

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LAW
ENFORCEMENT EMPLOYEE RELATIONS DIVISION**

Involving Certain Employees of
FOREST COUNTY

Case 73
No. 55334
ME(u/c)-3606

Decision No. 29159-B

Appearances:

Ruder, Ware, & Michler, S.C., by **Attorney Dean R. Dietrich**, Suite 600, 500 Third Street, P.O. Box 8050, Wausau, Wisconsin, appearing on behalf of Forest County.

Mr. Robert E. West, Consultant, 2001 Gilbert Road, Madison, Wisconsin and **Mr. Steven J. Urso**, Executive Assistant, Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, 340 Coyier Lane, Madison, Wisconsin, appearing on behalf of Wisconsin Professional Police Association/Law Enforcement Employee Relations Division.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

Wisconsin Professional Police Association/Law Enforcement Employee Relations Division filed a unit clarification petition on September 17, 2001, with the Wisconsin Employment Relations Commission seeking to include four positions in an existing bargaining unit of Forest County employees that it represents for the purpose of collective bargaining.

Dec. No. 29159-B

Hearing was held in Crandon, Wisconsin, on December 18, 2001, before Examiner Lauri A. Millot, a member of the Commission's staff.

The County argues the following bases for continued exclusion of the four positions from the unit:

1. Case Manager-Professional, Temporary
2. Parent Partner- Temporary
3. Lead Parent Partner-Temporary
4. Intensive Supervision Worker- Professional, Temporary

The parties filed written briefs by February 8, 2002.

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

FINDINGS OF FACT

1. Wisconsin Professional Police Association/Law Enforcement Employee Relations Division, hereinafter WPPA, is a labor organization with its offices located at 340 Coyier Lane, Madison, Wisconsin 53713.

2. Forest County, hereinafter the County, is a municipal employer with its offices located at 22 East Madison Street, Crandon, Wisconsin. The County provides governmental services to the public of Forest County.

3. In FOREST COUNTY, DEC. NO. 29159-A (WERC, 10/97), the Wisconsin Employment Relations Commission certified WPPA as the exclusive bargaining representative of a bargaining unit defined as

. . . all regular full-time and regular part-time employees of the Courthouse and Annexes and the Sheriff's, Highway and Social Services Departments of Forest County, excluding professional, confidential, supervisory and managerial employees, non-clerical employees of the Highway Department, employees of the Sheriff's Department with powers of arrest, elected officials and temporary employees

4. The incumbent in the position of Case Manager is Barb Dawson. The County hired Dawson in July, 2000.

Dawson's job description reads in pertinent part:

CASE MANAGER

(Early Intervention, Posit, Brighter Futures and Kinship/Foster Care)

GENERAL STATEMENT OF DUTIES: Serves as the Case Manager to the Children and Family Unit. This position operates under the direct supervision of the Agency Director and performs related work as required and assigned by the agency Director.

. . .

PRINCIPAL DUTIES AND RESPONSIBILITIES: Provide case management and intakes services to delinquent/uncontrollable youth and child abuse/neglect referrals. Screen referrals for statutory compliance. Complete intake process upon referral from the law enforcement agencies, public sources and schools. Assess needs of child and develop case plan to service needs of child and family. Provide court reports and testimony when required. Monitor and enforce orders of the court as they pertain to child and family. Provide referrals and administer services involving foster care placements. Administer POSIT Screens and follow through with enforcement of the recommended treatment plan. Develop and maintain a working knowledge of services provided by other Health, Tribal and Human Service Organizations. Coordinate the services of the Parent Partners within the Brighter Futures Plan. Provide on-call services in accordance with Chapter 48 to residents as needed on a rotating basis. Maintain and update appropriate records for all current cases. Performs related duties and tasks as assigned by the Agency Director.

REQUIRED KNOWLEDGE AND SKILLS: A B.S./B.A. in Social Work or eligibility for Social Work Certification within six months of hire. Valid Wisconsin Driver's License. Availability for back up or on-call services as needed.

ACCEPTABLE EXPERIENCE AND TRAINING: Knowledge of office terminology and procedures. Working knowledge of Windows, WordPerfect and Microsoft Word computer programs. Understanding of state laws pertaining to the operation of the Social Services Department. Possess the ability to make decisions in accordance with laws, regulations, ordinances and established procedures.

. . .

Dawson is responsible for the County's Parent Partner program. The program provides mentoring services to juveniles and parenting skills to referred individuals through the Brighter Futures grant initiative. Dawson screens the referral by talking with the referral person to determine the needs of the referred parent or family and to evaluate whether the identified needs fit the Parent Partner program structure. Dawson decides what services, if any, will be provided to the referred parent or family at County expense.

Dawson is responsible for the County's Kinship/Foster Care program. The Kinship Care program provides funding to families taking care of children in lieu of an out of home placement. Dawson processes application materials consistent with State of Wisconsin eligibility criteria. Dawson submits a Department of Justice Background Check form for all applicants and reviews the result; approves applicants that do not have a violation; and if a violation is identified, she exercises discretion in approving or denying that application. Dawson serves as the Foster Care Coordinator. Dawson receives applications from potential foster homes, evaluates the applicant based on State standards and, if the home meets the standards, licenses the home for foster children. Approximately 10-15 percent of Dawson's time is spent on the Kinship/Foster Care program.

Dawson has responsibility for juvenile justice programs through the Early Intervention grant. Dawson has performed these responsibilities for the County since 1995 – until July, 2000, through an independent contractor. Dawson administers POSIT, a screening tool used with underage drinking juveniles. Dawson spends approximately 10-20 percent of her time on this program.

Dawson performs Juvenile Court intake for first-time juvenile offenders. Dawson receives law enforcement referrals for first time offenders and meets with the offender and the offender's parent(s). Dawson has the authority to (1) counsel and release the offender; (2) offer the offender a deferred prosecution agreement; or (3) refer the offender to the Court for further action. When making this decision, Dawson considers the crime the offender has allegedly committed, the offender's previous record, the offender's family history and the amount, if any, of the offender's cooperation. The District Attorney can overrule Dawson's decision. Dawson monitors the offender's progress in fulfilling a deferred prosecution agreement or order of the Court. If Dawson determines that an offender is "out of compliance" with the terms of his or her agreement, she has the discretion to refer the offender to the Court system. Approximately 40-50 percent of Dawson's time is spent performing Juvenile Court intake responsibilities.

Dawson performs Child Abuse intake for the County. Dawson conducts an initial screening of reports of suspected abuse and/or neglect and determines whether the alleged abuse and/or neglect meets the statutory definition. Dawson conducts emergency child abuse investigations in the absence of the Protective Services Worker. Dawson spends approximately 10 percent of her time performing these investigations.

Dawson holds a Bachelor's degree from the UW-Madison with a Social Work emphasis and a Master's degree from Northern Illinois University in Education. Dawson earned post-graduate credits in assessment and testing. Dawson completed a one-week training program on Juvenile Court Intake. Dawson is a certified Social Worker in the State of Wisconsin.

Dawson's work is predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in its performance. The character of the work and result accomplished cannot be standardized in relation to a give period of time. Dawson's work requires knowledge of a advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in a institution of higher education.

5. The incumbent in the position of Parent Partner is Kathryn Schultz. The County hired Schultz on February 12, 2001. Schultz works a varied number of hours each week depending upon the number of referrals she is assigned. The maximum number of hours she has worked in a week is 40. Schultz is paid \$13.00 per hour.

The job description for the Parent Partner position reads in pertinent part:

. . .

GENERAL STATEMENT OF DUTIES: Serves as a Parent Partner for the Children and Family Unit. This position operates under the direct supervision of the Coordinating Social Worker and performs related work as required and assigned by the Agency Director and the Coordinating Social Worker.

. . .

PRINCIPAL DUTIES AND RESPONSIBILITIES: Provide parent aide services under the Brighter Futures Initiative. Brighter Futures is a performance, outcome based program. Monitoring of foster care placements, including but not limited to Independent Living Skills and services to the parents in accordance with the placement order. Provide services to families identified as having child abuse and neglect services needs. Develop and administers an evaluation tool for youth and there [sic] families that will identify areas of strength and weakness. Provide service to youth who are truant or at risk of truancy when referred by the school. Partner with the Forest County Health Department in their home visitation program to parents of newborns. Develop and maintain a working knowledge of services provided by other health, Tribal and Human Service Organizations. Maintain and update appropriate records for all current cases. Performs related duties and tasks as assigned by Agency Director or Coordinating Social Worker.

. . .

6. Schultz and the County entered into the following agreement:

EMPLOYMENT CONTRACT FOR PARENT PARTNER

BRIGHTER FUTURES INITIATIVE GRANT POSITION

Whereas, the parties named below intend to enter into an employment contract to provide parent aide services under the Brighter Futures Initiative Grant contingent upon continued funding for such position by the State of Wisconsin.

WITNESSETH:

This agreement made this ____ day of ____, 2001, by and between the Forest County Department of Social Services hereinafter referred to as "Employer" and Kate Schultz hereinafter referred to as "Employee":

I. PURPOSE:

The purpose of the Agreement is to provide parent aide services for and on behalf of the Forest County Department of Social Services. The employee shall be responsible for providing those services in the manner set forth herein. It is understood and agreed that this is an independent contractor, and the [sic] accordingly, any and all rights, obligations, privileges and responsibilities attended [sic] to said position shall be only those as are specifically contained in this Agreement, and in any other collateral Agreement that may be executed concurrent or subsequent herewith.

II. DUTIES:

The duties of the employee under this agreement shall be as follows:

- A. Receive referrals for Parent Partner from either the Director of the Forest County Department of Social Services or by Juvenile Court Intake Worker/Children Services Worker of the Forest County Department of Social Services. Referrals may also be received from school staff, Forward Service staff, mental health providers, etc.
- B. Upon receipt of a referral the employee shall commence contact with the referred individual and appropriate family members. All aspects of the referral shall be discussed and explained including duration and expectations. The employee shall make periodic reports on the status of said individuals to either the coordinating social worker or referring caseworker. The employee shall be available to testify in Court as may be needed and as scheduled from time to time.

- C. The employee shall keep accurate records for data collection and any reports that are required to be submitted to the Brighter Futures Initiative Management Team. The employee shall attend any and all staff meetings as required by the Director from time to time and keep other accurate records concerning hours worked, mileage and meal expenses incurred as may be required of him/her by the Director of Forest County Department of Social Services.
- D. He/She shall have other duties as may be assigned to him/her from time to time by the Director of Forest County Department of Social Services or coordinating social worker.

III. COMPENSATION:

The Parent Partner, lead parent aide, shall be compensated at an hourly rate for each hour devoted to performing the duties that are prescribed by this Contract. The hourly rate shall be in the amount of \$13.00 dollars per hour with payment to be made on a bi-weekly basis contingent upon, at least five (5) days prior thereto, the employee shall submit signed documentation as to the number of hours worked within the preceding bi-weekly period for which compensation is sought. Since the Parent Partner is an independent contractor, the hourly rate paid herein shall be in lieu of, including but not limited to, all required Social Security contributions, pension, Federal and State withholding. The Parent Partner shall be solely responsible for any and all liability with respect to requirements under the Social Security Act, Internal Revenue Code and the State of Wisconsin Income Taxes.

It is agreed and understood that this is a limited term employment contract and accordingly, the employee shall not work for, nor shall be subject to reimbursement for more than thirty-five [sic] (35) hours under the terms of this Contract.

IV. EXTENSION:

Notwithstanding the foregoing, it is agreed that this Contract may be extended by mutual agreement of both parties subsequent to the number of hours agreed to herein, or it may be extended at any other such time as this Contract may be terminated as provided in this Agreement.

V. EXPENSES:

In addition to the compensation set forth in the foregoing paragraph, the Parent Partner shall be reimbursed for any and all mileage devoted to supervision

services and other related duties at the rate of \$.29 per mile, not to exceed ____ number of miles for the term of this Contract. The expenses shall be compensated on a monthly basis, subject to signed verification such as submission of travel logs.

VI. LIABILITY INSURANCE:

The employer agrees to provide professional liability insurance for and to the benefit of the employee.

VII. TERMINATION:

This Agreement shall automatically terminate upon such time as the employee has worked the required number of hours under Article III of this Contract. Irrespective of the number of hours worked, this Agreement shall automatically terminate on December 31, 2001. Further, notwithstanding any contrary provision contained herein, either the employer or the employee may terminate this Contract at will and without the necessity of demonstrating cause, by providing the other party thirty (30) days written notice as to the intent of said party to terminate this Contract.

Dated this ____ day of ____ 2001

Kate Schultz, Parent Partner

Chuck Sekel, Director
Forest County Department of Social Services

Paul I. Millan, Chairman
Social Services Board
Forest County

7. Barb Dawson, Case Manager, assigns children and families to Schultz based on referrals received by the County. Schultz meets with Dawson who briefs Schultz on the needs of the child. Schultz is either provided a case plan for each child or she refers to a case plan previously prepared by Dawson for a similar situation. Schultz may consult with Dawson or Linda McEwen, Lead Parent Partner, to obtain suggestions on how to proceed with the child. Schultz has authority to schedule the date, time and location where she will meet the families and children, although it is generally dictated by the preferences of the families. Schultz meets

with children and families at the child's home, at school or at the County Courthouse. Dawson interacts daily with Schultz. Dawson reviews Schultz's caseload monthly and provides feedback to Schultz as to whether she is doing "a good job" or Dawson may direct Schultz to "do this differently."

8. Schultz' work is funded by a yearly Brighter Futures grant first obtained by the County in January, 2001. The County anticipates that the grant will be renewed annually to cover the period through December 31, 1993.

Schultz has a reasonable expectation of continued employment.

9. The incumbent in the position of Lead Parent Partner is Linda McEwen. The County hired McEwen in February 2001. In February, 1997, McEwen began working for Family Partners, a private social work agency that contracted her services to the County where she performed essentially the same work she currently performs. McEwen's supervisor is Barb Dawson, Case Manager. McEwen works a varied number of hours each week depending upon the number of referrals she is assigned in the Wabeno/Laona area. She currently works 2-4 hours per week, although in the past she has worked as much as 15-20 hours per week. McEwen maintains other employment on Mondays, Thursdays, Fridays and Wednesday afternoons, which limits her availability to work for the County.

10. A separate job description does not exist for the Lead Parent Partner position. McEwen follows the Parent Partner job description contained in Finding of Fact 5. Like Schultz, McEwen entered into an agreement with the County, the content of which is the same as that contained in Finding of Fact 6, except in two sections (differences are underlined) which read as follows:

. . .

III. COMPENSATION:

The Parent Partner, lead parent aide, shall be compensated at an hourly rate for each hour devoted to performing the duties that are prescribed by this Contract. The hourly rate shall be in the amount of \$13.50 dollars per hour with payment to be made on a bi-weekly basis contingent upon, at least five (5) days prior thereto, the employee shall submit signed documentation as to the number of hours worked within the preceding bi-weekly period for which compensation is sought. Since the Parent Partner is an independent contractor, the hourly rate paid herein shall be in lieu of, including but not limited to, all required Social Security contributions, pension, Federal and State withholding. The Parent Partner shall be solely responsible for any and all liability with respect to requirements under the Social Security Act, Internal Revenue Code and the State of Wisconsin Income Taxes.

It is agreed and understood that this is a limited term employment contract and accordingly, the employee shall not work for, nor shall be subject to reimbursement for more than twenty-one (21) hours under the terms of this Contract.

. . .

V. EXPENSES:

In addition to the compensation set forth in the foregoing paragraph, the Parent Partner shall be reimbursed for any and all mileage devoted to supervision services and other related duties at the rate of \$.29 per mile, not to exceed 3000 number of miles for the term of this Contract. The expenses shall be compensated on a monthly basis, subject to signed verification such as submission of travel logs.

. . .

(Emphasis added.)

11. McEwen receives referrals from Dawson by telephone at her home. McEwen determines when she will meet with the children and families at the child's home. McEwen generally meets with the children and families during the evening because it is convenient for the families due to work obligations. McEwen utilizes the materials and checklists created during her employment with Family Partners when fulfilling her responsibilities as a Parent Partner. McEwen consults with either Director of Social Services Sekel or Dawson when questions arise.

12. McEwen's position is funded by the Brighter Futures grant referred to in Finding of Fact 8.

McEwen has a reasonable expectation of continued employment

13. The incumbent in the position of ISP Monitor is John Bogolin. Bogolin was hired to this position October 13, 2000. Bogolin's supervisor is the Intake Worker (social worker) position that is currently vacant in the County. As a result of this vacancy, Bogolin reports to Director of Social Services Sekel. Bogolin works between 70 and 98 hours each two-week pay period. Bogolin is paid the hourly rate of \$15.63. Bogolin receives fringe benefits including sick leave, vacation leave and holiday leave and was offered, but declined health insurance coverage.

14. The job description most applicable to Bogolin's work states as follows:

GENERAL STATEMENT OF DUTIES: Worker will have daily contact with juveniles who are under order of the court. This position operates under the direct supervision of the Agency Director and performs related work as required and assigned by the agency Director.

DISTINGUISHING FEATURES OF THE CLASS: This employee performs duties within the Social Services Department, principally the Family and Juvenile Services Program. The procedures of this office are governed by Wisconsin Statutes Chapters 48, 938, 51 and 55 as well as other specific program policies and procedures.

PRINCIPAL DUTIES AND RESPONSIBILITIES: Provide case management and intake services to delinquent and uncontrollable youth. Assess needs of child and develop case plan to service needs of child and family. Provide court reports and testimony when required. Monitor and enforce orders of the court as they pertain to child and family. Administer POSIT Screens and follow through with enforcement of the recommended treatment plan. Develop and maintain a working knowledge of services provided by other Health, Tribal and Human Services Organizations. Provide on-call services in accordance with Chapter 48 & 938 to residents as needed on a rotating basis. Maintain and update appropriate records for all current cases. Performs related duties and tasks as assigned by the Agency Director.

REQUIRED KNOWLEDGE AND SKILLS: A B.S.W. or M.S.W. in Social Work or eligibility for Social Work Certification within six months of hire, individuals with commensurate experience may also be considered. Valid Wisconsin Driver's License and reliable, insured vehicle a necessity. Availability for back up or on-call services as needed.

ACCEPTABLE EXPERIENCE AND TRAINING: Knowledge of office terminology and procedures. Working knowledge of Windows, WordPerfect and Microsoft Word computer programs. Possess above average written and verbal communication skills. Understanding of state laws pertaining to the operation of the Social Service Department. Possess the ability to make decisions in accordance with laws, regulations, ordinances and established procedures.

. . .

15. Bogolin monitors juvenile delinquents assigned to his caseload consistent with Wisconsin law. Bogolin decides whether the youth will be released and removed from his caseload. Bogolin considers the youth's attitude, behavior and attendance at school, behavior toward his family, completion of court ordered penalties, and whether the youth is drinking alcohol or selling drugs.

Bogolin imposes sanction(s) on juveniles who fail to fulfill the obligations of their Court order. Bogolin is provided a list of possible sanctions, which include recommended sanctions for specific violations. Bogolin has imposed sanctions not included on the sanction list and has deviated from the recommended sanctions. Bogolin has never been questioned concerning a sanction he imposed.

Bogolin is assigned on-call intake responsibilities one week each month. Bogolin attended a weeklong intake-training program during his fourth or fifth week of employment with the County to prepare for this responsibility. Bogolin has at his disposal a Wisconsin Department of Correction guideline book for intake. During intake, the police bring a youth to Bogolin for either a criminal or non-criminal act. Bogolin exercises discretion in deciding whether to release the youth to the youth's parents or to place the youth in a foster home, a secured detention or in a nonsecure detention. Bogolin completes a Department of Correction form for each youth and, based on the responses, is able to identify the strengths and weaknesses of the youth. Bogolin utilizes this information and prepares a case plan for the youth.

16. Bogolin was employed as a police officer by the City of St. Charles, Illinois, for 20 years and attended multiple seminars during the course of his police officer career. Bogolin attended college and earned sufficient credits for sophomore status. Bogolin attends quarterly seminars presented by the Department of Corrections, which address training topics.

17. The County pays Bogolin with funds obtained through a federal grant administered by the Wisconsin Department of Justice. The County initially obtained the grant in October, 2000. The grant is limited to two years in duration and will end in September, 2002, unless the funds are exhausted prior to that date.

Bogolin does not have an expectation of continued employment.

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

CONCLUSIONS OF LAW

1. The incumbent in the position of Case Manager is a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

2. The incumbents in the positions of Parent Partner and Lead Parent Partner are not temporary employees.

3. The incumbent in the position of ISP Monitor is a temporary employee.

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

ORDER CLARIFYING BARGAINING UNIT

The Parent Partner and Lead Parent Partner are included in the bargaining unit described in Finding of Fact 3 and the Case Manager and ISP Monitor continue to be excluded from that unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

FOREST COUNTY

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

POSITIONS OF THE PARTIES

The County argues that the Case Manager (Dawson), ISP Monitor(Bogolin), Lead Parent Partner(McEwen) and the Parent Partner(Schultz) should continue to be excluded from the regular full-time regular part-time non-professional employee bargaining unit represented by WPPA because they are all temporary employees and because Dawson and Bogolin are professional employees.

As to Dawson, the County contends that her work satisfies all portions of the statutory definition of a professional employee. In support of its position, the County cites Dawson's possession of a four year specialized degree and the requirement for such a degree in the applicable job description. Regarding her temporary status, the County asserts that Dawson lacks a reasonable expectation of continued employment because the grant that funds the majority of her position cannot be renewed after 2003.

Turning to Bogolin, the County alleges his work responsibilities meet all of the statutory criteria for a professional employee. The County asserts that Bogolin's 20 years of experience as a police officer give him the knowledge needed to do the work in question-knowledge customarily acquired through acquisition of a four year specialized degree as noted in the job description for Bogolin's position. The County further contends Bogolin is a temporary employee because funding for his position will end in September 2002.

Regarding McEwen and Schultz, the County argues they are temporary employees because the funding for their positions will last no longer than the end of 2003. Thus, the County asserts that McEwen and Schultz do not have a reasonable expectation of continued employment.

WPPA argues that all of the disputed positions are held by regular full-time or regular part-time non-professional employees who should be included in the bargaining unit.

As to the Case Manager, WPPA asserts Dawson is neither a temporary employee or a professional employee. As to Dawson alleged temporary status, WPPA cites the ongoing need for the services performed and the likelihood of ongoing funding for the position. WPPA contends Dawson is not a professional employee because her work does not meet all of the criteria established by Sec. 111.70(1)(L), Stats.

As to the ISP Monitor, WPPA argues that Bogolin is not a temporary employee citing the fact that the position has already continued to exist beyond expectations and the potential

for the County to acquire additional funds. As to professional status, WPPA contends Bogolin's work does not require knowledge of an advanced type customarily acquired through a prolonged course of specialized instruction or the exercise of discretion, and argues that the results accomplished by his work can be standardized over a period of time.

Turning to the Parent Partner and Lead Parent Partner, WPPA asserts that neither is a temporary employees because the grant funding their positions does not expire until the end of 2003 and is subject to renewal.

DISCUSSION

We will first address the legal standards that we will apply to the employees in question to determine whether they are appropriately included in or excluded from the bargaining unit.

A temporary employee is an employee who lacks a reasonable expectation of continued employment so as not to be a regular full-time or regular part-time employee. MANITOWOC COUNTY, DEC. NO. 8152-J (WERC, 11/90). When determining whether there is a reasonable expectation of continued employment, we consider factors such as how long the duties in question have been performed and the likelihood that they will continue to be performed, the formal action (if any) taken by the employer to end the employment on a specific date, and the communications (if any) between the employee and employer regarding ongoing employment. Uncertainty as to the ongoing funding of a position is not sufficient to establish that an employee holding the position is a temporary employee. KEWAUNEE COUNTY, DEC. NO. 13185-E (WERC, 3/88); SCHOOL DISTRICT OF PITTSVILLE, DEC. NO. 21806 (WERC, 6/84); MANITOWOC COUNTY, DEC. NO. 15250-B (WERC, 9/77).

Section 111.70(1)(L) Stats., defines a "professional employee" as:

1. Any employee engaged in work:
 - a. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employee who:
 - a. Has completed the course of specialized intellectual instruction and study described in subd. 1.d:
 - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1.

We now turn to the specific employees at issue.

Case Manager

Looking first at the County's assertion that the Case Manager is a professional employee, we address the nature of the work Dawson performs because that is the focus of Sec. 111.70(1)(L), Stats.

Dawson has responsibility for, at the very least, five different and distinct programs, each of which has statutory parameters. Dawson's work with first time juvenile offenders and child abuse cases is neither routine nor mechanical and the record establishes that it is predominantly intellectual in character. Thus, the work meets the requirements of Sec. 111.70(1)(L)1.a., Stats.

The second question we address is whether the work requires the exercise of discretion and judgment. Dawson screens and determines whether a child and family will receive parenting services. Dawson performs intake for first-time juvenile offenders and essentially makes the decision as to whether the child will become part of the juvenile justice system. Dawson screens for child abuse and neglect and conducts emergency investigations. These responsibilities encompass at minimum 75 percent of her time and meet the discretion and judgment requirements of Sec. 111.70(1)(L)1.b., Stats.

In reaching this conclusion, we acknowledge the WPPA argument that Dawson's work is record keeping and is performed within "clear criteria"- thus negating any exercise of discretion. This WPPA argument focuses on the Kinship program. We concur with WPPA that in processing Kinship Care and Foster Care applications, Dawson has limited authority to exercise discretion due to these programs' statutory guidelines and procedures. Yet, the record establishes that even in the context of these programs, there are no fixed guidelines that Dawson must follow for each aspect of the application processes. Further, even if we found this WPPA argument persuasive, this component is no more than 15 percent of her job responsibilities. Given this, we have found that Dawson exercises the sort of judgment and discretion that is characteristic of a professional employee.

Turning to the character of the work performed, Dawson works with children and families in varying situations. The record establishes that this is not the type of work where the result can be standardized over a fixed period of time. Thus, the work satisfies the requirement of Sec. 111.70(1)(L)1.c., Stats.

Lastly, we find that Dawson's work requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education. The job description of the Case Manager position as presented in Finding of Fact 4 requires "a B.S./B.A. in Social Work or eligibility for Social Work Certification within six months of hire." The record establishes that Dawson has earned a Bachelor's degree in social work, a Master's degree in education, and is a certified social

worker. From our view of the record, we are satisfied that Dawson regularly applies her educational background in her decision-making responsibilities. Thus, her work meets the requirement of Sec. 111.70(1)(L)1. d., Stats.

In summary, we conclude that the work of the Case Manager meets the criteria established by Sec. 111.70(1)(L) 1.a.b.c. and d., Stats., and therefore the Case Manager is a professional employee who continues to be properly excluded from the non-professional employee unit. Given this finding, we do not address the County's assertions that the Case Manager is a temporary employee.

Parent Partner and Lead Parent Partner

The County asserts that Kathryn Schultz, Parent Partner, and Linda McEwen, Lead Parent Partner are temporary employees because their positions are funded by the Brighter Futures grant, which may at most be extended through 2003.

We conclude that both Schultz and McEwen have a reasonable expectation of continued employment. The services they perform have been provided by the County for an extended period of time and there is no persuasive evidence that the County had decided to discontinue the services in the future. Although the Brighter Futures funding is subject to annual renewal, the record persuades us that funding is available through December 31, 2003. Neither Schultz nor McEwen have been advised by the County that their employment will be terminated. Thus, we are satisfied that they are not temporary employees but are regular part-time employees who are appropriately included in the WPPA bargaining unit.

The County cites JEFFERSON COUNTY, DEC. NO. 26462-A (WERC, 3/91) in support of its contention that due to the uncertainty in funding, these positions are appropriately excluded from the bargaining unit. We find that the facts presented in this case are distinguishable to those presented in JEFFERSON COUNTY. In JEFFERSON, the Human Services Board affirmatively took action to terminate the operation of the Head Start Program "as of approximately November 1, 1990." Here, the County has taken no action to terminate the services provided.

ISP Monitor

The County asserts that John Bogolin, ISP Monitor, is a temporary employee and a professional employee who therefore should not be included in the bargaining unit.

We look first at the question of whether Bogolin is a temporary employee. Bogolin began his employment on October 13, 2000. His position is presently funded through September, 2002, unless the grant funds are exhausted prior to that date. Bogolin testified that

“when the grant runs out, the job runs out” and there is no persuasive evidence to the contrary in the record. Thus, we conclude Bogolin does not have a reasonable expectation of continued employment and is a temporary employee.

WPPA argues that the ISP Monitor is not a temporary employee because the position has “continued beyond the original expectations and could continue for an unspecified amount of time” and accurately points out that the County could fund the position. Though WPPA is correct that the County could continue to fund the position when the grant monies are expended, the record does not establish that the County has any intention of doing this. The ISP Monitor position is currently living beyond the life of the grant due to carry-over funding. If the County had any intent to extend this position, it would have taken steps to do so. The record does not establish that these steps have been taken. Rather, the record indicates that but for the carry-over funding, the position would have been eliminated prior to the date of hearing. Therefore, we conclude that the ISP Monitor will no longer exist as of September, 2002, and that Bogolin is a temporary employee who should remain excluded from the bargaining unit. 1/

1/ Should subsequent events prove us to be incorrect as to Bogolin’s temporary employee status, then the County’s contention that Bogolin should nonetheless continue to be excluded from the unit as a professional employee will come into play. Given that potential, we conclude it is appropriate to advise the parties that Bogolin is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats. We reach this conclusion because we are satisfied the work performed by Bogolin does not require “knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher education . . .” as specified in Sec. 111.70(1)(L)1.d., Stats. We note in this regard that Bogolin does not perform the full range of duties of an Intensive Supervision Worker (a position typically held by a professional social worker), does not personally possess a four-year specialized degree and received only a week of training from the Department of Corrections before assuming this position.

Dated at Madison, Wisconsin, this 9th day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner