

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TEAMSTERS UNION LOCAL 662
Involving Certain Employees of
PIERCE COUNTY

Case 139
No. 65103
ME-1153

Decision No. 31712

Appearances:

Andrea F. Hoeschen, Attorney at Law, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., 1555 North RiverCenter Drive, Suite 202, Milwaukee, Wisconsin, 53212, appearing on behalf of Pierce County Human Services Professional Employees General Teamsters Union- Local 662.

Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin, 54751, appearing on behalf of Pierce County Human Services Department Employees Local 556, WCCME, AFSCME, AFL-CIO.

Bradley D. Lawrence, Corporation Counsel, P.O. Box 367, Pierce County Courthouse, Ellsworth, Wisconsin, 54011, appearing on behalf of Pierce County.

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

On August 29, 2005, Teamsters Union Local 662 (Teamsters) filed a unit clarification petition with the Wisconsin Employment Relations Commission asking that the position of Parent Aide – Independent Living Skills/Community Services be included in a bargaining unit of Pierce County employees that it represents for the purposes of collective bargaining. Pierce County Human Services Department Employees Local 556, WCCME, AFSCME, AFL-CIO,

the current collective bargaining representative of the Parent Aide position, intervened in the proceedings and opposes the Teamsters' request. Pierce County joins AFSCME in arguing that the Parent Aide is properly included in the AFSCME unit.

A hearing was held on the petition on December 20, 2005 in Ellsworth, Wisconsin, before Commissioner Paul Gordon, with a stenographic record being made available to the parties. The parties filed briefs and reply briefs by February 23, 2006, whereupon the record was closed.

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

FINDINGS OF FACT

1. Pierce County, herein the County, is a municipal employer with offices at 412 W. Kinne Street, P. O. Box 670, Ellsworth, Wisconsin, and maintains a Department of Human Services. The Department was formerly called Department of Social Services.

2. Pierce County Human Services Professional Employees General Teamsters Union- Local 662, herein Teamsters, is a labor organization that serves as the collective bargaining representative of a bargaining unit described in the Commission's 1974 Certification of Results of Elections as:

. . . all regular employees of the Pierce County Social Services Department, including professional employees, but excluding the director and supervisors . . .

The most recent collective bargaining agreement between Teamsters and the County listed the positions in the bargaining unit as follows:

WAGE SCHEDULE AND CLASSIFICATIONS (job titles only)

. . .

Mental Health Therapist II	CD Counselor III
Mental Health Therapist I	Psychiatric Nurse
CSP Clinical Coordinator	Social Worker I
Juvenile Lead Worker	CD Counselor II
Social Worker III	Human Services Worker
Social Worker II	CD Counselor I

3. On August 19, 1980 the Wisconsin Employment Relations Commission issued an Order which stated in pertinent part:

Wisconsin Council of County and Municipal Employees #40, AFSCME, AFL-CIO hereinafter referred to as AFSCME, having, on September 12, 1979, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to Section 111.70 (4) (d) of the Municipal Employment Relations Act, to determine whether the non-professional and para-professional employees in the employ of the Social Services Department of Pierce County desired to continue to be represented for the purposes of collective bargaining by General Drivers and Helpers Union Local 662, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as Teamsters, or by AFSCME; and prior to hearing on said petition, and on January 23, 1980, Teamsters having, in writing, advised the Commission and AFSCME, as well as the County, that it no longer claimed to represent the employees involved, and that thereafter, and on May 20, 1980, AFSCME, by letter, having advised the Commission that the County had voluntarily recognized AFSCME as the exclusive bargaining representative for the employees involved, and that, therefore, it and the County had initiated negotiations for said employees;

...

Pierce County Human Services Department Employees Local 556, WCCME AFSCME, AFL-CIO, herein AFSCME, is the current name of the labor organization that the County voluntarily recognized in 1980. The most recent collective bargaining agreement between AFSCME and the County contains the following recognition clause:

The County recognizes and acknowledges that the Union, its agents, representatives or successors, as the exclusive bargaining agent for all nonprofessional and paraprofessional employees of the Pierce County Department of Human Services, excluding the department director, professional, managerial, supervisory and confidential employees, on matters concerning wages, hours, terms and conditions of employment.

