

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**GRANT COUNTY PROFESSIONAL EMPLOYEES  
UNION, LOCAL 337-A, AFSCME, AFL-CIO**

Involving Certain Employes of  
**GRANT COUNTY**

Case 7  
No. 54483  
ME-852

**Decision No. 27557-C**

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Appearances:

Godfrey & Kahn, S.C., Attorneys at Law, by **Mr. Jon Anderson**, 131 West Wilson Street, Madison, Wisconsin, appearing on behalf of Grant County.

**Mr. David White**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Madison, Wisconsin, appearing on behalf of Grant County Professional Employees Union, Local 337-A, AFSCME, AFL-CIO.

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

On September 25, 1996, Grant County Professional Employees Union, Local 337-A, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit of Grant County employes through inclusion of the Social Services Manager and the two Qualified Mental Retardation Professionals. The County opposed the petition on the grounds that the employes are managerial.

No. 27557-C

Hearings in the matter were held in Lancaster, Wisconsin before Examiner Stuart Levitan, a member of the Commission's staff, on April 4, 1997 and September 24, 1998. The County and Union filed written argument on December 7, 1998 and March 12, 1999, respectively.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. Grant County, hereafter the County, is a municipal employer with its principal offices at 130 West Maple Street, Lancaster, Wisconsin.

2. Grant County Professional Employees Union, Local 337-A, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at 8033 Excelsior Drive, Madison, Wisconsin. The Union is the certified exclusive collective bargaining representative for a bargaining unit of professional County employees.

3. Among its responsibilities, the County maintains a nursing home known as Orchard Manor. Orchard Manor consists of two operations, a skilled nursing facility (SNF) of 100 beds and an intermediate care facility for the mentally retarded (ICF/MR) of 50 beds. The total budget for Orchard Manor is \$6.3 million, of which \$163,000 comes from County sources and the rest from various state and federal programs and private pay.

Steve Sterzinger is the Administrator and reports to an oversight Orchard Manor Committee consisting of six Grant County supervisors. The Orchard Manor organizational chart lists the Medical Director, the Directors of Finance, Human Resources and Nursing, the Qualified Mental Retardation Professional (QMRP), the Social Services Manager, the Resident Admissions Coordinator, the Engineering and Systems Coordinator, the Activity Manager, Housekeeping Supervisor, Laundry Supervisor, Certified Dietary Manager and Physical Therapy Manager as department heads and held by the County to be excluded from any bargaining unit on the grounds of managerial status. The Medical Director and Physical Therapy Manager are contracted positions; all other positions are held by County employees.

The County pay system provides that only the Administrator and the Directors of Finance, Human Resources and Nursing are paid more than the two QMRPs and the Social Services Manager, which three positions are paid substantially higher than the other listed department heads.

4. At Orchard Manor, the County employs two QMRPs, Pamela Wilson and Patti Heer. They are responsible for the day-to-day administration of the ICF/MR unit. They have the following job description:

**ORCHARD MANOR**

**JOB DESCRIPTION**

**DEPARTMENT:** Q.M.R.P.

**JOB TITLE:** Resident and Program Manager/Qualified Mental Retardation Professional (QMRP)

**REPORTS TO:** Administrator

Overall management responsibility for the resident and individual program. Develop and execute departmental budget. Develop and monitor the implementation of Individualized Program Plans for residents; update plans as necessary and document progress; liaison between facility and outside agencies, guardians, and family members; serve as a resource person to staff in understanding, developing and monitoring behavior programs including staff-resident relationships; function as a member of an interdisciplinary team in periodically reviewing cases to determine need for continued care of placement in alternate facilities; coordinate planning for admission, evaluation, placement or discharge as appropriate, meeting the emotional/social needs of the resident; help prepare the residents for any changes in their living situation; monitor at least one classroom curriculum; participation with staff disciplinary actions and evaluations; develop, implement, and evaluate policies and procedures related to the ICF/MR unit; and perform such other duties as may be assigned. Function as department head.

**QUALIFICATIONS:**

1. Must be one of the following:
  - a. Psychologist licensed under c.455, Stats.
  - b. Physician

- c. Social worker with a graduate degree from a school of social work accredited or approved by the council on social work education or with a bachelor's degree in social work from a college or university accredited or approved by the council on social work education.
  - d. Audiologist, registered nurse, therapeutic recreation specialist who is a graduate of an accredited program or who has a bachelor's degree in a specialty area such as art, dance, music, physical education, or recreation therapy.
  - e. Human services professional who has a bachelor's degree in a human services field.
- 2. Specialized training in mental retardation or at least one year of experience in treating or working with mentally retarded persons.
  - 3. Management experience is desirable.

**ESSENTIAL FUNCTIONS:**

- 1. Recruits and conducts preadmission screenings and oversees all admissions to the ICF/MR facility.
- 2. Ascertains the need and coordinates DD inservices in both arranging and teaching.
- 3. Coordinates, through other department heads, total DD resident care.
- 4. Develops, implements, and evaluates DD facility's philosophy, program, objectives, policies, and procedures.
- 5. Develops and executes departmental budget.
- 6. Develops and presents Resident Program Manager/QMRP departmental annual report.
- 7. Responsible for calling special interagency meetings involving problems arising with resident & compiling specific information and documentation regarding particular situation.

8. Initiates discipline to staff.
9. Participates in staff evaluations.
10. QMRP for the DD residents in the facility.
11. Assists in developing, implementing, and evaluating Orchard Manor policy and procedure.
12. Coordinate quality assurance programs, in the DD facility. Such QA programs, but not limited to, are: audits, behavioral, fire, safety, human rights, infection control, pharmacy and therapeutics, quality assurance, and utilization review.
13. Monitors (timely, accurate, and informational) DD facility documentation in charts and care plans.
14. Monitors direct care staff in follow-through of IPP/behavioral programming.
15. Coordinates and assists residents with the procurement and utilization of community resources.
16. Assists the County of Grant Social Services staff with regard to guardianships and other court related procedures.
15. Maintains familiarity with federal and state DD regulations and codes. Is also familiar with Medicare guidelines and determines eligibility status. Also reviews level of care on an ongoing basis and recommends level changes to Health Services Supervisor.
16. Works with consulting psychologist in writing behavioral programs for challenging residents. Takes initial documentation to evaluate need for program. Implements and reviews behavioral programs. Inservices staff on correct procedures for implementing program. Records and tabulates data monthly to monitor progress.
17. Administers assessment inventory on each resident annually to assess any increase or decrease of skills from previous year.

18. As mandated by state and federal requirements the QMRP evaluates discharge and appropriateness of placement in alternate living situation.
19. Counsels residents on a number of issues such as sexuality, behavioral concerns, peer relations, etc.
20. Chairs the developmental disability forum for Orchard Manor.
21. Chairs and schedules annual and quarterly individual program planning meetings.
22. Represents QMRP at management council meetings.
22. Chairs behavioral/human rights committee.
24. Responsible for documentation of outside contacts and progress notes.
25. Prepares social history.
26. Acts as advocate for resident rights.
27. Contacts residents, family members, and/or guardians regarding: a) scheduled care conference, b) send care conference notification to family/guardian, c) room changes, d) resident's needs, ie, clothing.
28. Works with other QMRP of the facility.
29. Responsible for Badger Camp applications.
30. Conducts all qualified mental retardation professional duties and social services duties.
31. Responsible for discharge summaries.
32. Other duties as assigned by administrator.

#### PHYSICAL AND MENTAL REQUIREMENTS:

##### Strength:

1. Able to lift and carry objects less than 20 lbs. occasionally.

Mobility:

1. Able to sit for long periods of time 90%
2. The ability to twist and reach at shoulder height frequently.
3. Able to bend and stoop as required to file and obtain supplies.

Manual Dexterity:

1. Able to use hands, arms for moderately difficult manipulation such as typing, computer, filing and writing.
2. Eye hand coordination as required for keyboard, printer knobs.

Speech:

1. Able to articulate clearly to give instruction, speak on phone and communicate other professions.

Sensory requirements:

1. Able to see objects close to read medical records, direction, and labels, and other data.
2. Able to hear normal sounds and voices with some background noises to receive verbal instruction, answer phone and to communicate with staff and residents.

Cognitive requirements:

1. Able to concentrate on minimal to fine details as related to medical records for more than 60 minutes.
2. Able to understand and relate to specific ideas generally several at a time.

Equipment:

1. Computer, printer, Xerox machine, FAX machine, Dictaphone, telephone, file cabinets.

Employment Variables:

1. Must be able to work other than normal working hours when needed or deemed necessary.
2. Must be able to work in a variety of settings.

Normal Working Hours: 8:00am - 4:30 pm, Monday-Friday

Salary Classification: 16

Evaluation: Periodically as deemed necessary by management.

1. This job description is not intended to be all inclusive. The employee will also perform other reasonable related business duties as assigned by the supervisor or other management.
2. Management reserves the right to change job responsibilities, duties and hours as needs prevail. This document is for management communication only, and not intended to imply a written or implied contract of employment.
3. I have read and understand this job description. I agree to accept the responsibilities and duties as outlined.

The QMRPs are the primary Orchard Manor employees responsible for developing an Individual Program Plan (IPP) for each resident. The IPP involves occupational, physical and speech therapy, nursing activities, and possibly housekeeping and maintenance issues. A QMRP chairs the committee which develops each IPP.

The QMRPs are responsible for contacting psychologists and psychiatrists and determining when assessments are required and what behavioral programming should be done. The QMRPs determine and document the extent to which each IPP is proving effective, and what other steps might need to be taken. The QMRPs may make IPP modifications, and are the authority for modifications proposed by other personnel. In evaluating alternative treatment and service levels, the QMRPs may base decisions on the availability of reimbursements or other funding sources.

Applicable state licensure criteria include annual on-site surveys by teams from the state Bureau of Quality Assurance to investigate care, finances and the physical operation. Such surveys last for several days, with the QMRP as the primary contact person representing



Orchard Manor. The QMRP monitors the activities of the Director of Finance and other administrative personnel to ensure compliance with applicable regulations.

The QMRPs manage the Work Therapy Program, which involves establishing so-called “factories” or work activities such as folding laundry or shredding confidential documents. In 1995, the QMRPs led the review, planning and implementation of a major revamping of the use of the facility classrooms, switching from an activity focus to a pre-vocational focus. As of early spring 1997, the QMRPs had the task of establishing a new factory by June of that year, with details of establishing the factory left to the QMRPs, subject to final approval by the Administrator.

The QMRPs oversees the schedule of Manor staff, subject to the requirements of applicable state administrative code. They do not set staffing levels or individual staffing needs.

5. State of Wisconsin regulations require facilities such as Orchard Manor to have a committee applying interpretive guidelines. At Orchard Manor, the QMRPs serve as the chairperson of the Orchard Manor Developmental Disability Facility Behavior and Human Rights Committee, which evaluates the basic behavioral planning to ensure against resident abuse. The QMRPs make appointments to the Committee, including representatives of outside agencies; schedules and determines the Committee agenda; and directs any support staff the Committee enjoys.

The published protocol for this Committee, which the QMRPs developed, is as follows:

**ORCHARD MANOR  
DEVELOPMENTAL DISABILITY FACILITY  
BEHAVIOR & HUMAN RIGHTS COMMITTEE**

It is the policy of the Orchard Manor ICF-MR Unit to have one multi-purpose committee to serve for all advisory functions including the facility’s Human Rights Committee. The Committee shall be chaired by one of the two Q.M.R.P.’s and will consist of staff from the primary discipline including Administration, Activities, Nursing and the other Q.M.R.P. Other members will include community representatives, guardian representative as well as a resident representative. The committee will serve as an advocate for the individual resident rights especially in relationship as they may be affected by behavior management programs. This committee will meet at least quarterly.

Copies of the Resident Bill of Rights and Responsibilities will be given to the resident, family and/or guardian and verbally explained at the time of admit. A modified copy of the Resident Bill of Rights in modified language for easier understanding by the developmentally disabled will be prominently displayed in the ICF-MR Unit. Staff will be informed of Resident Rights through orientation of new employees as well as at the annual inservice.

A written plan shall be developed for each resident participating in a behavioral treatment program including residents placed in a physical restraint or for whom drugs are used to manage behavior. This plan will be incorporated in the resident's I.P.P. This plan includes:

1. The behavioral objectives of the program.
2. The methods used as well as the schedule for the use of each method.
3. The persons responsible for the program.
4. How the data is collected and documented to assess the objectives of the program as well as determining the effectiveness of the program.
5. Plan for medication reduction.

#### Review and Approval

The Human Rights Committee shall review for approval before implementation of the program for the following:

1. Any unlocked time-out that exceeds one hour.
2. Any procedure that would be considered unusual or intrusive such as a procedure that would be considered painful or humiliating by most persons or a procedure involving the confinement of an ambulating person by means of a physical restraint or specialized clothing.
3. Any procedure that restricts or denies a residents rights under sub. ch. II.
4. A Behavioral program will be implemented only with the written consent of the resident, parent or guardian prior to the implementation of the program.

#### Conduct and Control

The facility shall have a written policies and procedures for resident conduct and control what are available in each living unit and to parents and guardians.

1. When appropriate, residents shall be allowed to participate in the formatting policies and procedures for resident conduct and control.

2. Corporal punishment of a resident is not permitted.
3. No resident may discipline another resident unless this is done as part of organized self-government program conducted in accordance with written policy and is integral part of an overall treatment program supervised by a licensed psychologist or physician.
6. Orchard Manor has an in-house Behavior Human Rights Program Policy, developed by the QMRPs, as follows:

**ORCHARD MANOR  
DEVELOPMENTAL DISABILITY FACILITY  
QMRP Department Behavior Human Rights Program Policy**

**POLICY:**

According to interpretive guidelines which govern the operation of an intermediate care facility for persons with mental retardation, a committee to review behavior programs and procedures used to modify residents behavior must include outside individuals. The committee reviews purpose behavior programs to ensure that the basic rights of the resident are met and the least intrusive procedures or methods are used to modify the desired behavior.

As chair of this committee, the QMRP schedules and invites the committee members to the meetings. This committee includes representatives from outside agencies, community, guardians, residents and specified staff from Orchard Manor. In addition, they review, monitor, and recommend changes to the facility about its practice and programs involving the rights of the individual.

The Orchard Manor QMRPs promulgated a Developmental Disability (D.D.) Forum, to facilitate communication among department supervisors within the D.D. unit. As chair of the Forum, the QMRPs coordinate its activities.

7. Since November, 1998, Gail Lipschutz has served as the Orchard Manor Social Services Manager, currently with the following position description:

**ORCHARD MANOR**

**JOB DESCRIPTION**

**DEPARTMENT: SOCIAL SERVICES**

JOB TITLE: Social Services Manager

REPORTS TO: Administrator

The Manager of Social Services provides administration of the social services provided by Orchard Manor. This position is responsible to provide social services to the residents of Orchard Manor including the coordination of the individual care plan. Is responsible for recruitment, admissions, and pre-admission screenings. Is also responsible for discharge planning and referral services. The Manager is the resident rights coordinator and is responsible for conducting all investigations involving violations of residents' rights. Participation with staff disciplinary actions and evaluations regarding residents' rights issues. Functions as a department head. Is responsible for the development, implementation, and evaluation of the department's budget. Is responsible for the development, implementation, and evaluation of departmental policy and procedures as well as the overall facility policies.

#### QUALIFICATIONS:

1. Prefer one year's experience as a nursing facility social worker.
2. Must have a bachelor's degree in social work, sociology or psychology and meet the national association of social workers' standards of membership; or have master's degree in social work from a graduate school of social work accredited by the council on social work education.
3. Must be able to relate effectively with a wide variety of personality types and under a variety of settings.
4. Must be able to communicate effectively with residents, staff, family members, and others.
5. Management experience is desirable.

#### ESSENTIAL FUNCTIONS:

1. Must have working knowledge of HSS132 codes & regulations for nursing facility.

2. Must have working knowledge of HSS134 codes & regulations for developmental disability facility.
3. Conducts pre-admission screenings for nursing facility.
4. Recruits and conducts admissions to the nursing facility.
5. Oversees recruitments and admissions from ICF/MR facility.
6. Develops, implements, and evaluates Social Service policies & procedures.
7. Assists in the development, implementation, and evaluation of Orchard Manor policy and procedures.
8. Responsible for calling special interagency meetings involving problems arising with resident & compiling specific information and documentation regarding particular situation.
9. Furnishes evaluation input for direct care staff.
10. Responsible for development and execution of department budget.
11. Coordinates and investigates complaints of abuse, neglect, etc. and recommends appropriate action to the administrator. Initiates discipline to staff regarding resident abuse and neglect and reports findings to the state.
12. Liaison to the family for facility-contact families regarding resident issues.
13. Participates in staff evaluations.
14. Responsible for resident or family grievances and their investigation. Also maintains records.
15. Acts as advocate for resident rights.
16. Assists in providing for resident needs.
17. Responsible for analyzing safety issues in facility with committee.
18. Develops and presents social services annual report.

19. Represents social services at management council meetings.
20. Counsels residents and families as needed.
21. Conducts Quality Assurance studies for the department.
22. Takes admission histories and develops care plans for residents with care plan team.
23. Conducts social histories.
24. Assists in arranging for funding and financial assistance to those residents in need.
25. Coordinates discharge planning & makes referrals.
26. Responsible for documentation in social service portion of chart as well as progress notes.
27. Arranges for guardianship or protective placements when necessary.
28. Assists the county of Grant Social Services staff with regard to guardianships and other court related procedures.
29. Assists in obtaining power of attorney for health care and power of attorney for finance.
30. Responsible for complying with SNF and ICF/MR code requirements and social service policies & procedures.
31. Responsible for orienting staff, residents, and families to federal regulations regarding resident rights.
32. Conducts inservices, ie, annual mandatory inservice regarding resident rights, policies, and procedures.
33. Facilitates monthly family support group meetings.
34. Assists with resident council.

Page 15  
No. 27557-C

35. Keeps abreast of information relevant to position as well as to topics of

aging, etc., via books, inservices, journals, etc.

36. Member of restraint reduction committee.
37. Works in the office, resident rooms, and throughout the facility and visits outside locations during resident recruitment.
38. Contacts hospital personnel, nursing facility personnel, and other agencies in recruitment and admission duties.
39. Other duties as deemed appropriate to the position or as directed by the administrator.

#### PHYSICAL REQUIREMENTS:

##### Strength:

1. Able to lift and carry objects less than 20 lbs. occasionally.

##### Mobility:

1. Able to sit for long periods of time 90%
2. The ability to twist and reach at shoulder height frequently.
3. Able to bend and stoop as required to file and obtain supplies.

##### Manual Dexterity:

1. Able to use hands, arms and moderately difficult manipulation such as typing, computer, filing, and writing.
2. Eye hand coordination as required for keyboard, printer knobs.

##### Speech:

1. Able to articulate clearly to give instruction, speak on phone and communicate other professions.

##### Sensory requirements:

1. Able to see objects close to read medical records, direction, and labels, and other data.
2. Able to hear normal sounds and voices with some background noises to receive verbal instruction, answer phone and to communicate with staff and residents.

Cognitive requirements:

1. Able to concentrate on minimal to fine details as related to medical records for more than 60 minutes.
2. Able to understand and relate to specific ideas generally several at a time.

Equipment:

1. Computer, printer, Xerox machine, FAX machine, Dictaphone, telephone, file cabinets.

Employment Variables:

1. Must be able to work other than normal working hours when needed or deemed necessary.
2. Must be able to work in a variety of settings.

Evaluation: Periodically as deemed appropriate by management.

Normal Working Hours: 8:00-4:30 pm, Monday-Friday.

Salary Classification: 16

1. This job description is not intended to be all inclusive. The employee will also perform other reasonable related business duties as assigned by the supervisor or other management.

2. Management reserves the right to change job responsibilities, duties and hours as needs prevail. This document is for management



communication only, and not intended to imply a written or implied contract of employment.

3. I have read and understand this job description. I agree to accept the responsibilities and duties as outlined.

The Social Services Manager is responsible, along with the Director of Nursing, for screening and assessment of potential admittees to Orchard Manor, which involves an implicit acceptance by the facility that it has the means of protecting and caring for the individual. This responsibility is heightened by the presence of a 16-bed locked unit, for the care of persons adjudicated to be potentially harmful to themselves and others.

The Social Services Manager chairs a committee (herself, Charge Nurse, Dietitian and Activity Manager) that writes care plan for residents, which define the nature and scope of services the resident is to receive. Discretionary determinations reflected in the care plan (e.g., for physical or other therapies, specialized care and feeding, etc.) affect the budget of public funds spent on each resident. The funds for items and activities to implement a care plan are found in other Orchard Manor department budgets.

The Social Services Manager has the sole responsibility for overseeing all resident abuse complaints in both the SNF and the ICF/MR; pursuant to state administrative code, the Social Services Manager reports on such matters directly to the state Bureau of Quality Assurance, and can effectively recommend discipline up to and including discharge for verified complaints.

She effectuates resident discharges, including making referrals to other agencies as appropriate.

She coordinates and facilitates a family support group. She does the annual in-service on resident rights. She determines, sometimes unilaterally, whether Orchard Manor should refer someone for guardianship and protective placement. She can recommend room changes or transfers. She investigates when resident items are reported missing. She attends weekly management council meetings. She is on the restraint committee, which determines whether a resident should have chemical or physical restraints.

From 1989 to 1996 the County maintained a part-time position assigned to the ICF/MR but within the social services budget. In 1996, Lipschutz determined that the position should be eliminated and recreated to assume new social services responsibilities. She secured the

administration's endorsement, and prepared the initial 1997 budget showing the position's elimination. She informed the incumbent of the County's intent, and obtained her directed resignation.

8. The Qualified Mental Retardation Specialists, Pamela Wilson and Patti Heer incumbents, have sufficient participation in the formulation, determination and implementation of management policy to be managerial employees.

9. The Social Services Manager, Gail Lipschutz incumbent, has sufficient participation in the formulation, determination and implementation of management policy to be a managerial employee.

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

### **CONCLUSIONS OF LAW**

1. The incumbents in the position of Qualified Mental Retardation Specialist are managerial employees within the meaning of Sec. 111.70(1)(i), Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. The incumbent in the position of Social Services Manager is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

**ORDER**

The Qualified Mental Retardation Professionals and the Social Services Manager shall remain excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at Madison, Wisconsin this 2nd day of June, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**GRANT COUNTY**

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

**POSITIONS OF THE PARTIES**

**The Union**

The Union asserts that the three disputed employees are not managerial employees and should be included in the bargaining unit.

The Union examines the various functions of the QMRPs and concludes that their duties, responsibilities and authority are insufficient to warrant exclusion as managerial employees. The Union argues that the QMRPs are part of a team which writes individual care plans for developmentally disabled residents and have no authority to establish such plans outside of the team. Indeed, the QMRPs have no greater authority or responsibility than other members of the team and, as relates to medical issues, actually have substantially less authority than medical members of the team. Drawing comparisons between the care plan in this context and the Individual Educational Plan (IEP) for school students with disabilities, the Union states that the QMRPs' role in care plan development is really no greater than the role of the school guidance counselor, social worker or other educational professional. Just as the educational employees are not managerial employees by virtue of their roles in the IEP process, so too the QMRPs cannot be considered managerial employees because of their involvement on the team developing care plans.

Nor are they managerial by virtue of their role in policy development, inasmuch as the policies developed are largely dictated by state law or regulation. In fact, there was no policy entered into the record established by a QMRP in which she exhibited any managerial discretion, much less of the "significant degree" or "relatively high level of responsibility" required by the Commission of managerial employees.

Nor, the Union states, are the QMRPs managerial by virtue of their budgetary responsibilities. They lack discretion to set an original budget and lack the authority to take funds from a different program's budget. Further, of their total 1997 QMRP budget of \$73,902, the amount set for wages and related expenses - and thus monies over which the QMRP's had no discretion - was \$73,152, leaving only \$750 subject to the QMRPs' discretionary spending. This constitutes barely 1% of the total QMRP budget, and thus surely cannot be what the Commission considers as authority to commit the employer's resources.

In conclusion, the Union states that the record evidence does not support the conclusion that the QMRPs are imbued with interests significantly at variance with those of other employees, as is necessary for a finding of managerial status. While they have a role in the formulation of care plans, their role is not superior to the other team members, and in fact is often less significant; their role in formulating policies lacks discretion and is not of the requisite level of responsibility; and their role in setting a budget is limited and ministerial in nature.

Regarding the Social Services Manager, the Union states that the employee is not managerial.

Like the QMRPs, the Social Services Manager is but one part of a larger team, many of whom have far greater authority than she in setting the care plans. Nor does the pre-screening visit with prospective residents involve the establishment of policy. While the Social Services Manager exercises professional discretion in this function, there is no evidence that she exercises managerial discretion.

Regarding budgetary authority, the amount over which the Social Services Manager has discretion - perhaps, at most, \$525 out of a total Social Services budget of \$36,053 - is so small as to fail to support a claim of managerial authority.

Accordingly, the Social Services Manager is not a managerial employee.

### **The County**

The County maintains that the subject employees satisfy the criteria for managerial employees, and thus should remain excluded from the bargaining unit.

As to the QMRPs, the County states the Union petition is without merit because the subject personnel hold extremely high levels of responsibility with Orchard Manor, with duties encompassing all managerial functions including the development, implementation and evaluation of the ICF/MR program philosophies and policies, the supervision of the active treatment program, supervision of behavioral programming and, ultimately, maintaining complete responsibility for a caseload of 20-30 residents. Their level of autonomy, responsibility and organizational status reflects a position that is clearly managerial in nature.

Regarding their role in the formulation, determination and implementation of management policy, the County states that their responsibilities are quite autonomous in nature and require a great deal of independence; that they hold primary accountability during the annual survey by the State; that they have the primary responsibility for the development and implementation of an accurate Individual Program Plan, serving as chair of the IPP team; that

they are an invaluable resource in the annual evaluation process for several other positions; that they are recognized as salaried department heads and participate, as equals, in the Management Council and are held in high managerial status vis-à-vis others on the organizational chart; that they are the key individuals in the development of overall ICF/MR policies, with further sole responsibility to ensure that subordinate committees operate in a manner consistent with Orchard Manor policy; and that they have overall supervision of the ICF/MR staff.

Regarding their authority to commit the employer's resources, the County states that the QMRPs work with each manager to formulate an original budget and collaborate on the development of their own budget; have the complete authority to commit the County's resources and to make purchases relating to care plans; and develop annual reports and mission-related goals.

The County concludes that because the QMRPs possess a considerable amount of responsibility and accountability in the formulation and implementation of policy and are recognized as having the ability to commit the employer's resources, the subject positions are most certainly held by managerial employees.

As to the Social Services Manager position, the County states that this employee should also remain excluded from the bargaining unit due to the exercise of managerial authority.

Regarding the Manager's role in the formulation, development and implementation of management policy, the County states that the Manager's role in determining admissions practices and procedures is critical to the overall success of the facility; that the Manager is the critical player in the development of patient care plans for skilled nursing patients, which are as important as the IPP's which the QMRP's develop; that the Manager administers the facility's Resident Abuse Administrative Policy, under which the Manager investigates resident complaints and recommends employee discipline; that the Manager formulates and administers resident rights policies, as well as the general policies relating to admissions, discharges and transfers; and that the Manager is regarded as a manager within the organization.

Regarding the Manager's authority to commit the employer's resources, the County states that the position has the same authority to develop an annual budget as all other department heads and has the authority, within the scope of her budget, to move funds between budget line items without prior approval from the Administrator.

The County concludes that because the Social Services Manager possess a considerable amount of responsibility and accountability in the formulation and implementation of policy, and is recognized as having the ability to commit the employer's resources, the Manager is certainly a managerial employee.

### **DISCUSSION**

In Sec. 111.70(1)(i), Stats., the Legislature excluded "managerial employees" from the definition of "municipal employees," but did not provide a statutory definition of the former term. Instead, it has left to the Commission the case-by-case development of a definition.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources. MILWAUKEE V. WERC, 71 Wis. 2D 709 (1976); MILWAUKEE VTAE, DEC. NO. 8736-B (WERC, 6/79); EAU CLAIRE COUNTY V. WERC, 122 Wis. 2D 363 (CtApp. 1984); MARINETTE COUNTY (PINEVIEW HEALTH CARE CENTER), DEC. NO. 26154-B (WERC, 3/92).

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88); PORTAGE COUNTY, DEC. NO. 6478-C (WERC, 10/87); DOOR COUNTY (COURTHOUSE), DEC. NO. 24016-B (WERC, 8/88). Managerial status which is based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. VILLAGE OF JACKSON, SUPRA; FOREST COUNTY, DEC. NO. 17528-B (WERC, 6/85); JACKSON COUNTY, DEC. NO. 17828-B (WERC, 10/86); CITY OF WHITEWATER, DEC. NO. 24354 (WERC, 3/87).

From our review of the record, we are satisfied that the QMRPs and the Social Services Manager significantly participate in program and policy at Orchard Manor and thus are managerial employees.

As to the QMRPs, the record establishes that they have functional responsibility for the day-to-day operation of the intermediate care facility at Orchard Manor. This level of responsibility sufficiently involves them in determining and implementing management policy to establish their managerial status and distinguishes them from those professional employees whose normal job duties involve policy development (for instance the QMRPs in STATE OF WISCONSIN, DEC. NO. 26758 (WERC, 1/91) or the school district professionals who develop IEP's) but who lack the sufficiently high level of responsibility needed to generate managerial status.

The high level nature of the QMRPs' impact on policy and program is further demonstrated by their role in Work Therapy Program as set forth in Finding of Fact 4.

Thus, we are satisfied that the QMRPs are managerial employees who should remain excluded from the bargaining unit.

Turning to the Social Service Manager, the record persuades us that she also has a sufficiently high level of responsibility for program and policy to establish managerial status. Her overall impact on the Orchard Manor facility is comparable to that of the Personal Care Nurse Supervisor found to be managerial in the MENOMINEE COUNTY case, DEC. NO. 26983-B (WERC, 4/95) cited by the County herein.

The Manager's role in a recent personnel transaction (as set forth more fully in Finding of Fact 7) is an example of the impact she has in determining the kind and number of employees used in the delivery of services. She concluded a position should be eliminated; received the Administrator's endorsement; prepared a budget reflecting the elimination; and obtained the incumbent's resignation.

Given the foregoing, we are satisfied that the Social Services Manager is a managerial employee who should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin this 2nd day of June, 1999.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

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