

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of

**AFSCME LOCAL 2656A**

Involving Certain Employees of

**PRICE COUNTY**

Case 103  
No. 69540  
ME(u/c)-1297

**Decision No. 27354-H**

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**Appearances:**

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

**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 February 3, 2010, AFSCME Local 2656A filed a petition with the Wisconsin Employment Relations Commission requesting that the Elderly Benefits Specialist be included in the bargaining unit of professional Price County employees that it represents.

A hearing on the petition was held in Phillips, Wisconsin, on July 20, 2010, before Commission Examiner Matthew Greer. A transcript was prepared, which was received by the Commission on August 4, 2010. The parties declined the opportunity to file written arguments with the Commission.

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

No. 27354-H

## **FINDINGS OF FACT**

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

2. AFSCME Local 2656A, herein the Union, is a labor organization that serves as the exclusive collective bargaining representative for certain professional employees in the County.

3. The Elderly Benefits Specialist position was created in the late 1970s or early 1980s. The incumbent in the position, Julie Krause, is the sole County employee who holds the position and has been the sole employee in the position since she was hired by the County on November 12, 2002. Krause reports to the aging unit supervisor, who is a County employee, and to an elder law attorney, who is an employee of the Coalition of Wisconsin Aging Groups. She reports to the aging unit supervisor on personnel, payroll, and other day-to-day matters. The elder law attorney supervises the Specialist's substantive caseload and provides training. The position of Elderly Benefits Specialist is currently included in a bargaining unit of non-professional County employees.

4. The following excerpt from a February 2010 Elderly Benefits Specialist position description accurately describes Krause's duties:

## **II. Essential Duties and Responsibilities**

### **Counseling, Advocacy, Information and Referral (60%)**

1. Assist seniors in understanding and addressing issues relating to Medicare, Medicare Supplemental Insurance, Supplement Security Income (SSI), Social Security Retirement and Disability, Medical Assistance, Consumer Problems, Age Discrimination in Employment, Homestead Tax Credit, Housing Problems, Supportive Home Services, Food Stamps, Energy Assistance, Veteran's Administration Benefits, General Relief, and other Legal and Benefit problems related to public benefit programs.
2. Provide high quality advocacy on behalf of each client to obtain desired client outcomes with regard to public benefit programs and related issues including Medical entitlements, Health and other Insurance (disputes and appeals), Non-covered Health Costs, Income Maintenance, Community-Based Services, Housing/Utilities, Consumer/Finance, Surrogate Decision Making, Elder Rights and "Other" Categories as listed on the Code Desk Card of the Legal Assistance/Benefits Specialist Program.

3. Advise clients of their legal rights and protect and promote those rights to the extent permitted under the law for non-attorneys.
4. Conduct a thorough intake and review process to evaluate the appropriateness of initiating a case on a client's behalf and to determine the type of assistance that can be provided to that client when that assistance is appropriate.
5. Screen all clients for public benefits eligibility.
6. Recognize and make appropriate referrals to regional attorney in cases needing legal assistance or exceeding the qualifications or scope of this position.
7. Recognize and make appropriate referrals to internal or external office, agencies or programs, as needed.
8. Conduct job duties in accordance with general program rules, and rules of professional responsibility as set out in the CWAG Benefit Specialist Handbook, and Chapter 9 of the Wisconsin Aging Network Manual of Policies, Procedures and Technical Assistance.

**Outreach and Education (10%)**

1. Maintain regular office hours with scheduled appointments.
2. Undertake outreach to target low-income, frail/disabled, and rural and socially isolated elderly populations of the county.
3. Conduct home visits to the homebound client, as necessary.
4. Provide group facilitation, education, advocacy and conduct workshops and presentations on public benefits, elder rights and/or aging issues.
5. Accept referrals from and act as a consultant to various public/private agencies or private attorneys as time permits on aspects of public benefits and other aging issues.
6. Provide public information through written newspaper/newsletter articles or personal presentation/appearance on radio or TV. Carry on an ongoing public relations role.

**Record Keeping (15%)**

1. Maintain confidential, organized, detailed and carefully documented case files for each client/case.
2. Complete required daily/monthly/quarterly/annual reports and comply with all established policies and procedures of the state and county.

**Professional Development (10%)**

1. Develop and maintain an expertise in federal and state public benefits programs.
2. Develop and maintain an expertise in health care financing as applied to persons 60 and older.
3. Develop and maintain an expertise in housing and other consumer concerns as applied to persons 60 and older.
4. Attend initial basic training and regular bi-monthly update training as provided by the legal assistance provider.
5. Attend other relevant training sessions, programs, workshops and seminars, as supervisor deems necessary and appropriate.
6. Maintain working and expert knowledge of all of the issues coded on the Legal Assistance/Benefit Specialist Program Issue Codes Desk Card and Advocacy Manuals.

**Other Duties as Assigned (5%)**

1. Provide support to the unit, Aging and Disability Resource Center and department as needed.
2. Perform department IT support for video-teleconferencing.

5. Prior to February 2010, the minimum educational requirement set by the County for the Elderly Benefits Specialist position was a high school diploma, GED, or equivalent. Effective with the February 2010 update to the position description, the minimum educational requirement was changed to a “bachelor’s degree in a health or human services related field, preferred; or a license to practice as a Registered Nurse in Wisconsin....”

The new educational requirement for the position was implemented by the County following a change in the contract terms between the County and the Wisconsin Department of

Health Services. Effective with the 2010 contract, newly hired Elderly Benefits Specialists are required to meet the following education requirements:

- a. A Bachelor of Arts or Science degree (preferably in a health or human services related field) or a license to practice as a registered nurse in Wisconsin...and at least one year of experience working with at least one of the client populations of the Aging and Disability Resource Center; or
- b. Approval from the Department in the event that the staff member lacks the degree and experience described above. Such approval is discretionary on the part of the Department.

