITOWOC COUNTY (HUMAN SERVICES  
DEPARTMENT)

Case 235

No. 53223 ME-804

Decision No. 26743-B

Appearances:

Mr. Gerald D. Uglund, Staff Representative, Box 370, Manitowoc, Wisconsin, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Mr. Robert J. Zeman, Manitowoc County Corporation Counsel, 1010 South Eighth Street, Manitowoc, Wisconsin, appearing on behalf of Manitowoc County.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER DISMISSING PETITION

On October 23, 1995, Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, filed a petition with the Wisconsin Employment Relations Commission seeking clarification of two Social Worker positions at the Manitowoc County Health Care Center into a bargaining unit of professional employes in the Manitowoc County Department of Human Services. On November 13, 1995, the Union filed a supplemental petition, seeking the clarification of the three additional Health Care Center positions (Qualified Mental Retardation Personnel, Dementia Program Coordinator and Recreation Therapist), into the professional Human Services Department unit. The County opposed both petitions.

Hearing in the matter was held in Manitowoc, Wisconsin, on April 2 and 3, 1996, before Coleen Burns, an Examiner on the Commission's staff, with a stenographic transcript of the hearing being available to the parties by April 22, 1996. The County and the Union submitted written arguments on August 22, 1996 and November 14, 1996, respectively, and waived the submission of reply briefs. The Commission, now being fully advised in the premises, hereby makes and issues the following

No. 26743-B

## FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at Box 370, Manitowoc, Wisconsin.

2. Manitowoc County, herein the County, is a municipal employer with offices at 1010 South Eighth Street, Manitowoc, Wisconsin. Among its operations and activities, the County maintains a Human Services Department (HSD), which provides social, familial, psychiatric, medical and other services to individuals and families throughout the general Manitowoc community, and a Health Care Center (HCC), which provides care in a residential setting to the aged, infirm or handicapped who cannot live independently. The HSD has office locations in downtown Manitowoc, at a site approximately 4.5 miles from the HCC, and a satellite office known as the Reed Street Counseling Center, approximately 3.5 miles away from the main HSD office. The HSD and HCC are separate and distinct entities, and below the level of County Board and County Administrator, have separate and distinct organizational charts.

3. The Health Care Center positions in dispute (Social Worker, Qualified Mental Retardation Professional, Recreation Therapist and Dementia Program Coordinator), are currently unrepresented for the purposes of collective bargaining.

At present, there are two bargaining units which include the Health Care Center employees. Local 1288, AFSCME, AFL-CIO represents certain non-professional Health Care Center employees in a unit described in the 1994-1995 County/Local 1288 contract as:

the employees of the Employer engaged in the operation of the Manitowoc Health Care Center, excluding the Administrator, Assistant Administrator, Director of Nursing, Pharmacy Director, Director of Social Services, Clinical Care Coordinators, Environmental Services Director, Dietician, Records Director, Social Workers, QMRPs, Purchasing Agent, Recreation Therapist, DD Program Supervisor, Director of Activities, Supervisors, Director of Business Services, Registered Nurses, confidential office employees, temporary employees, Director of Dietary Services, and Nursing Secretary, Staff Specialist, Music Therapist, and Education and Quality Standards Coordinator.

Local 5068, AFT, AFL-CIO represents certain professional Health Care Center employees in the unit described in the 1996-1997 County/Local 5068 contract as:

all regular full-time and regular part-time registered nurses, sanitarians, competent professional authority/nutrition educators, and health educators employed in the Manitowoc County Health

Department and the Manitowoc County Health Care Center, excluding supervisory, confidential, managerial, clerical and temporary employees as defined in the Wisconsin Employment Relations Commission Case XLII, No. 18471, ME-1122, Decision No. 13191 (Public Health Nurses), for the purpose of collective bargaining on all matters concerning wages, hours and conditions of employment.

The professional employe bargaining unit into which the Union seeks to place the four Health Care Center positions consists exclusively of Human Services Department employes and is described in the 1994-1995 County/Local 986-A, AFSCME contract as:

the professional employees of the Employer engaged in the operation of the Manitowoc County Human Services Department, excluding the Director, Deputy Director, Social Worker Supervisor(s), Clinical Director/Psychiatrist, Clinical Services Manager, Clinical Team Supervisor, Administrative Operations Manager, Accounting/Data Processing Supervisor, and clerical and para-professional employees of the Human Services Department who are represented by other bargaining units.

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

#### CONCLUSION OF LAW

The Health Care Center professional positions identified in Finding of Fact 3 are not appropriately included in the Human Services Department professional employe bargaining unit represented by Local 986-A, AFSCME, AFL-CIO.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

The unit clarification petition is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin,  
this 7th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, 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/ continues on the next page.)

---

(Footnote 1/ continues from the previous page.)

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 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.

MANITOWOC COUNTY (HUMAN SERVICES)

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

POSITIONS OF THE PARTIES

The Union

In support of its petition, the Union asserts as follows:

The five subject positions are all professionals, and are neither confidential, supervisory or managerial, and have a community of interest with the professionals in the Department of Human Services.  
2/

The social workers' community of interest is shown by virtue of the fact that they work with Human Services Department (HSD) employees when they make referrals for different community services; have similar wages and benefits; have identical degree requirements; and receive similar training. Moreover, the Health Care Center's social services Director came from the HSD where he provided long-term case management.

The community of interest of the Qualified Mental Retardation Professional is shown by virtue of the fact that the incumbent has a degree in social work, which is also required of many positions in the HSD professional unit. Indeed, there are QMRP's in the HSD professional unit. Further, there is no evidence that there is any community of interest with any other bargaining unit.

The community of interest of the Recreation Therapist is shown by virtue of the fact that, although the position has no contact with the HSD, the work is essentially that of a QMRP, which position is also represented in the HSD professional unit. Moreover, the governing board of the Health Care Center is composed of the same members,

---

2/ In its brief, the County disclaimed any interest in maintaining that the positions were confidential, supervisory or managerial, and had previously stipulated that the positions were professional. Accordingly, this memorandum will omit the union's arguments on those points.



except for citizen members, as the board of the HSD.

The community of interest of the Music Therapist/Dementia Program Coordinator is shown by virtue of the fact that the incumbent's academic preparation is consistent with the diversity of the certifications, majors and degrees of the HSD professional unit incumbents.

Because none of the statutory exclusions apply, and because the greatest community of interest for the subject positions is with the HSD professional unit, the subject positions should be accreted to that unit.

In support of its position that the petition should be dismissed, the County asserts as follows:

The union is improperly attempting to use this unit clarification proceeding to cause five employees of the Health Care Center to become members of a bargaining unit they have no relationship to, contrary to the bargain the union struck when it negotiated the recognition clauses of the HCC and the HSD. A unit clarification is no substitute for an election.

While the subject positions generally have similar wages, hours and benefits to the positions at the HSD, the subject positions and the other positions at the HSD lack any shared purpose other than the very broad one of providing services to those who need them; have only sporadic and infrequent contacts; have no commonality of supervision whatsoever below the level of County Administrator and elected/appointed officials, and have a separate and distinct workplace.

There is no bargaining history at all to show that anyone had ever asserted that the subject positions should appropriately be added to the Human Services Department; attaching these positions would result in fragmentation within the facility, doing both the employees and the county a disservice.

## DISCUSSION

As evidenced by the bargaining unit descriptions set forth in Finding of Fact 3, the parameters of the relevant existing bargaining units are defined by the organizational unit in which

positions/employees exist.

The unit into which the Union seeks to place the Health Care Center professionals is limited by its terms to Human Services Department professionals.

Where units are defined by departments or other organizational units, we honor those departmental/organizational parameters when we are asked to clarify bargaining units. Thus, in Walworth County, Dec. No. 18271-A (WERC, 12/90), the County had reorganized its Public Health Department into its Hospital. The County sought to have us take five former Public Health Department employees out of a Courthouse bargaining unit and place them in a unit of Hospital employees. The unit to which the County sought to clarify the employees was defined as "all regular full-time and regular part-time employees employed by the Hospital at its Elkhorn, Wisconsin facilities ...." In clarifying the unit as asked by the County, we held that where the scope of the unit is defined not by the function of the employees but solely by whether the employees are employed "by the Hospital", it was clear that the five employees now fall squarely within the scope of the Hospital unit and should be so included.

We relied on Walworth County in deciding Brown County (Department of Social Services), Dec. No. 15559-A (WERC, 1/91), when a union sought the inclusion of a professional position into a Department of Social Services unit after the position was removed from the County judicial branch and placed in the Department of Social Services. Noting that the existing unit description encompassed all professional employees employed by Brown County Department of Social Services, we reiterated that where the scope of the unit is defined not by function but by whether the employee is employed by the identified department, it is appropriate to clarify the bargaining unit accordingly. We included the professional Social Services employee in the Department of Social Services unit.

Finally, we relied on both these cases in Pierce County, Dec. No. 27487 (WERC, 12/92), in which we granted a County petition to clarify a unit by removing a position from a Human Services Department unit to a Community Health Services Department unit after the County had moved the position from the Human Services Department to the Community Health Services Department.

Given the foregoing, it is not appropriate for us to clarify Health Care Center employees into a Human Services Department unit and we have dismissed the petition.

Dated at Madison, Wisconsin this 7th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner