

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

BARRON COUNTY

Involving Certain Employees of

BARRON COUNTY

Case 31
No. 54668
ME-863

Decision No. 18583-A

Appearances:

Mr. Michael J. Burke, Executive Director, Northwest United Educators, 16 West John Street, Rice Lake, Wisconsin 54868, appearing on behalf of Northwest United Educators.

Weld, Riley, Prenn & Ricci, S.C., Attorneys at Law, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, by **Ms. Kathryn J. Prenn**, appearing on behalf of the County.

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

On November 25, 1996, Barron County, herein the County, filed a petition for unit clarification with the Wisconsin Employment Relations Commission asking that the Payment Counselor position and the Crime/Victim Witness Coordinator position be excluded from a Northwest United Educators bargaining unit of professional employees in the Department of Social Services. Hearing in the matter was held in Barron, Wisconsin on May 27, 1997 before Examiner Dennis P. McGilligan, a member of the Commission's staff. A stenographic transcript of the proceedings was completed and received by June 3, 1997. The parties submitted post-hearing briefs, the last of which was received October 10, 1997. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

Northwest United Educators, hereinafter the Union or NUE, is a labor organization which has its offices located at 16 West John Street, Rice Lake, Wisconsin 54868.

Barron County, hereinafter the County, is a municipal employer which has its offices at 330

East LaSalle Street, Barron, Wisconsin 54812.

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1. In 1981, pursuant to a stipulation between NUE, the County and AFSCME Council 40, the Wisconsin Employment Relations Commission directed an election in a bargaining unit described as:

. . . all regular full-time and regular part-time Social Workers and Trainees employed by Barron County in the Department of Social Services, . . .

NUE won the election and was certified by the Commission as being the collective bargaining representative of employees in the above-described unit.

The 1996-1997 contract between NUE and the County describes the bargaining unit as:

. . . all regular full-time and regular part-time Social Workers and all other regular full-time and regular part-time employees of the Department of Social Services excluding the Director, supervisory, confidential, management, support, casual, seasonal and temporary employees.

1. On November 25, 1996, the County filed a unit clarification petition requesting that the positions of Payment Counselor and Crime/Victim Witness Coordinator be excluded from the existing professional employee bargaining unit described in Finding of Fact 3 because they are not “employees of the Department of Social Services.” The County contends that said positions could appropriately be included in a new residual professional employee bargaining unit consisting of:

all regular full-time and regular part-time professional employees excluding Social Workers, public health and registered nurses, the nutritionist, the director of the Health Department, the director of social services, the supervisory, confidential, managerial, support, casual, seasonal, and temporary employees.

The Union argues that these positions should continue to be included within the aforesaid existing professional bargaining unit.

1. The County has the following bargaining units: a courthouse nonprofessional unit represented by AFSCME; a Highway Department unit represented by AFSCME; a Sheriff’s Department law enforcement unit represented by WPPA; a Health Department professional unit represented by NUE; a social services professional unit represented by NUE; and a social services support staff nonprofessional unit represented by NUE.

1. In the Health Department professional bargaining unit, there are approximately 22 Nurses and 1 Nutritionist. In the Social Service professional bargaining unit, there are approximately 20 Social Workers, 5 Payment Counselors, and 1 Crime/Victim Witness Coordinator.

1.The nonprofessional support staff employees in the Health Department are in the courthouse nonprofessional bargaining unit.

2.The County and NUE stipulated that the Payment Counselor position and the Crime/Victim Witness Coordinator position are filled by professional employees within the meaning of Sec. 111.70(1) (L), Stats.

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3.The Crime/Victim Witness Coordinator position was created in 1994 under the jurisdiction of the District Attorney. Although the position is not in the Department of Social Services, the parties agreed to add the position to the social services professional employees bargaining unit.

4.Prior to July 31, 1996, the Payment Counselors were employees of the Department of Social Services where the County's child support activities had been located since 1975. Effective July 31, 1996, the County created a separate Child Support Agency. This change resulted in the Payment Counselors no longer being employees of the Department of Social Services. At the time of the hearing, there were six Payment Counselor positions, five filled and one vacant.

The Child Support Agency is not under the supervision or jurisdiction of the Department of Social Services.

11. Effective July 1, 1997, the two support staff clerical positions in the Child Support Agency were removed from the social services nonprofessional bargaining unit and added to the courthouse nonprofessional bargaining unit.

12. Issues such as supervision, disciplinary actions, approval of leaves, approval of vacation, and approval of compensatory time for the Payment Counselor and Crime/Victim Witness Coordinator positions are outside of the jurisdiction of the Department of Social Services and are handled within other departments of Barron County; namely, the Child Support Agency and the District Attorney's office, respectively.

13. The Payment Counselor positions are located on the third floor of the County courthouse while the Crime/Victim Witness Coordinator position is housed in the District Attorney's office which is located on the second floor of the courthouse. The Social Workers' offices are located on the fourth floor of the courthouse.

14. Payment Counselors and Social Workers have historically been at the same pay level pursuant to the applicable collective bargaining unit covering employees in the bargaining unit described in Finding of Fact 3. However, the Payment Counselors do not have the same merit system or salary progression as do the Social Workers.

1.Although Payment Counselors are no longer supervised by the Department of Social Services,

they still enjoy the same pay, benefits and working conditions as they did when they worked for the Department of Social Services. Payment Counselors have occasional contact with Social Workers in the course of performing their duties.

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

CONCLUSION OF LAW

The Payment Counselor and Crime/Victim Witness Coordinator positions are not appropriately included within the bargaining unit described in Finding of Fact 3.

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

ORDER CLARIFYING BARGAINING UNIT

The positions of Payment Counselor and Crime/Victim Witness Coordinator are hereby excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 14th day of January, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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

POSITIONS OF THE PARTIES

Union

The Union, in its brief, argues that the “undue fragmentation” and “bargaining history” criteria strongly support the continuation of the aforesaid positions within the existing bargaining unit. The Union also argues that the positions share a community of interest with the employees in the Social Services bargaining unit.

In support thereof, the Union first argues that if the Commission were to exclude the positions from the Social Services professional bargaining unit, “it is possible that the employees will form a separate courthouse professional bargaining unit.” The Union opines that not only are seven (7) bargaining units too many for the County, but three professional bargaining units for less than fifty (50) employees is fragmentation. (Emphasis supplied) The Union contends that the County’s testimony (Attorney Prenn) and rejection of the Union’s proposal to combine all professional employees in the courthouse into a single bargaining unit “is evidence that the County is interested in small, compartmentalized bargaining units.” The Union concludes that while such a philosophy may work well for management contract administration, it violates the anti-fragmentation mandate of Sec. 111.70(4)(d)2.a., Stats.

The Union also argues that bargaining history supports its position. In this regard, the Union points out the voluntary inclusion of the Crime/Victim Witness Coordinator position in the

Social Services bargaining unit in June, 1994, as well as the fact that if the County's position is upheld, the Payment Counselors "will be forced out of a bargaining unit that they have been in since the child support unit was established in 1975."

The Union further argues that the disputed positions share a community of interest with the employees in the Social Services professional bargaining unit because they all are professional employees; they all work in the courthouse and share common hours and working conditions as a result thereof; and the Payment Counselors' pay has been linked to the Social Worker I pay in the parties' collective bargaining agreement.

In conclusion, the Union concedes that this might be a difficult case for the Commission because the employees in question do not work for the County's Social Services Department yet are included in said department's bargaining unit. However, the Union believes that exclusion of these positions will result in the undue fragmentation of bargaining units. Based on all of the foregoing, the Union requests that the aforesaid employees be allowed to remain in the existing Social Services bargaining unit or, in the alternative, that the Commission require an election to consolidate all professional employees working in the courthouse.

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County

The County initially argues that the Commission has the authority to remove the Payment Counselor and Crime/Victim Witness Coordinator positions from the Social Services professional bargaining unit. In this regard, the County asserts that its decision to create a Child Support Agency separate and apart from the Department of Social Services is a change in circumstances which materially affects the unit status of the aforesaid positions and permits modification of the voluntarily agreed upon Social Services professional bargaining unit.

The County next argues that the Commission has the authority to create a bargaining unit for courthouse professional employees who are not employees of the Department of Social Services. In this regard, the County maintains that the Commission has both the authority to determine whether it is inappropriate to continue to include the Payment Counselor and the Crime/Victim Witness Coordinator positions in the existing Social Services professional bargaining unit and to decide whether their inclusion in the proposed courthouse professional employees bargaining unit would be appropriate. The County cites Secs. 111.70(1)(b) and (4)(d)2.a., Stats., and SHAWANO COUNTY (MAPLE LANE HEALTH CARE CENTER), DEC. NO. 22382 (WERC, 2/85) in support thereof.

The County also argues that the continuation of the aforesaid positions in the Social Services professional employees bargaining unit is inappropriate, and their inclusion in the proposed courthouse professional employees bargaining unit is appropriate. In this regard, the County first points out that the Payment Counselors are no longer employees of the Department of Social Services, but of a new and separate department within the courthouse with its own director. The

County adds that whereas the Payment Counselors had previously been subject to the jurisdiction of the Social Services Committee or Board, there is now a separate Child Support Agency Committee which oversees the newly-created Child Support Agency. The County believes that the Payment Counselors cannot “have a foot in each puddle.” In the opinion of the County, they cannot be both “employees of the Department of Social Services” as referenced in the Social Services professional employees’ bargaining unit recognition clause, and not “employees of the Department of Social Services.” Finally, the County notes that the differences between Social Workers and Payment Counselors have been recognized at the bargaining table in that a wage progression has been bargained for Social Workers, but not for the Payment Counselors, or for the Crime/Victim Witness Coordinator.

The County further maintains that the Crime/Victim Witness Coordinator was never an employee of the Department of Social Services, and, therefore, never shared a community of interest with the Social Services professional employees. As is the case with the Payment Counselors, the Crime/Victim Witness Coordinator does not share office space, support staff or duties with the Social Workers. Said position is not hired by or subject to supervision by the Department of Social Services, is not housed in said Department, does not receive support staff services from the Department and is under the jurisdiction and supervision of the District Attorney’s office.

Finally, the County argues that bargaining history supports its position. The County points out that when it agreed to add the Crime/Victim Witness Coordinator position to the Social Services professional employees bargaining unit, it had only two choices (since it did not make sense to create a courthouse professional employees bargaining unit comprised of only one

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employee in 1994) – add the position to the Health Department professional unit or add the position to the Social Services professional employees bargaining unit. With the change in circumstances with respect to the Payment Counselors, the County believes the time has come for the creation of a courthouse professional employees bargaining unit comprised of seven professional employees with more to come in the future. The County adds that just as the parties agreed to move two clerical positions from the Social Services support staff bargaining unit to the courthouse nonprofessional unit, it is reasonable to move the disputed professional positions from the Social Services professional unit to the proposed courthouse professional unit.

In its reply brief, the County first reiterates its belief that bargaining history supports its position. In this regard, the County states “that the die was cast many years ago when separate bargaining units were established for the professional employees in the Public Health Department and the professional employees in the Social Services Department.” The County opines “that the only logical next step is to establish the third side of the triangle, i.e., a bargaining unit for the professional employees in other departments in the courthouse.” The County believes that this makes more sense than the Union’s proposal to alter the recognition clause in the Social Services professional employee collective bargaining agreement, while not similarly tampering with the recognition clause in the agreement for the County’s other professional employees i.e., the nurses.

The County also argues that the Union's proposal disrupts the historically based situation which has provided for separate and distinct bargaining units for the Social Services employees. The County concludes that this disruption "when balanced against the nebulous concerns about the creation of a new bargaining unit which is consistent with the pattern of bargaining units already established within the County" tips the scales in favor of the County's proposal to create a new courthouse professional unit.

The County next argues that the Union has overstated the significance of the anti-fragmentation provision of the statute to be considered citing SHAWANO COUNTY (MAPLE LANE HEALTH CARE CENTER, SUPRA, wherein the Commission stated:

The anti-fragmentation provision of the statute is a less absolute, general statement of unit determination policy which the Commission has, with judicial approval, historically included as one of several factors considered in resolving appropriate unit disputes.

The County points out that the bargaining unit at issue in SHAWANO COUNTY was comprised of seven employees, the same number to be initially included in the bargaining unit proposed by the County. The County adds that even though its request will result in several bargaining units within the County, "there is a rhyme and reason to the pattern of those units." In this regard, the County points out that the Social Services Department will continue to have separate bargaining units for the professional and non-professional social service employees while the courthouse will have separate bargaining units for the non-professional courthouse employees and the professional courthouse employees.

The County rejects the Union's assertion that if the Commission excludes the positions from the Social Services bargaining unit, the affected employees will be forced into non-union status. In this regard, the County first notes that Sec. 111.70(4)(d)2.a., Stats., provides that "the commission may provide an opportunity for the municipal employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining

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unit. . . ." (Emphasis added) The County also believes that an election is not necessary because the Union is already the bargaining representative for the affected positions and the County has not opposed that continued representation.

Finally, the County questions the Union's alternative of suggesting that the Commission require an election to consolidate all professional employees working in the courthouse since the nurses are not included. The County adds that the pattern of the bargaining unit composition within the County has served the parties well and that the only missing piece at this point is a unit for the ever increasing number of courthouse professional employees.

For all the reasons set forth above, the County requests that the Commission exclude the

Payment Counselor and Crime/Victim Witness Coordinator positions from the Social Services professional employees unit, “particularly in light of the County’s willingness to immediately establish a courthouse professional bargaining unit for these employees under the continued representation of NUE.”

DISCUSSION

The County has correctly argued that in a unit clarification proceeding, the Commission will not consider altering the voluntarily agreed upon composition of a bargaining unit 1/ over the objection by one of the parties to said agreement unless:

1. The position(s) in dispute did not exist at the time of the agreement; 2/ or
2. The position(s) in dispute were voluntarily included or excluded from the unit because the parties agreed that the position(s) were or were not supervisory, confidential, etc. 3/ or
3. The position(s) in dispute have been impacted by changed circumstances which materially affect their unit status; 4/ or
4. The existing unit is repugnant to the Act. 5/

The County asserts that movement of the Payment Counselors from the Department of Social Services to a separate Child Support Agency is a change in circumstances which materially affects the unit status of the Payment Counselor and Crime/Victim Witness Coordinator positions. We agree.

The Payment Counselors are materially affected by the creation of the Child Support Agency because the bargaining unit has been defined as a “Department of Social Services” unit and the Payment Counselors are no longer employed by that Department. Creation of the Child Support Agency materially affects the unit status of the Crime/Victim Witness Coordinator position (which never was a Social Services Department position) because there now exist six other non-Social Services professional employees.

Turning to the merits of the question of whether the disputed positions should continue to be included in the Department of Social Services unit, we conclude their exclusion is appropriate.

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The unit was created as a departmental unit by stipulation of the parties in 1981 and we see no compelling reason to modify its departmental status now. Contrary to the argument of NUE, we are satisfied that the potential creation of a third professional unit will not constitute undue fragmentation and that there is no present compelling community of interest between the Social

Workers, Payment Counselors and the Crime/Victim Witness Coordinator. Therefore, we do not modify the departmental nature of the existing unit and have excluded the disputed positions because they are not held by Department of Social Services employees.

Dated at Madison, Wisconsin this 14th day of January, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

ENDNOTES

1. See generally MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 13134-A (WERC, 1/76); WEST ALLIS-WEST MILWAUKEE SCHOOL DISTRICT, DEC. NO. 16405-C (WERC, 1/89); CITY OF CUDAHY, DEC. NO. 12997 (WERC, 9/74).
2. DANE COUNTY, DEC. NO. 15696-A (WERC, 12/88); TOMAHAWK UNIFIED SCHOOL DISTRICT NO. 1, DEC. NO. 12483-A (WERC, 5/74).
3. CESA #4, DEC. NO. 14177-A (WERC, 7/80); CITY OF CUDAHY, DEC. NOS. 19451-A, 19452-A (WERC, 12/82); DANE COUNTY, DEC. NO. 22976 (WERC, 10/85).
4. MANITOWOC COUNTY, DEC. NO. 13434 (WERC, 3/75); CITY OF MILWAUKEE, DEC. NO. 26019 (WERC, 5/89).
5. WAUKESHA COUNTY, DEC. NO. 14830 (WERC, 8/76); WALWORTH COUNTY, DEC. NO. 9394-A (WERC, 3/73).

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