There were no significant changes in the duties of the Elderly Benefits Specialist position following the implementation of the change in educational requirements.

6. Krause holds a Bachelor of Science degree with a major in psychology and minors in gerontology, sociology, and anthropology, and held that degree when hired by the County in 2002.

7. The work of the Elderly Benefits Specialist 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 education or a hospital.

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

#### CONCLUSION OF LAW

The Elderly Benefits Specialist 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 Elderly Benefits Specialist shall continue to be excluded from the bargaining unit represented by AFSCME Local 2656A and shall remain included in the existing bargaining unit of non-professional employees.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of November, 2010.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Terrance L. Craney /s/

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Terrance L. Craney, Commissioner

**PRICE COUNTY**

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

The issue before us is whether the Elderly Benefits Specialist is a professional employee within the meaning of the Municipal Employment Relations Act (MERA). Section 111.70(1)(L), of MERA defines a “professional employee” in pertinent part as follows:

1. Any 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 ...

We find that the duties performed by the Elderly Benefits Specialist satisfy the first three elements of the definition of a professional employee in Sec. 111.70(1)(L)(1), Stats. The remaining issue that we must decide is whether the work of the Specialist requires “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...” as set forth in Sec. 111.70(1)(L)(1)(d), Stats.

The Commission interprets this (1)(d) statutory language to mean knowledge that is customarily acquired through a “four-year degree in a specialized field of study.” EAU CLAIRE SCHOOL DIST., DEC. NO. 17124-C (WERC, 3/09). The knowledge needed to perform the employee’s work may meet this (1)(d) requirement even if the employer does not require a four-year specialized degree and/or the employee does not have a four-year specialized degree. Conversely, even if the employer does require a four-year specialized degree and/or the employee has a four-year specialized degree, the knowledge needed to perform the work in

question may not meet the (1)(d) requirement. As we stated in BROWN COUNTY, DEC. No. 7954 -F, (WERC, 3/91):

...the course of study is a definition of the required knowledge which is the criterion, but is not the criterion itself. It necessarily follows that some professional positions require this kind of knowledge even though the incumbent acquired it through a means other than a formal program of instruction or a college degree.

... it [also] follows that an employer might insist an applicant for a position hold certain specialized educational credentials, but if the performance of the job duties does not require that body of knowledge, the position would not be found to be professional.

Thus, the fact that an incumbent in a disputed position actually possesses a four-year specialized degree and/or that the employer's qualification guidelines for the position require a four-year specialized degree are relevant considerations but are not determinative. Our task is to identify the work that is performed, determine what knowledge is needed to perform that work, and determine how that knowledge is customarily acquired. EAU CLAIRE SCHOOL DIST., DEC. NO. 17124-C (WERC, 3/09); OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86).

The essential duties performed by the Elderly Benefits Specialist are set forth in Finding of Fact 4 and include interviewing elderly County residents, referred to as clients, when they seek assistance regarding public benefits, screening clients for public benefits, communicating with clients regarding their eligibility for public benefits, advocating on behalf of clients applying for benefits/appealing denial of benefits, and providing referrals in situations where a client has issues that are outside the scope of the position. When performing these duties, the incumbent refers to set guidelines and policies established by the County and the State of Wisconsin, including Chapter 9 of the Wisconsin Aging Network Manual of Policies, Procedures, & Technical Assistance and the contract between the County and the State Department of Health Services.

The knowledge required to perform these duties is set forth in the job description quoted in Finding of Fact 4. The Elderly Benefits Specialist must have knowledge of the various public benefits, programs, and services that are available to elderly County residents, knowledge of principles involved in providing legal services to elderly persons and protecting the rights of the elderly, knowledge of the aging process and the needs of the elderly, knowledge of basic bookkeeping/accounting principles, and knowledge of MS Word/MS Office software. Although not specifically listed in the position description, the record in this matter indicates that the incumbent must also have knowledge of application and appeal processes at public benefits agencies in order to effectively advocate on behalf of clients seeking benefits.



As to the customary method for acquiring the knowledge required to perform the work of the Specialist, we conclude that on-the-job training and periodic continuing education remain the customary method. As the incumbent testified, much of the training regarding her job-related duties comes from an initial training session with an elder law attorney and approximately 36 hours of continuing education each year to remain current regarding public benefit laws and changes in eligibility requirements as benefit program are modified and new benefit programs are created. We acknowledge that the incumbent also testified that the courses and internship in gerontology and psychology prepared her to communicate with elderly individuals, including those with physical disabilities, cognitive impairments, and substance abuse disorders. However, we are persuaded that, while her communication skills enhance her ability to perform her job at a high level, they do not qualify as “knowledge of an advanced type in field of science or learning” and are not “customarily acquired by a prolonged course of specialized intellectual instruction.” Rather, the ability to successfully communicate with the elderly is a basic life skill customarily acquired through life and/or on-the-job experience.

In reaching our conclusion, we acknowledge the change in educational requirements for newly hired Specialists reflected in Finding of Fact 5. We note that this change does not mandate a four-year specialized degree inasmuch as the “health or human services” focus remains a preference not a requirement. More importantly, the “for newly hired” nature of this very recent change and the absence of any accompanying change in Specialist job duties combine to persuade us that this new educational requirement may enhance job performance but does not alter the “customary” manner in which the knowledge needed to perform the work is currently acquired.

For the foregoing reasons, we find that the Specialist is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats., and thus shall continue to be included in the non-professional employee bargaining unit.

Dated at Madison, Wisconsin, this 9th day of November, 2010.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

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Judith Neumann, Chair

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

Terrance L. Craney /s/

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Terrance L. Craney, Commissioner

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