

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

AFSCME LOCAL 2656A

Involving Certain Employees of

PRICE COUNTY

Case 93
No. 66078
ME-1187

Decision No. 27354-G

Appearances:

Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751, appearing on behalf of Price County Professionals Local 2656A, AFSCME, AFL-CIO.

Lori Blair-Hill, Human Resources Coordinator, 126 Cherry Street, Phillips, Wisconsin 54555, appearing on behalf of Price County.

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

On July 14, 2006, Price County Professionals Local 2656A, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission requesting that the Family Skills Counselor be excluded from the bargaining unit of professional Price County employees that it represents and included in a non-professional County employee unit represented by AFSCME Local 2656. The County opposes the petition asserting the Counselor is a professional employee.

A hearing on the petition was held in Phillips, Wisconsin, on December 13, 2006, before Commission Examiner Danielle L. Carne. A transcript was made, which was received by the Commission on January 23, 2007. The parties declined the opportunity to file written arguments with the Commission.

No. 27354-G

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Price County, hereafter County, is a municipal employer providing services to the citizens of the County through its employees.

2. The Price County Professionals Local 2656A, AFSCME, AFL-CIO, hereafter AFSCME Local 2656A, is a labor organization that serves as the exclusive collective bargaining representative for certain professional employees in the County Human Services, Forestry and Zoning Departments.

3. Local 2656, AFSCME, AFL-CIO, hereafter AFSCME Local 2656, is a labor organization that serves as the exclusive collective bargaining representative for certain non-professional employees of the County

4. The County Family Skills Counselor position was created in 1991. From 1993 through 2001, there were three tiers of Family Skills Counselor positions in Price County. The minimum educational requirement for the Family Skills Counselor I position was a high school diploma; the minimum educational requirement for the Family Skills Counselor II position was an associate degree; and the minimum educational requirement for the Family Skills Counselor III position was a bachelor's degree. In 2002, the three tiers of Family Skills Counselor positions were combined into a single category.

5. When the tier system for the Family Skills Counselor position was eliminated, the County began to debate whether to place the minimum educational requirement for the Family Skills Counselor position at a bachelor's degree^[JN1] or an associate degree.

6. The Family Skills Counselor position became vacant, through a retirement, on December 31, 2004. Although the County had not yet decided on the minimum educational requirement for the position, the advertisement for the position posted by the County provided the following on that subject:

Minimum qualifications include:

- Associate Degree in Child Care or related field with 2 years experience working with children and families in a professional or para-professional capacity, preferred

OR

- Combination of post-secondary education and 2 years experience working with children and families in a professional or para-professional capacity which would provide applicant with the necessary knowledge, skills, and abilities needed to perform the responsibilities of the position

AND

- The ability to work a flexible schedule and perform after-hours services when needed or scheduled.
- A valid driver's license and reliable vehicle insured to county-required limits.
- Ability to pass the Caregiver Background check as defined under Wisconsin Administrative Code HFS 12.

7. The following current position description for the Family Skills Counselor position, dated January 17, 2005, accurately describes the Counselor's duties:

I. Job Summary

This is an advanced-level, para-professional position within the Children & Youth Unit serving children, youth and families faced with child welfare or juvenile justice issues. The person in this position assists the Social Worker in assessing the needs of families under stress and in jeopardy of out of home placements. As part of a collaborative team, this person teaches basic family living and problem solving skills to parents and families in order to help keep the family unit intact. The duties of this position also include teaching parenting and functional home-maintenance skills and linking families to critically needed community resources. Position is under the direct supervision of the Children and Youth Unit Supervisor and general supervision of the Director

II. Essential Duties and Responsibilities

A. Family Skills Counselor (90%)

- Maintain caseload of families in need of basic family living skills training.
 - Assist Social Worker or Supervisor involved in the case to perform assessment of family's strengths and needs on an ongoing basis throughout the service period.

- Identify, with families and Social Worker, the problems/concerns needing to be addressed.
 - Assist in developing a service plan for each case and assist to identify internal or external resources to meet those needs.
 - Maintain on-going communication (at least bi-weekly) with the PC DHS social worker and other service providers in the home regarding the family's progress in behavioral, parenting or individual counseling or service areas.
 - Coordinate work and services with appropriate community resources and attend case staffings with other agencies when required and assigned by supervisor.
 - Carry out the family skills training as identified in the family's case plan and monitor and report progress to the social worker.
 - Assess efficacy of service plan and services and make recommendations for change as needed.
 - Participate in permanency planning, when assigned.
- Provide skill training including, but not limited to:
 - Parenting
 - normal child development, bonding, basic needs and enrichment activities
 - age appropriate expectations and discipline
 - child behavior management techniques
 - Personal & Home management
 - independent living skills

- financial management including budgeting, check book balancing, etc.
 - job seeking skills
 - social skills
 - personal care and hygiene
 - chemical dependency/mental health recognition and resource referral
 - nutrition and health issues including human growth and development
 - home management including environmental cleaning, maintenance, etc.
- Complete all paperwork according to time schedules, including daily case notes, time logs, etc.
 - Maintain working relationship with personnel from other agencies.
 - Maintain innovative and non-judgmental approach/attitude in dealing with families.
 - Maintain professional attitude and behavior in all interactions with families, other agencies, the public and other county staff.
 - Maintain flexible work schedule.
 - Co-facilitate family therapy sessions as requested by social worker.
 - Facilitate nurturing program to groups of parents as requested by supervisor.
 - Perform duties in the family homes amid possible conditions of extreme filth, odor, and/or family discord, having to rely on own resources.

- Follow Child Abuse/Neglect reporting procedures according to guidelines.

B. Other Duties

- Perform intake responsibilities on a rotational basis
- Other duties as assigned

III. Knowledge, Skills, and Abilities

- Skillful in communicating effectively and developing rapport with others in a non-judgmental manner.
- Skillful in working effectively under stressful conditions with emotional issues.
- Skillful in working within a flexible schedule based on client need.
- Skillful in working within timelines, and using time efficiently.
- Skillful in producing professional written correspondence, narratives and daily notes.
- Skillful in gathering appropriate information through effective interviewing, engaging clients, assisting in developing service plans which relate to the presented concerns, and utilizing agency and community resources effectively.
- Knowledge of, and adherence to agency programs, procedures, regulations, policies, and applicable statutes/laws.
- Knowledgeable about community resources.
- Knowledgeable in child development, effective parenting and home management with the ability to teach skills in these areas.
- The ability to perform job responsibilities with, at time (sic) limited supervision or assistance.

IV. Minimum Requirements

- Bachelors or Associate Degree in Child Care or closely related field with 2 years experience working with children and families in a professional or para-professional capacity, preferred

OR

- Combination of post-secondary education and 4 years experience working with children and families in a professional or para-professional capacity which would provide applicant with the necessary knowledge, skills, and abilities needed to perform the responsibilities of the position. Education (post-secondary or CEUs) must include training concerning developing relationships, family dynamics, normal child development, interviewing techniques and problem solving strategies

AND

- The ability to work a flexible schedule and perform after-hours services when needed or scheduled
- valid driver's license and reliable vehicle insured to county-required limits.

V. Physical Requirements

- Ability to make skillful, coordinated movements of one or two hands (manual dexterity).
- Ability to make skillful, coordinated movements of fingers of one or two hands (finger dexterity).
- Ability to occasionally lift 20 pounds (e.g. a small child, equipment).
- Ability to frequently bend/crouch to perform filing.
- Ability to perform work from a sedentary position.
- Ability to function in situations encountered in a normal office setting.

- Ability to function in situations encountered in client's home setting.
- Ability to move about the community under adverse conditions such as inclement weather,
- Ability to drive a vehicle.

VI. Special Requirements

- Must produce evidence of meeting or exceeding the minimum automobile liability insurance requirements contained in the Price County Minimum Insurance Ordinance (Currently \$100,000 for each person for bodily injury, \$300,000 for each occurrence for bodily injury, and \$50,000 for each occurrence for property damage), in order to operate a vehicle on agency business.
- Must be able to pass the Caregiver Background check as defined under Wisconsin Administrative Code HFS 12.

8. The Family Skills Counselor position is part of the Department of Human Services. Generally, when a case is referred to the Department of Human Services, a County Social Worker is assigned to function as the case manager and will assume primary responsibility for a case. If family skills training or assistance is required, a Family Skills Counselor will be enlisted to function as one of the service providers on a case. In that event, the Social Worker and the Family Skills Counselor collaborate to identify the particular family-skills needs presented by a case, to devise a "service plan" that is most appropriate for those given needs, and to continually assess whether the devised approaches are effective. It is the role of the Family Skills Counselor to independently work, on a direct basis, with a family, entering the family's home, interacting with family members, identifying the need for and providing necessary skills training, and evaluating the family's status with an eye toward such factors as the effectiveness of services being provided, the safety of children in the home, and the status of mental illness or substance abuse afflictions. The Family Skills Worker makes assessments regarding all of these factors and reports them back to the Social Worker. While the Social Worker has the ultimate responsibility for each case, the independent assessments made by the Family Skills Worker provide insight critical to the Social Worker's ability to effectively manage cases.

9. The Family Skills Counselor has the opportunity, on a monthly basis, to seek advice regarding cases from Chuck Bernard, a psychologist employed by the University of Wisconsin - Stout, who is retained by the County as a consultant. Mr. Bernard provides feedback relating to techniques that can be used in dealing with particular problems that arise in cases, as well as information relating to various relevant case dynamics such as mental illness and drug addiction.

10. The Family Skills Counselor position ultimately was filled by the current incumbent, Ms. Tracy Timmers, who began working as the County's only Family Skills Counselor on August 1, 2005.

11. Prior to becoming a Family Skills Counselor, Ms. Timmers worked for Price County, for two and one-half years, as a part-time Family Visitor. The Family Visitor position involved the in-home training of first-time mothers. Prior to holding the Family Visitor position, Ms. Timmers worked for approximately ten years as a child-care provider in her home.

12. Ms. Timmers has a high school diploma, as well as a one-year certification in child care services, which certification she obtained in 1988 from Chippewa Valley Technical College. During her employment as a Family Visitor and subsequently during her employment as a Family Skills Counselor, Ms. Timmers, at the recommendation of the County, also has participated in various three-day, two-day, one-day, and half-day continuing education training programs on topics such as home visitation, overweight issues in childhood, fetal alcohol syndrome, perinatal mood disorders, child abuse and neglect, suicide prevention and recognition, and alcohol and drug addiction.

13. While the work of the Family Skills Counselor is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment, and is of such a character that the result accomplished cannot be standardized, it 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 learning.

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

CONCLUSION OF LAW

The Family Skills Counselor is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Family Skills Counselor shall be excluded from the bargaining unit represented by AFSCME Local 2656A and included in the bargaining unit represented by AFSCME Local 2656.

Given under our hands and seal at the City of Madison, Wisconsin, this 20th day of April, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

PRICE COUNTY

**MEMORANDUM ACOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

The issue before us is whether the Family Skills Counselor 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.

All of the criteria in 1 or 2, above, must be present for an employee to be deemed professional. CHIPPEWA VALLEY TECHNICAL COLLEGE, DEC. NO. 22230-A (WERC, 5/88). We have generally interpreted the Sec. 111.70(1)(L)1.d., Stats., criterion of “a prolonged course of specialized intellectual instruction and study” as being met by a four year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04); MATC, DEC. NO. 6343-D (WERC, 10/89). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is generally acquired, but the

statutory definition focuses on the nature of the work that the employee performs. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work and the knowledge needed to perform same. OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86).

The Family Skills Counselor meets the first three components of the Sec. 111.70(1)(L) 1, Stats. definition of a professional employee. Ms. Timmers' job duties often require her to make independent, on-the-spot assessments regarding the needs and status of families that have come to the attention of the Department of Human Services because of some difficult circumstance. However, we conclude that the Family Skills Counselor is not a professional employee because the work performed in 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 or hospital. As we have held before, *see, e.g.*, PIERCE COUNTY, DEC. NO. 31712 (WERC, 6/06), skills training in the areas of parenting and personal and home management does not require an advanced course of study. The types of skills being taught by the Family Skills Counselor, such as meeting a child's basic needs, balancing a check book, and personal hygiene constitute basic living skills. Such skills are routinely taught without the benefit of an advanced degree.

Our conclusion as to the knowledge needed to perform the work is supported by the fact that incumbent has carried out her duties successfully without having obtained either a bachelor's or an associate degree. In addition, we note that the Family Skills Counselor has the opportunity to consult with professional employees regarding the aspects of her cases that may require knowledge of the type generally obtained through a four year specialized degree. Ms. Timmers regularly consults not only with the Social Worker assigned to the case, but also with Chuck Bernard, the UW-Stout psychologist who has been retained by the County for the express purpose of providing feedback regarding some of the more complex elements of her cases.

Given our conclusion that the Family Skills Counselor is not a professional employee, we have ordered that the position/employee be moved from the professional employee unit represented by AFSCME Local 2656A to the non-professional employee unit represented by AFSCME Local 2656.

Dated at Madison, Wisconsin, this 20th day of April, 2007.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

