

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN COUNCIL 40, AFSCME, :  
AFL-CIO : Case 103  
Involving Certain Employees of : No. 49168 ME-3316  
JUNEAU COUNTY : Decision No. 27877  
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Appearances:

MMr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, for the Union.

Ms. Angeline D. Miller, Corporation Counsel, Juneau County, Juneau County Courthouse Annex, Room 16, 220 East LaCrosse Street, Mauston, Wisconsin 53948, for the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

On April 22, 1993, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to conduct an election among employees of Juneau County pursuant to the provisions of the Municipal Employment Relations Act. Hearing on the petition was held in Mauston, Wisconsin, on September 2, 1993, before Examiner Coleen A. Burns. The record was closed on October 21, 1993, following receipt of post-hearing written argument. Having considered the entire record and the arguments of the parties, and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereafter the Union, is a labor organization with offices at 5 Odana Court, Madison, Wisconsin.

2. Juneau County, hereafter the County, is a municipal employer with offices at the Juneau County Courthouse, Mauston, Wisconsin.

3. On April 22, 1993, the Union filed a petition for an election with the Commission in which the Union sought to represent all regular full-time and regular part-time professional employees, excluding supervisory, confidential and managerial employees of the County. On May 4, 1993, the Union filed an amended petition which differed from the original petition in one respect, i.e., in response to a question on the petition form which requested the Petitioner to indicate whether the claimed unit contained any professional, craft or supervisory employees, the Union circled the word "professional." By a letter dated June 8, 1993, Union Representative David White advised County Representative Angeline Miller that the Union was not seeking to represent the Public Health Nurses employed in the County's Department of Public Health Service. At hearing, the Union amended its petition for election by stating that the claimed appropriate bargaining unit consisted of "all regular full-time and regular part-time professional employees employed in the Juneau County Human Services Department excluding supervisory, confidential, and managerial employees, and excluding Public Health Nurses." The County maintains that the bargaining unit sought by the Union in the petition, as amended at hearing, is

not appropriate in that it excludes the Public Health Nurses. The County has a collective bargaining relationship with three unions, i.e., Local 1312, Courthouse Unit, AFSCME; Juneau County Professional Police Association; and Local 569, Highway, AFSCME. Local 1312 represents clerical employees in the Department of Human Services and the Department of Public Health Service, as well as in various other County Departments.

4. The County and the Union agree that the following employees in the Human Services Department and the Department of Public Health are professional employees and that there are no other professional employees in the County who are not supervisory, managerial or confidential.

Anderson, Susan G.	Public Health Nurse I
Benish, Polly A.	Public Health Nurse II
Krizan, Lisa	Public Health Nurse I
Peterson, Rhonda M.	Public Health Nurse II
Pirtwitz, Mary J.	Public Health Nurse I
Balthazor, Eugene	Human Services Worker III
Boyd, Bruce	Social Worker V
Stanchfield, Richard	AODA Counselor
Wilcox, Gayle	Outpatient Clinician
Zima, Lynn	Social Worker V
Copeland, Daphne	Human Services Worker III
Hempel, Kimberly	Social Worker V
Hying, Gregory	Social Worker V
Kotchi, Carolyn	Human Services Worker II
Reigard, Kenneth	Social Worker V
Rodriquez, Penny	Human Services Worker I
Sinur, Mary C.	Human Services Worker I
Walls, Larry	Human Services Worker II
Wyss, Patricia A.	Human Services Worker III
Wandrasch, Valinda	Social Worker V
Mueller, Leah	Human Services Worker
Corwith, Brooke	Human Services Worker I
Larson, Deborah	Human Services Worker III

5. The County has two classifications of Public Health Nurse, i.e., Public Health Nurse I and Public Health Nurse II. The primary functions of the Public Health Nurse I are described in the position's job description as follows:

- A. When needed, initiates and develops the written nursing care plan for the individual patient.
- B. Participates in the provision of nursing care which may include direct patient care according to the needs of the individual patient.
- C. Coordination of services with any other health, social service, or custodial providers serving the patient.
- D. Observes signs and symptoms and reports to the physician reactions to treatments, including drugs, and changes in the patient's physical or emotional condition.
- E. Teaches, supervises, and counsels the patient, family members, and significant others regarding the nursing needs and other related problems of

the patient.

- F. Maintains records and reports as required by the agency.
- G. Assists in communicable disease follow-up.
- H. Health education presentations.
- I. Participates in workshops, seminars, and inservice training to update knowledge base of nursing as needed.
- J. Agency liaison as assigned.
- K. Other related work as assigned.

The primary functions of the Public Health Nurse II are described in the position's job description as follows:

A. Administration

- 1. Assumes responsibility and authority for the public health service in the absence of the administrator.
- 2. Participates in program planning, coordination, training, supervision, and evaluation.
  - a. Prepares and submits required reports and statistics.
- 3. Assists in supervision of agency professional and clerical staff.
- 4. Assists with interpreting health services to the community.
- 5. Assists with staff development, including inservice education.

B. Professional

- 1. Conducts school health programs and assists with the training of or consultation with teachers and other volunteer groups in regard to student health matters.
  - a. Referral and follow-up per program guidelines.
- 2. Conducts county clinics per agency policy. Implements referrals when necessary.
- 3. Communicable disease follow-up.
- 4. Provides professional nursing care in the home or office and maintains records per

agency policy.

5. Health education presentations to groups per request.
6. Agency liaison as assigned.
7. Information and referral resource.
8. Provides Jail Health per agency policy.
9. Provides back-up assistance to PHN I who performs mental health nursing.

C. Educational

1. Participates in workshops, seminars, and inservice

D. Other related work as assigned.

Pursuant to the Public Nurse Merit System, effective January 1, 1993, the Public Health Nurse I had a minimum wage rate of \$12.6883 per hour and a maximum wage rate of \$15.8659 per hour, and the Public Health Nurse II had a minimum wage rate of \$13.7917 and a maximum wage rate of \$17.2340 per hour. Each of the Public Health Nurse classifications are on a Public Health Service wage schedule which has seven steps, i.e., Minimum, 6 Months, 1 year, 2 year, 3 Year, 4 Year,

and 5 Year. The Public Health Nurses are evaluated in July and with satisfactory evaluation, as determined by Department Head/Health Committee, are granted yearly merit increases on the next anniversary date following the evaluation. The Public Health Nurse I is at Grade 16 and the Public Health Nurse II is at Grade 18.

6. The professional employees in the Juneau County Department of Human Services at issue occupy one of the following positions: Human Services Worker I, II, III, or V (also known as Social Worker V); Alcohol and Other Drug Abuse Counselor (AODA); and Outpatient Clinician. These professional employees, unlike the Public Health Nurses, are paid according to the County's Nonunion Salary Schedule, which schedule has twelve steps, i.e., a Minimum, 6 Month, Step 1, Step 2, Step 3, Step 4, Step 5, Step 6, Step 7, Step 8, Step 9 and Maximum. The position of AODA Counselor, which has a County Grade range of 13 through 16 and a salary range of \$20,381.89 (\$9.7989 per hour) to \$30,247.88 (\$14.5422 per hour), has responsibilities and duties which include interviewing, evaluating and counseling individuals for chemical dependencies; recommending and implementing treatment plans for these individuals; conducting court ordered social histories and reporting to the courts or other social agencies as required; coordinating clients transition from inpatient to outpatient status; and assisting families in coping with the client's condition. The Human Services Worker I classification has a County Grade of 13 and a salary range of \$20,381.89 to \$25,681.18 (\$12.3467 per hour). The Human Services Worker I has responsibilities and duties which include making studies of individuals and families in need of social services; providing appropriate services, including counseling and follow-up, to individuals, families and children entering foster care or alternative placements; supervising juveniles; attending court and preparing reports for court; and providing 24-hour crisis intervention (on-call) services. The Human Services Worker I classification includes the position of Case Manager, which position is responsible for facilitating the treatment and maintenance of the chronically mentally ill and the developmentally disabled; counseling the individual client and consulting with the client's family and friends; evaluating the need for community services and/or admission to the hospital; facilitating Chapter 51 and 55 commitments and protective placements; and providing 24-hour crisis intervention (on-call) services. The Human Services Worker I classification includes the position of Zero to Three Service Coordinator, which position is responsible for developing service plans for 0-3 children and their families; assisting in the development of individualized Family Service Plan; ensuring the continued effectiveness of the Family Service Plan; assisting the family in identifying potential service providers; and ensuring timely delivery of services. The Human Services Worker II classification has a County Grade 15 and a salary range of \$22,508.66 (\$10.8214 per hour) to \$28,360.91 (\$13.6350 per hour). The Human Services Worker II has duties and responsibilities which include identifying the social service needs of individuals and families; providing counseling and other social services to clients, who may include children taken into protective custody and under foster care, as well as families experiencing emotional, behavioral, financial, health and other family problems; referring clients to other service agencies as appropriate; making child custody decisions; placing adults in treatment centers, residential care facilities, etc.; licensing foster homes; initiating court actions for termination of parental rights; and providing 24-hour crisis intervention (on-call) services. The Human Services Worker III has a County Grade 16 and a salary range of \$23,631.16 (\$11.3611 per hour) to \$30,247.88 (\$14.5422 per hour) and has duties and responsibilities which are similar to those of the Human Services Worker II, including the provision of 24-hour crisis intervention (on-call) services. The classification of Human Services Worker V has a County Grade 18 and a salary range of \$26,053.32 (\$12.5256 per hour) to \$33,348.25 (\$16.0328 per hour), as do the positions of Human Services Worker V, Community Support Program, and the Human Services Worker V-JCAN. The duties

and responsibilities of the Human Services Worker V include conducting casework interviews to obtain relevant social history data and assessing needs; providing psychotherapy to individuals and groups; providing consultation to other community agencies and professionals; providing educational and prevention services to other community groups; participating in the diagnostic process, treatment planning, therapy coordination and program development, including child sexual abuse programs; and responding to emergency situations, including 24-hour on call. The Human Services Worker V - JCAN has duties and responsibilities which include sharing responsibility for social, personal, academic and vocational development of JCAN students; leading individual, group and family counseling; providing court services such as intake and supervision; providing protective services, including child abuse and neglect investigations; implementing clinical assessments; participating in M-Teams and IEP meetings involving JCAN students; and carrying a beeper when not at JCAN during regular hours. The Human Services Worker V, Community Support Program, has duties and responsibilities which include acting as case manager for the CMI population; making assessments, developing treatment plans, and implementing treatment plans; providing supportive therapy, including psychotherapy; consulting with families and other care givers; and making appropriate referrals to and coordinating with other service providers. The Human Services Worker V Outpatient Psychotherapist has a Grade of 18 through 20, with a salary range of \$26,053.32 to \$36,713.36 (\$17.6506 per hour), and has duties and responsibilities similar, if not identical, to those provided by the Human Services Worker V.

7. The Department of Human Services and the Department of Public Health Service are separate and distinct County Departments. The Department of Human Services is under the direction of the Human Services Board. The Public Health Nurses and the professional employees of the County's Department of Human Services do not have any common supervision, although the County Board has general authority over employees in each Department. The Department of Public Health Service is located downstairs in the Courthouse Annex and all of the Public Health Nurses work out of this location. The Human Services Department is located upstairs in the Courthouse Annex. The Human Services Department also has an office at the Kennedy Center, which office is less than a mile from the Courthouse Annex. The Service Worker V - JCAN is assigned to work out of the Hustler Village Hall. The Human Services Worker I, Case Manager, and the Human Services Worker V, Community Support Program, work out of the Kennedy Center. The majority of the professional employees of the Human Services Department work out of the Courthouse Annex. The Public Health Nurses, like the professional employees of the County's Department of Human Services, work outside of their respective Department offices as necessary to meet with clients and others in homes, schools, institutions, etc. The Department of Human Services and the Department of Public Health Service have the same office hours, i.e., Monday through Friday, 8:00 a.m. to 4:30 p.m. The Public Health Nurses, unlike the majority of the professional employees of the County's Department of Human Services, do not carry a beeper and are not on a 24-hour on-call status. The Public Health Nurses have regularly scheduled clinics in which they work outside of normal office hours and may be called upon to perform other work outside of their normal office hours. Public Health Nurses and professional employees of the County's Department of Human Services are involved in the Zero Through Three program. There are monthly inter-departmental meetings of employees involved in the Zero Through Three program. At least once a month, Public Health Nurses and professional employees of the County's Department of Human Services make joint visits for Community Option Program (COP) assessments, which visits may involve the elderly, but primarily involve maternal and child health care. As is necessary, the Public Health Nurses and professional employees of the County's Department of Human Services make joint visits to schools and to meet with clients who are in maternal and child care programs. The Public Health Nurses make referrals to the Department

of Human Services and the professional employees of the County's Department of Human Services make referrals to the Public Health Service. In the past, Public Health Nurses and professional employees of the Department of Human Services, as well as other non-represented employees of the County, have met as a group to discuss compensation concerns and have met as a group to present these concerns to the County Personnel Committee.

8. The professional employees of the County's Department of Human Services serve the social services need of the County population, while the Public Health Nurses serve the health needs of the County population. Often, the professional employees of the County's Department of Human Services and the Public Health Nurses serve the same client population, e.g., chronically mentally ill; developmentally disabled; elderly; juvenile and CHIPS or delinquencies. Public Health Nurses, like the professional employees of the County's Department of Human Services interview and assess individual and family needs; provide counseling; assist families in dealing with problems; represent their respective departments to schools, institutions, and community organizations; provide services outside of normal office hours as required; visit clients' homes; evaluate clients' need for community services; refer clients to outside agencies as they deem appropriate; and participate in M-Teams. The Public Health Nurses and the professional employees of the Human Services Department share a community of interest with respect to duties, skills, wages, hours and working conditions.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. To create a collective bargaining unit of County professional employees which excludes the positions of Public Health Nurse I and Public Health Nurse II would cause undue fragmentation and contravene the provisions of Sec. 111.70(4)(d)2.a., Stats.

2. All regular full-time and regular part-time professional employees of Juneau County, excluding supervisory, managerial, and confidential employees is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

3. The positions of Public Health Nurse I and Public Health Nurse II, as well as the positions of all of the professional employees in the Department of Human Services listed in Finding of Fact 4, are appropriately included in the collective bargaining unit consisting of "All regular full-time and regular part-time professional employees of Juneau County, excluding supervisory, managerial, and confidential employees."

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

#### DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction among employees of Juneau County in a collective bargaining unit consisting of "all regular full-time and regular part-time professional employees in the employ of Juneau County, excluding managerial, supervisory, confidential and all other employees" who were employed on November 23, 1993, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees voting desire to be represented by Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of collective bargaining with

Juneau County with respect to wages, hours and conditions of employment, or desire no representation.

Given under our hands and seal at the City of  
Madison, Wisconsin this 23rd day of November,  
1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

William K. Strycker /s/  
William K. Strycker, Commissioner

I concur.  
Commissioner

Herman Torosian /s/  
Herman Torosian,



JUNEAU COUNTY

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The petition for election as initially filed by the Union requested that an election be conducted among "all regular full-time and regular part-time professional employes, excluding supervisory, confidential, and managerial employes of the County." At hearing, the Union amended the petition for election by seeking to represent "all regular full-time and regular part-time professional employes employed in the Juneau County Human Services Department, excluding supervisory, confidential and managerial employes, and excluding Public Health Nurses." The County maintains that the amendment to the election petition is untimely and that the collective bargaining unit being sought by the Union in the amendment to the Petition is inappropriate because the exclusion of the Public Health Nurses violates the statutory prohibition against fragmentation of collective bargaining units.

POSITIONS OF THE PARTIES

Union

By the letter dated June 8, 1993, the County was notified that the Union did not seek to represent the County Public Health Nurses. The Commission has long accepted amendments of election petitions before, during, and even after hearing. The Union's petition for election, as amended at hearing, is properly before the Commission.

The Commission has consistently found that MERA does not require the establishment of the "most appropriate unit." Thus, the Union need not demonstrate that the collective bargaining unit sought by the County is inappropriate.

The Human Services professionals, who are required to have a bachelors' or masters' degree, have skills and duties, such as attending to mental health needs, that are similar to one another, but which are distinct from that of the Public Health Nurses, who are required to hold a bachelors' degree. The Human Services professionals are paid according to the County Non-Union Salary Schedule, while the Public Health Nurses are paid according to the Public Nurse Merit System.

The Public Health Nurses and the Human Services professionals work in separate departments, do not have common supervision and do not have a common workplace. The Public Health Nurses, unlike the Human Services professionals, are not on-call, do not carry beepers and do not provide 24 hour crisis intervention (on-call) services. Unlike the Human Services professionals, the Public Health Nurses work outside of normal business hours to provide immunization clinics and related health services.

The County's proposal to include five Public Health Nurses in a bargaining unit which also contains eighteen Human Services professionals places the interests of the subordinate Public Health Nurses at risk. A risk which was noted by Commissioner Torosian in his dissenting opinion in Taylor County, Dec. No. 27360 (8/92). In Taylor County, the Commission's refusal to permit the separation of the bargaining unit was due, in large part, to the eleven year bargaining history of an overall professional unit. Such bargaining history is absent in the present case. Moreover, the pay scale of

the Public Health Nurses, which is a radical departure from the pay scale of the other non-represented employees, suggests that the Nurses have a markedly different bargaining history than the Human Services professionals.

The Human Services professionals share a community of interest which is separate and distinct from that of the Public Health Nurses. The wages, hours, workplace, supervision, and working conditions are similar to one another and distinct from that of the Public Health Nurses. The establishment of the Human Services professional unit sought by the Union would not cause undue fragmentation of the bargaining units.

The Union requests the Commission to direct an election among employees in a collective bargaining unit consisting of the professional employees of the Juneau County Human Services Department, which unit would exclude the Public Health Nurses. In the event the Commission fails to find such a unit appropriate, the Union wishes to reserve the right to proceed on an election for all Juneau County professional employees.

#### County

The amendment to the election petition, which changes the bargaining unit from an overall professional unit to one which is limited to social workers, constitutes a new and different petition. The Commission has consistently held that it must resolve one election issue before considering another and that if more than one election petition is filed within a one year period, the subsequent petition is untimely. (cites omitted) The Commission should dismiss the election petition as amended at hearing and limit its deliberation to the issue raised in the original petition, i.e., is a collective bargaining unit comprised of "All regular full time and regular part-time professional employees, excluding supervisory confidential, and managerial employees" an appropriate unit.

The Public Health Nurses and Human Services professionals have a history of meeting as a group to discuss wage concerns and have met as a group to discuss these concerns with the County Board's Personnel Committee. The Public Health Nurses and Human Services professionals serve many of the same clients and often jointly provide services. The Public Health Nurses and Human Services professionals not only have a shared interest in wages and benefits, but they also have a shared purpose, i.e., to ensure that their clients adapt and adjust to daily living and attain the highest level of independent living.

The Public Health Nurses and Human Services professionals have independent County Board Committees overseeing their respective departments, but there is common supervision in that both groups of employees are accountable to various County Committees, such as Finance, Personnel, and Insurance. The normal work hours of the Public Health Service and Human Services Departments are 8:00 a.m. to 4:30 p.m. As needed, the Public Health Nurses may be called in to work outside of their normal work hours, which is similar to the on-call status of some of the Human Services professionals. The Department of Human Services and the Public Health Nursing Department share space in the Courthouse Annex. The Department of Human Services also has an office at the Kennedy Center.

The Public Health Nurses and Human Services professionals share a community of interest. To exclude the Public Health Nurses from the bargaining unit would be a violation of the Commission's statutory duty to avoid fragmentation of collective bargaining units.

## DISCUSSION

### Jurisdiction

On April 22, 1993, the Union filed a petition for an election with the Commission in which the Union sought to represent all regular full-time and regular part-time professional employees, excluding supervisory, confidential and managerial employees of the County. On May 4, 1993, the Union filed a second petition which differed from the original petition in one respect, i.e., in response to a question on the form which asked the Petitioner to indicate whether the claimed unit contained any professional, craft or supervisory employees, the Union circled the word "professional." At hearing, on September 2, 1993, the Union amended its petition for election by stating that the claimed appropriate bargaining unit consisted of "all regular full-time and regular part-time professional employees employed in the Juneau County Human Services Department excluding supervisory, confidential, and managerial employees, and excluding public health nurses."

Relying upon Milwaukee Area Technical College, Dec. No. 11755 (WERC, 4/73); City of Milwaukee, Dec. No. 9477 (WERC, 1/70) and City of Milwaukee, Dec. No. 9172 (WERC, 7/69), the County argues that the Union's petition, as amended at hearing, should be dismissed because the Union has filed more than one petition within a one-year period and the petition is untimely. In City of Milwaukee, Dec. No. 9172 (WERC, 7/69), AFSCME, District Council 48, filed a petition for election among employees in a collective bargaining unit represented by Teamsters Local 242, which unit had been certified by the Commission following an election conducted by the Commission. At the time that AFSCME filed the petition, the Teamsters and the City were in fact finding. Concluding that the Teamsters and the City were entitled to an opportunity to enter into a collective bargaining agreement through good faith bargaining and the use of fact finding, the Commission found the AFSCME petition to be untimely.

In City of Milwaukee, Dec. No. 9477 (WERC, 1/70), the Commission certified Teamsters Local 242 as the collective bargaining representative of a group of City of Milwaukee employees. The election certification was issued on September 13, 1968. When the City and the Teamsters were unable to reach an agreement on the terms of the collective bargaining agreement, the Commission ordered the matter to fact finding. On October 3, 1969, following the Teamster unit's rejection of the fact finder's recommendations, AFSCME, District Council 48 filed an election petition requesting another election among employees in the Teamsters unit. Concluding that the Teamsters, the certified

collective bargaining representative, was entitled to a reasonable period of time to conduct negotiations on behalf of the collective bargaining unit before the Commission entertained another petition for election among the employees represented by the Teamsters, the Commission dismissed the AFSCME petition as untimely.

The County employees affected by the instant proceeding are not currently represented by any labor organization. Unlike the two City of Milwaukee cases relied upon by the County, consideration of the Union's election petition, as amended at hearing, would not deprive any certified collective bargaining unit representative of a reasonable opportunity to negotiate a collective bargaining agreement. Dismissal of the Union's petition for election, as amended at hearing, would not further the policy considerations which were the basis of the Commission's decision in the two City of Milwaukee cases and the Commission rejects the County's argument that these two decisions provide any basis for finding the Union's petition, as amended at hearing, to be untimely.

In Milwaukee Area Technical College District, the Milwaukee Theatrical Stage Employees Union Local 18, AFL-CIO, filed an election petition seeking to represent five employees who were part of a larger group who had voted against representation in an earlier election which had been conducted by the Commission. Applying the language of Sec. 111.70(4)(d)5, Stats., the Commission concluded that the passage of five months since the last election and/or the fact that the election sought by Petitioner would involve a substantially smaller voting group did not constitute a "sufficient reason for another election" and dismissed the petition for election as untimely filed. In reaching this decision, the Commission recognized that it would be disruptive to subject municipal employers to nearly continuous representation campaigns.

Neither side argues, and the record does not establish, that any of the employees affected by this proceeding have been a part of a voting group in any prior representation election conducted by the Commission. Given the absence of any prior election activity, the rationale underlying the Commission's decision to dismiss the election petition in Milwaukee Area Technical College District is not applicable to the instant proceeding.

The Commission has permitted amendments to election petitions when the Commission has been satisfied that neither party suffered any substantial surprise or inconvenience in either the amendment of the original petition or the filing of the subsequent petitions. 4/ As the Union argues, the election petition which was filed with the Commission on May 4, 1993, does not differ materially from the petition which was filed on April 22, 1993. 5/ However, there is a difference between the collective bargaining unit sought by the Union in the petition filed on April 22, 1993 and that which was sought by the Union at hearing on September 2, 1993 in that the latter does not include the positions of Public Health Nurse.

As the Union argues, Union Representative White's letter of June 8, 1993 provided the County with notice that the Union was not seeking to represent the

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4/ Joint School District No. 3, City of Oconomowoc, et al., Dec. No. 10388 thru 10388-E (WERC, 6/71).

5/ The petition filed on May 4, 1993, differed from the original petition in one respect, i.e., in response to a question on the petition form which asked the Petitioner to indicate whether the claimed unit contained any professional, craft or supervisory employees, the Union circled the word "professional."

Public Health Nurses. Additionally, the Union's amendment of the election petition at hearing did not deprive the County of the right to argue that the appropriate collective bargaining unit is the professional unit described in the Union's original petition. We are satisfied that the amended petition has not caused the County any substantial surprise or inconvenience and that the Union's election petition, as amended at hearing, is appropriately before the Commission.

#### Appropriate Unit

The County, contrary to the Union, argues that the collective bargaining unit sought by the Union is inappropriate because it would contravene the Commission's statutory mandate to avoid fragmentation. Section 111.70(4)(d)2.a., Stats., the statutory provision relied upon by the County, states in pertinent part:

The commission shall determine the appropriate bargaining unit for the purposes of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit. . . .

Our rationale in Taylor County 6/ is applicable to the instant matter.

When exercising our statutory discretion to determine whether a proposed bargaining unit is appropriate, we have consistently considered the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.

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6/ Dec. No. 27360 (WERC, 8/92). In that case Chairperson Hempe and Commissioner Strycker found that an 11 year bargaining history containing only two arguable instances of the interests of one group being "submerged" to those of a larger one were insufficient reasons to fragmentize the bargaining unit. Commissioner Torosian took a sterner view of those two instances and thus dissented.

5. The degree to which the employees in the unit sought have a common or exclusive workplace.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

We have used the phrase "community of interest" as it appears in Factor 1 as a means of assessing whether the employees participate in a shared purpose through their employment. We have also used the phrase "community of interest" as a means of determining whether employees share similar interests, usually -- though not necessarily -- limited to those interests reflected in Factors 2 - 5. This definitional duality is of long-standing, and has received the approval of the Wisconsin Supreme Court. 4/

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4/ Arrowhead United Teachers v. WERC, 116 Wis.2d 580, 592 (1984):

. . . when reviewing the commission's decisions, it appears that the concept (community of interest) involves similar interests among employees who also participate in a shared purpose through their employment. (Emphasis supplied.)

The fragmentation criterion reflects our statutory obligation to "avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal workforce." 5/

The bargaining history criterion involves an analysis of the way in which the workforce has bargained with the employer or, if the employees have been unrepresented, an analysis of the development and operation of the employee/employer relationship. 6/ Although listed as a separate component, under some circumstances, analysis of bargaining history can provide helpful insights as to how the parties, themselves, have viewed the positions in question in the past from the standpoint of both similar interests and shared purpose.

Based upon long-standing Commission precedent, we believe it is well understood by the parties that within the unique factual context of each case, not all criteria deserve the same weight 7/ and thus a single criterion or a combination of criteria listed above may be determinative. 8/

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5/ Section 111.70(4)(d)2.a., Stats.

6/ Marinette School District, Dec. No. 27000 (WERC,

9/91).

- 7/ Shawano-Gresham School District, Dec. No. 21265 (WERC, 12/83); Green County, Dec. No. 21453 (WERC, 2/84); Marinette County, Dec. No. 26675 (WERC, 11/90).
- 8/ Common purpose Madison Metropolitan School District, Dec. Nos. 20836-A and 21200 (WERC, 11/83); similar interests, Marinette School District, supra; fragmentation, Columbus School District, Dec. No. 17259 (WERC, 9/79); bargaining history, Lodi Joint School District, Dec. No. 16667 (WERC, 11/78).

We acknowledge that the Public Health Nurses and the professional employees of the County's Department of Human Services each perform professional services under the aegis of one clearly identifiable profession. However, we are persuaded that the two groups of employees often perform similar duties and use similar skills. For example, Public Health Nurses, like the professional employees of the County's Department of Human Services, interview and assess individual and family needs; provide counseling; assist families in dealing with problems; represent their respective departments to schools, institutions, and community organizations; provide backup emergency services outside of normal office hours as required; visit clients' homes; evaluate clients' need for community services; refer clients to outside agencies as they deem appropriate; and participate in M-Teams.

It is true that the professional employees of the Department of Human Services, unlike the Public Health Nurses, are on the "Nonunion Salary Schedule." As a result, the Public Health Nurses have a higher minimum salary, a higher maximum salary, and progress more quickly to the maximum salary than the professional employees of the Department of Human Services who are in a comparable Grade. It is evident, however, that the wages paid to the Public Health Nurses fall within the range of the wages paid to the professional employees of the County's Department of Human Services. We are persuaded, therefore, that there is a similarity in the wages of the Public Health Nurses and the professional employees in the Department of Human Services.

The Department of Human Services and the Department of Public Health Service have the same office hours. The Public Health Nurses are regularly scheduled to work outside of their normal work hours to provide coverage at clinics. The professional employees in the Department of Human Services carry a beeper and are on 24 hour call. While it is true that the Public Health Nurses and the professional employees in the Department of Human Services differ in the manner in which they are called upon to work outside of their normal office hours, on balance, they share a similarity of hours.

To be sure, the Public Health Nurses work in a Department which is separate and distinct from that of the professional employees of the County's Department of Human Services. However, since the professional employees in the Department of Human Services do not share a common workplace, the lack of a common workplace is not a compelling factor. 7/ We note, however, that the Public Health Nurses work in an office which is located in the Courthouse Annex, as do the majority of the professional employees of the County's Department of Human Services.

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7/ Professional employees of the Department of Human Services work in the Courthouse Annex, the Kennedy Center, and the Hustler Village Hall.

Contrary to the argument of the County, the fact that the Public Health Nurses and the professional employees in the Department of Human Services are under the general supervision of the County Board, and its committees, does not establish that the two groups of employees have common supervision. Of relevance is the supervision which is provided by the supervisory and managerial employees within the Public Health Service and Human Services Department. As the Union argues, this supervision is separate and distinct.

Both groups of employees are involved in The Zero Through Three program and the Community Option Program. The Zero Through Three program involves monthly inter-departmental meetings and, at least once a month, Public Health Nurses and professional employees of the County's Department of Human Services make joint visits for COP assessments, which visits may involve the elderly, but primarily involve maternal and child health care. Additionally, the Public Health Nurses, like the professional employees of the County's Department of Human Services, visit client homes, community schools and community institutions. Indeed, it is not uncommon for Public Health Nurses and the professional employees of the County's Department of Human Services to make joint visits to schools and to make joint visits to meet with clients who are in maternal and child care programs.

As the Union argues, the Public Health Nurses have a wage schedule which is separate and distinct from that of the professional employees in the Department of Human Services. The record, however, is insufficient to establish the reasons for this difference. The record does, however, establish that, in the past, both group of employees, as well as other non-represented employees, have met together discuss compensation concerns and to present these concerns to the County's personnel committee. In the present case, neither the evidence of "bargaining history," nor any other record evidence, provides a reasonable basis to conclude that the interests of the Public Health Nurses will be submerged by the interests of the larger group of Department of Human Services professional employees.

It is true that the professional employees of the County's Department of Human Services serve the social services need of the County's residents, while the Public Health Nurses serve the health needs of the County's residents. The Public Health Nurses, however, make referrals to the Department of Human Services and the professional employees of the County's Department of Human Services make referrals to the Public Health Service. Frequently, the professional employees of the County's Department of Human Services and the Public Health Nurses serve the same client population, e.g., chronically mentally ill; developmentally disabled; elderly; juvenile and CHIPS or delinquencies. We are persuaded that the Public Health Nurses and the professional employees in the Department of Human Services possess a shared purpose to assess and meet the needs of this client population.

The Commission has a statutory obligation to strike a balance between the need to avoid fragmentation of the workforce by maintaining as few units as practicable and the need to ensure that the unique interests and aspirations of a given group of employees are not subordinated to the interests of another group. In the present case, the only professional employees of the County who are not managerial, confidential or supervisory are the Public Health Nurses and the professional employees of the County's Department of Human Services which the Union seeks to represent. Application of the above factors leads us to conclude that the Public Health Nurses share a community of interest with the professional employees in the County's Department of Human Services such that to exclude the Public Health Nurses from the professional bargaining unit being sought by the Union would result in undue fragmentation.



Conclusion

Inasmuch as the professional collective bargaining unit sought by the Union contravenes our statutory directive to avoid undue fragmentation, it is not an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats. As the County argues, the appropriate collective bargaining unit is one which consists of "All regular full-time and regular part-time professional employees of Juneau County, excluding supervisory, managerial and confidential employees."

Dated at Madison, Wisconsin this 23rd day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

William K. Strycker /s/

William K. Strycker, Commissioner

Concurring Opinion of Commissioner Torosian

I concur. My dissent in Taylor County was based on the petitioning nurses' request for "(1) a unit that would otherwise be appropriate and (2) a history of representation in which the unique interests and aspirations of said proposed unit have clearly been submerged by a larger group of different professionals . . ." (footnotes omitted)

The instant case is distinguishable in that there is no history of interests being submerged.

Dated at Madison, Wisconsin this 23rd day of November, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/

Herman Torosian, Commissioner