4. In 1995, Teamsters and the County settled a Teamsters-filed unit clarification petition by agreeing in part that an "Independent Living Skills" position would be added to the Teamsters' bargaining unit as Social Worker I. AFSCME was not a party to the agreement.

5. Prior to August 2005, the County Human Services Department, Children, Youth and Families Unit, had a part-time (.6 FTE) Social Worker II position in the Teamster bargaining unit called Independent Living Skills/Community Service Specialist. The Independent Living Skills component of the position provided services/training to adolescents between 15 and 21 years of age designed to teach them independent living skills such as how to budget, buy groceries, rent an apartment and open and manage a checking account. The Community Services component of the position provided service to juveniles in the juvenile justice system who had been Court ordered or voluntarily agreed to perform community

service hours. In this regard, the employee organized community service sites, provided some transportation of juveniles to the work sites, supervised them at the site, accounted for their hours and reported their service to the responsible Social Worker. Other duties assigned to this position included some grant writing and some additional Juvenile Court work.

6. Prior to August 2005 the County Human Services Department had a non-professional part-time (.6 FTE) position in the AFSCME bargaining unit called Parent Aide. This position performed tasks assigned by a social worker designed to help parents develop parenting and home organization skills so that children could continue to be in the home or could be returned to the home.

7. In early 2005 the Social Worker II - Independent Living Skills/Community Service Specialist position in the Teamster unit was vacant. At that time the County also had received a grant from the State of Wisconsin for a coordinated services program. The County analyzed its staffing and budget needs for various positions that would be part of a coordinated service team, the grant contract requirements, the AFSCME and Teamsters collective bargaining agreements, the qualifications needed to perform the Independent Living Skills/Community Service work and how neighboring counties were staffing such work. The County determined that the Independent Living Skills/Community Service duties of the Social Worker II position did not require knowledge typically acquired through a four year specialized degree and further concluded that said duties could be transferred to the existing part-time Parent Aide position in the AFSCME unit. The Social Worker II position became a Social Worker I position with new duties as the coordinator of the coordinated service team at the same part-time level (.6 FTE), remained in the Teamster bargaining unit and was filled. The existing part-time .6 FTE Parent Aide position which assumed the Independent Living Skills/Community Services duties was expanded to a .8 FTE position and a second part-time Parent Aide (.6 FTE) with the same Independent Living Skills/Community Services duties was created within the AFSCME unit and filled.

8. The position description for the revised Parent Aide position at issue contains the following:

Qualifications for this position: High school diploma and at least 50 hours of training related to Children, Youth & Families. Within the past two years, at least six months prior paid work experience in providing services to families and children. Available transportation required, the ability to work flexible hours, good record keeping skills, the ability to understand and follow directions, the ability to relate to people and deal with difficult situations, good written and verbal communications skills, general understanding and skill in conflict resolution, ability to work independently, the ability to deal with confidential matters.

. . .

Position Summary (describe the major responsibilities of this position): Under supervision of the social work supervisor, this position is designed to assist staff with daily client and program responsibilities in the area of family and children's services, determine eligibility for and provides individuals with independent living skills, and is instrumental with the Community Service program.

. . .

<u>% Time</u>	<u>Duties</u>
20%	<p>A. Perform tasks assigned by supervisor and social workers to augment in-home services in the area of family, children, and adult services:</p> <ol style="list-style-type: none">1) Develop, coordinate and provide a program of supervised visitation for court-ordered clients2) Provide parent aide services to client families to assist in maintaining children in their home or assist in successfully returning children to their own home. Activities to be determined by the referring social worker and supervisor, but may include family meetings, parenting instruction, home organization, budgeting, and other activities as needed and assigned.3) Emergency transportation for clients.
30%	<p>A. Determination of eligibility for and assistance in providing independent living services in the area of family and children's services in Pierce County as assigned by supervisor and social workers</p> <ol style="list-style-type: none">1) Provide independent living services as follows:<ol style="list-style-type: none">a. Receive referrals of qualified youth, fitting state/federal guidelines;b. Conduct assessments to determine client needs;c. Provide skill training on individual and group basis;

- d. Provide services or make referrals in the area of family counseling, parenting skills, provide services, and medical services as follow-up to the referral;
 - e. Coordinate with other agency personnel on services to families and children in need of protection; and,
 - f. Perform administrative tasks (i.e., state reports, grant re-writes, etc.) as needed.
 - 2) Provide necessary services and locate resources for children in foster care or other alternate care, their natural families and foster families to aim for independence of child.
 - 3) Home visits, office visits, collateral visits, and consultation with other agencies to ensure provision of services.
 - 4) Maintain accurate, meaningful, and current case records, reports, and other types of correspondence to ensure quality control for federal/state reimbursement.
- 20% B. Duties relating to Community Service
- 1) Recruit new Community Services sites and retain current sites.
 - 2) Accept referrals to Community Service Program from Social Workers.
 - 3) Match juveniles with Community Service Sites.
 - 4) Arrange for or provide supervision for Community Service jobs.
 - 5) Provide written documentation of completed Community Service.
 - 6) Assist in program development.
- 10% C. Performance of tasks related to improving skills and public information.

- 1) Attend in-service training and staff development activities.
- 2) Attend staff meetings as requested.
- 3) Provide public information activities to other area service agencies, schools, churches, and civic groups.
- 4) Performs other work as assigned.

One of the Parent Aides, Dorothy Armstrong, has a college degree in social work. The other Aide, JoAnn Larson, has a two-year associate degree, taught in Head Start for 20 years, has a child development associate certificate and has gone through several other training programs in the area of children and families

The duties of the Parent Aide position do not require 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 learning.

9. The positions in the non-professional AFSCME Human Services unit require a variety of levels of training and education including a two year paralegal certificate, two year degree in accounting from a technical college or university, or completion of high school. None of the AFSCME represented positions require State certification or licensure.

Most of the positions in the Teamster unit require at least a four year specialized degree and all of the positions require appropriate State certification or licensure. One position in the Teamster unit (Psychiatric Nurse) requires only a two year associate degree in nursing, and another (CD Counselor) requires only a high school diploma with training in the AODA field.

10. The revised Social Worker I position and the two Parent Aide positions are both in the Children, Youth and Families division of the Department of Human Services. They share a common supervisor and office work location. Unlike the Social Worker I, the Parent Aides do most of their work in homes or in the community. Other than the two Parent Aide positions, all of the Children, Youth and Families division positions are in the Teamster bargaining unit. Currently the Child, Youth and Families division is the only one of the Department's seven divisions that includes employees from both bargaining units. Previously, there had been a Social Worker in the Teamster unit who worked in the W-2 program of the Economic Support division which was otherwise staffed entirely by AFSCME unit positions.

11. The Parent Aides primarily interact with Teamster unit employees. Interaction with other AFSCME unit employees occurs if they need typing or other clerical work done and during staff meetings/team meetings. The Parent Aides spend a majority of their time

performing work related to their Independent Living Skills/Community Service responsibilities.

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

CONCLUSIONS OF LAW

1. The incumbents in the Parent Aide-Independent Living Skills/Community Services position are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

2. The position of Parent Aide-Independent Living Skills/Community Services is most appropriately placed in the AFSCME bargaining unit described in Finding of Fact 3.

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 position of Parent Aide-Independent Living Skills/Community Service shall continue to be included in the AFSCME bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Chairperson Judith Neumann did not participate.

PIERCE COUNTY

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

DISCUSSION

This case presents issues as to whether the two employees in the revised position of Parent Aide are professional employees within the meaning of Sec. 111.70 (1) (L), Stats., and, if not, within which bargaining unit, Teamsters' or AFSCME's, the position/employees should be placed.

All parties agree that if the Parent Aides are professional employees (as argued by Teamsters), then they should be included in the primarily professional employee Teamster unit rather than the AFSCME unit which does not include any professional employees.

Even if the Parent Aides are not professional employees, Teamsters argue that placement of the position/employees in the Teamster unit is nonetheless appropriate because the independent living and community services duties were formerly performed by Teamster-represented employees and because the Parent Aides have a greater community of interest with the Teamster-represented employees than with those employees in the AFSCME unit. AFSCME and the County contend that because the Parent Aides are not professional employees, they belong in the non-professional and paraprofessional employee AFSCME unit with whom they share a strong community of interest.

Professional Employee Status

A professional employee for purposes of the Municipal Employment Relations Act is defined in Sec. 111.70(1)(L), Stats as:

1. An employee engaged in work:
 - a. Predominantly 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. An employee who:
- a. Has completed the courses 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 to become a professional employee as defined in subd.1.

All of the criteria in 1 or 2, above, must be present for an employee to be deemed professional. CHIPPEWA VALLEY TECHNICAL COLLEGE, DEC. NO. 22230-A (WERC, 5/88). We have generally interpreted the Sec. 111.70(1)(L)1.d., Stats. criterion of “a prolonged course of specialized intellectual instruction and study” as being met by a four year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04); MATC, DEC. NO. 6343-D (WERC, 10/89). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is generally acquired, but it is the nature of the work that the employer requires of the employee on which the statute focuses its attention. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work involved and the knowledge needed to perform same. OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86).

Here, it is agreed by all that the Parent Aide position was not held by a professional employee before the Independent Living Skills/Community Services duties were added to the position. Thus, beginning our analysis with the Sec. 111.70 (1)(L) 1.d., Stats. criterion, it is the knowledge needed to perform these added duties which we must consider when deciding the professional status of the Parent Aides. If the added duties do not require knowledge customarily acquired through a four year specialized degree, then the Parent Aides are not professional employees. If the added duties require such knowledge, then we would proceed to examine the other professional employee criterion contained in Sec. 111.70(1)(L), Stats.

Looking first at the Independent Living Services duties, we note that they are not taught in a class room or academic setting but in the home. The subject matter consists of very basic living skills such as helping an adolescent with a checking account, diet, simple lease arrangements, doing laundry, changing oil in a car, and other similar skills. These are matters performed by millions of people each day without the need for an advanced degree.

The duties in this position clearly supplement or provide information parents usually provide to their children. Knowledge provided by a four year specialized degree is not required to show adolescents how these basic living skills are usefully performed, important as they are.

Our conclusion in this regard is supported by the fact that the Parent Aide job description lists the educational qualifications for the position as a high school degree and 50 hours of training and by the fact that one of incumbents does not have a four year specialized degree. We acknowledge that the other incumbent does have a degree in social work but, as discussed above, we are persuaded that the knowledge needed to perform this portion of the added duties is not customarily acquired through such a degree.

We reach the same conclusion as to knowledge needed to perform the community service duties. Securing job sites for youths, monitoring their attendance and performance, some transportation, reporting to the coordinated team or social worker, and similar matters are basic, straight forward job duties. There is nothing in the record which would indicate that the knowledge needed to perform these duties is customarily acquired through a four year specialized degree. The absence of such a qualification requirement in the job description and the absence of such a qualification by one of the incumbents again supports our conclusion that the Sec. 111.70(1)(L) 1.d. Stats., criterion has not been satisfied.

Given the foregoing, we conclude that the incumbents in the Parent Aide position are not professional employees.

Bargaining Unit Placement

Teamsters correctly argue that a determination that the Parent Aides are not professional employees does not definitively resolve the question of whether the Aides are properly included in the non-professional employee AFSCME unit. As certified by the Commission in 1974, the Teamster unit is not exclusively professional and it is clear that non-professional employees were among the 1974 employee voters who selected Teamsters. Thus, inclusion of the non-professional Parent Aides in either the Teamster unit or the AFSCME unit would not offend the scope of the existing bargaining units. Therefore, to resolve the remaining issue before us, the question becomes one of determining which unit should most appropriately include the Parent Aides.

When deciding unit inclusion disputes that are not resolved on their face by the scope of the units themselves,¹ we typically seek guidance from the following factors:

¹ Teamsters assert that the existing units are organized/divided along divisions/units within the Department and that because the Parent Aides are now in an otherwise Teamster-only division, the Parent Aides should become part of the Teamster unit. As reflected in Finding of Fact 10, there is support in the record for the Teamster argument, but neither the Teamster nor the AFSCME recognition clause reflect this alleged dividing line and, as also indicated in Finding of Fact 10, this alleged dividing line has not been universally honored in the past. Therefore, we are not persuaded that the Parent Aides' unit status can appropriately be resolved based on this Teamster argument.

1. