

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

---

In the Matter of the Petition of  
**WISCONSIN COUNCIL 40, AFSCME, AFL-CIO**  
Involving Certain Employees of  
**WALWORTH COUNTY**

Case 142  
No. 55167  
ME-3593

**Decision No. 29378**

---

Appearances:

**Mr. Michael J. Wilson**, Representative at Large, and **Mr. Laurence Rodenstein**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

von Briesen, Purtell & Roper, S.C., by **Attorney Charles P. Magyera**, 411 East Wisconsin Avenue, Suite 700, Milwaukee, Wisconsin 53202-4470, appearing on behalf of Walworth County.

**FINDINGS OF FACT, CONCLUSIONS OF LAW**  
**AND DIRECTION OF ELECTION**

On May 9, 1997, Wisconsin Council 40, AFSCME, AFL-CIO filed a petition for election with the Wisconsin Employment Relations Commission seeking a representation vote in a bargaining unit described as "All full-time and regular part-time professional employees in the Courthouse and other County departments not currently represented by a labor organization, excluding supervisors, confidentials and management employees." The professional positions of Assistant Corporation Counsel, Communication Specialist/Systems Analyst and Registered Nurse at the Lakeland Nursing Home are in dispute as to inclusion or

No. 29378

exclusion from the proposed unit. AFSCME asserts these positions are held by municipal employes while the County contends the Assistant Corporation Counsel is a managerial employe, the Communication Specialist is a supervisor and a managerial employe, and the Registered Nurses are supervisors.

Hearing in the matter was held on November 10, 1997, and February 12, 1998, in Elkhorn, Wisconsin, before Examiner Lionel L. Crowley, a member of the Commission's staff. The parties filed initial briefs on the Assistant Corporation Counsel and Communications Specialist/Systems Analyst and the County filed a reply brief and the Union waived its right to file a reply brief. The County filed a brief as to the Registered Nurse positions and the Union did not. The record was closed on April 1, 1998.

The Commission, having reviewed the evidence and arguments of counsel and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

### **FINDINGS OF FACT**

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717.

2. Walworth County, hereinafter referred to as the County, is a municipal employer and has its offices located at P. O. Box 1001, Elkhorn, Wisconsin 53121. The County employs a number of professional employes who are not currently represented for the purposes of collective bargaining.

3. The parties agreed the following positions are included in the proposed professional employe unit:

<u>Position</u>	<u>Occupant</u>
Child Support Enforcement Attorney	Kendall Wick
Judicial Law Clerk	Jennifer Buenzli
Senior Accountant	Peggy Watson
Accountant	Janet Papcke
Urban Technician and Planner	M.C. Weidensee
Rural Technician and Planner	Brian Smetana
Rural Watershed and Planner	David Duwe
Lead Systems Analyst	Julia Stokes
Plat Review Specialist	Terry Shilling
Clinical Dietitian	Bonnie Secketa

Social Worker - Nursing Home

Robert Powell  
Loretta Bernau  
Vickie George-Gorden  
Laurie Rubendall  
Colleen Lesniak  
Jennifer Broadus  
Angela Havlik  
Janis Brandes  
Karen Stout  
Christine Lynch

Volunteer Coordinator  
Recreational Therapist

4. The Corporation Counsel's office consists of the Corporation Counsel, the Assistant Corporation Counsel and the Child Support Enforcement Attorney. Gary Rehfeldt is the Assistant Corporation Counsel. The Corporation Counsel has designated Rehfeldt as the Deputy Corporation Counsel and, in the absence of the Corporation Counsel, Rehfeldt is authorized to function as the Corporation Counsel. The County terminated its Corporation Counsel in 1995 and hired a new one on January 19, 1996, who resigned on August 6, 1996, and the present Corporation Counsel was hired on October 7, 1996. During the 2 ½ months of 1996, when there was no Corporation Counsel, Rehfeldt ran the office, prepared the budget for 1997, attended County Board meetings, signed time cards and vouchers. He occupies the same suite of offices as the Corporation Counsel.

Rehfeldt does not continue to exercise the budgetary authority he did in 1996 when he was Acting Corporation Counsel.

Rehfeldt does not have sufficient participation in the formulation, determination or implementation of management policy or sufficient authority to commit the County's financial resources to be deemed a managerial employee.

5. The position of Communications Specialist/Systems Analyst is currently occupied by Joseph Bauman. Mr. Bauman spends about 40-45% of his time doing technical support, trouble shooting and maintenance of computer hardware and software, 25% of his time doing installation of computer software and hardware, 16-18% on recommending computer hardware and software and programming compatibility, 15% on data communications and 3-4% on telecommunications. Bauman provides pricing and hardware specifications to County departments as to the computer hardware and software needed to meet department needs. The actual decision on the recommendation for purchasing is made by the Department Head of the particular department making the purchase. Bauman provides technical and professional recommendations as to equipment and software.

Bauman does not have sufficient participation in the formulation, determination or implementation of management policy or sufficient authority to commit the County's resources to be deemed a managerial employee.

The County recently hired a PC Specialist to take over some of the functions performed by Bauman. Bauman assisted in developing the job description for the position and developed the skills testing portion of the selection process. Bauman was on the interview panel and participated in a significant way in the selection of the applicant that filled the position. Bauman's involvement in hiring the PC Specialist was based on his technical expertise and experience in the computer software and hardware areas and the fact that he would be working closely with the PC Specialist. After the position was filled, Bauman completed and signed the probationary report which resulted in the new PC Specialist becoming a permanent County employee. At the time this action occurred, the Data Processing Department had a number of vacancies and there were several employees holding acting positions, including the Department Head. As of the date of the hearing, the organization of the Department was still to be decided by the new Department Head.

Bauman never disciplined any employees, laid off, transferred or promoted anyone nor has he adjusted any grievances. Bauman cannot assign the PC Specialist to certain hours of work, authorize overtime, or approve sick leave and vacation requests. His wage rate was not changed in any way following the addition of the PC Specialist.

Bauman does not possess supervisory duties and responsibilities in sufficient combination and degree to be deemed a supervisor.

6. The County has 28 Registered Nurse positions at its Lakeland Nursing Home evenly divided between full-time and part-time. The Registered Nurses (RN's) perform the assignment of a Unit Supervisor. In WALWORTH COUNTY, DEC. NO. 9041-C (WERC, 3/92), we determined that Licensed Practical Nurses (LPN's) who served as Unit Nurses were supervisors. Unit Nurses (now called Unit Supervisors) were then and are now either LPN's or RN's. The Registered Nurses have the same or greater supervisory responsibilities than the Licensed Practical Nurses found to be supervisors in 1992.

The Registered Nurses possess supervisory duties and responsibilities in sufficient combination and degree to be deemed supervisors.

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

### **CONCLUSIONS OF LAW**

1. The Assistant Corporation Counsel is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., appropriately included in the proposed collective bargaining unit described in Conclusion of Law 4.

2. The Communications Specialist/Systems Analyst is not a supervisor within the meaning of Sec. 111.70(1)(o), Stats., or a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats., appropriately included in the proposed collective bargaining unit described in Conclusion of Law 4.

3. The Registered Nurses at Lakeland Nursing Home are supervisors within the meaning of Sec. 111.70(1)(o), Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

4. A question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a., Stats.:

All regular full-time and regular part-time professional employees of Walworth County who are not presently included in a collective bargaining unit, excluding supervisors and managerial, confidential or executive employees.

Based upon 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 in the voting group consisting of all regular full-time and regular part-time professional employees of Walworth County, who are not presently included in a collective bargaining unit, excluding supervisors and confidential, managerial, or executive employees, who were employed on May 18, 1998, except such employees as may prior to the election quit their employ 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 Walworth County, or whether such employees desire not to be so represented by said labor organization.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of May, 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

WALWORTH COUNTY (COURTHOUSE)

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

**POSITIONS OF THE PARTIES**

**The Union**

The Union contends that both the Assistant Corporation Counsel and the Communications Specialist/Systems Analyst filled in during a period when each of their respective departments were short handed and now there are new department heads who perform as supervisory and managerial employees. The Union observes that the Assistant Corporation Counsel prepared the 1997 budget but did so when the Corporation Counsel position was vacant. Now that the position is filled, the Corporation Counsel has assumed all the duties including preparation of an initial budget for his Department. The Union argues that from time to time municipal employees fill in for non-bargaining unit personnel yet remain municipal employees. Additionally, it claims that proximity between municipal employees and managerial employees does not create a presumption of managerial status.

As to the Communications Specialist/Systems Analyst, the Union asserts that there is no trace of traditional supervisory authority and responsibility. It maintains that Bauman supervises an activity as opposed to supervising an employee. It argues that his expertise in computer-related matters define whatever directions and advice he offers to others. It submits that the pricing and determination of specifications of equipment to be purchased or the scheduling of purchases and installation within the confines of an existing budget and as reviewed by higher authority do not confer managerial status. It concludes that this position's duties and responsibilities in combination and degree are insufficient to be supervisory or managerial.

As to the Registered Nurses, the Union contends they are not supervisors.

**The County**

The County contends that the record, which was uncontested, clearly established that the Assistant Corporation Counsel is a managerial employee by reason of his budgetary duties, his prior heading of the Corporation Counsel's office for substantial periods of time and his status as Deputy Corporation Counsel with full power to act in the absence of the Corporation Counsel.

As to the Communications Specialist/Systems Analyst, the County insists that the record fully substantiates that he is a supervisor. It submits that he participated in developing

the PC Specialist position and job description, was involved in the hiring process including development of the skills test, participation in the oral interview and he evaluated the skills testing portion of the job application process. It claims that the PC Specialist reports to the Communications Specialist/Systems Analyst and is under his supervision on a day-to-day basis and that he filled out the probationary period evaluation of the PC Specialist. It alleges that if additional PC Specialists are hired, they also would report to the Communications Specialist/Systems Analyst.

The County further contends that the Communications Specialist/Systems Analyst is a managerial employee based on his pricing and determining specifications of equipment and the management of the budgeted amount for computer hardware and software. It asserts that the Analyst's recommendations of hardware and software and planning of purchases involve substantial sums of money and establish that the position is managerial.

With respect to the Registered Nurse position, the County submits that the record leaves no doubt that the Unit Supervisor, which can be an LPN or an RN, is, in fact, a supervisor. It points to the testimony of witnesses that the Unit Supervisors assign and oversee the work of Certified Nurse Attendants as well as Certified Medication Assistants and Ward Clerks. The Unit Supervisors evaluate the Certified Nurse Attendants and make recommendations during the "tracking" period and whether the employee has successfully completed his/her probationary period. It points out that the Unit Supervisors can authorize overtime, transfer Certified Nursing Attendants from one unit to another based on need, ensure that they do not go beyond the scope of their authorized abilities, recommend them for promotions, remove them if engaged in patient abuse and make commendations to unit managers. The County relies on an earlier decision of the Commission in WALWORTH COUNTY, DEC. NO. 9041-C (WERC, 3/92) where LPN Unit Nurses were found to be supervisors. It claims that Registered Nurses do the same thing and the factors found in 1992 are the same today except that the supervisory duties are greater because the acuity of patients has increased. It states that the evidence is overwhelming that the Registered Nurse Unit Supervisors are supervisors and should be excluded from the professional unit.

### **DISCUSSION**

With respect to managerial employees, the Legislature has excluded "managerial employees" from the definition of "municipal employees" found in Sec. 111.70(1)(i), Stats., and has left the Commission to develop the parameters of the exclusion. There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers the extent to which the individuals possess the authority to commit the employer's resources. KEWAUNEE COUNTY V. WERC, 141 WIS.2D 347 (1987). For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and

direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97).

The County argues the Assistant Corporation Counsel is a managerial employee by reason of his budgetary duties, his past functioning as Acting Corporation Counsel, and his current status as Deputy Corporation Counsel with full power to act as Corporation Counsel when the Corporation Counsel is absent.

The evidence as to the Assistant Corporation Counsel's budgetary activity came into the record by way of stipulation. The parties disagree as to whether the stipulation should be interpreted as linking the budgetary duties to the Assistant's past status as Acting Corporation Counsel or whether those duties are ongoing. For our review of the record, we concluded the best inference to draw is that the budgetary duties resulted from his acting status and are not ongoing. Thus, even assuming those duties would be sufficient to establish managerial status, they are not part of the Assistant's current responsibilities. Therefore, this evidence, like his past status as Acting Corporation Counsel, is irrelevant as to the Assistant's present managerial status.

There remains the question of whether his Deputy designation is sufficient to establish managerial status. We conclude it is not. The record does not indicate that the current Corporation Counsel has been or will be absent for extended periods of time or that the Assistant has, in fact, exercised any managerial authority during any absences that have occurred.

Given the foregoing, we conclude the Assistant Corporation Counsel is not a managerial employee and therefore is eligible to be in the proposed professional employee bargaining unit.

The County contends that the Communications Specialist/Systems Analyst is a managerial employee based on his pricing of computer hardware and software and his recommending software and hardware purchases. The Communications Specialist/Systems Analyst is doing ministerial work with regard to determining prices, and with respect to his recommendations is giving his professional expertise and judgment. We are satisfied from the record the respective Department Head makes the policy and budgetary decisions (Tr. 52-53). The Communications Specialist/Systems Analyst is not a managerial employee.

The County asserts that the Analyst is also a supervisor.

Section 111.70(1)(o), Stats., defines a "supervisor" in pertinent part as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or

discipline other employees, or to adjust their grievances or effectively to



recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When evaluating a claim of supervisory status under Sec. 111.70(1)(o), Stats., we consider the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

In addition the Commission has historically held that not all of the above-quoted factors need be present, and that if the factors appear in sufficient number and degree, the Commission will find an employee to be a supervisor. WALWORTH COUNTY, DEC. NO. 29040 (WERC, 4/97).

The record establishes that the Communications Specialist/Systems Analyst assisted in the development of the position description for a PC Specialist, participated in the oral interview of applicants, developed and conducted the skills testing portion of the job interview process, effectively recommended the hiring of the PC Specialist and completed the probationary report which determined that the PC Specialist passed probation.

Ordinarily, this level of involvement in the hiring and probationary process would be a significant indicator of supervisory status. However, the facts of this case persuade us that the

Analyst's involvement actually reflects Bauman's technical expertise, the absence of a permanent Department Head, the presence of other vacancies in the Department, and the reality that compatibility between Bauman and the new hire was important because they would be working together. Therefore, we do not find Bauman's involvement with the hiring and probationary status of the PC Specialist to be indicative of supervisory status.

While it seems clear that Bauman will direct the work activity of the PC Specialist, we are not persuaded that he has any significant disciplinary authority over the Specialist and we find he functions as a lead worker rather than a supervisor. We note that the hiring of the Specialist did not alter Bauman's wage rate and that he spends his work day performing his own computer work.

Given all of the foregoing and the uncertainty as to how the now hired Department Head will organize the Department and define responsibilities, we find that Bauman is not a supervisor and is eligible for inclusion in the proposed professional unit.

As to the Registered Nurses at the Lakeland Nursing Home, we conclude they are supervisors. In WALWORTH COUNTY, DEC. NO. 9041-C (WERC, 3/92), we concluded the Licensed Practical Nurses who served as Unit Nurses were supervisors. Unit Nurses (now designated Unit Supervisors) were then and are now either LPN's or Registered Nurses. The record in this case establishes that Unit Nurses/Unit Supervisors continue to possess supervisory responsibility in sufficient combination to render them supervisors. It is not necessary to repeat the evidence and rationale for this conclusion because it simply mirrors our prior decision in WALWORTH COUNTY, SUPRA. Given the foregoing, we find that the Registered Nurses are supervisors excluded from the proposed unit.

Dated at Madison, Wisconsin, this 18th day of May, 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

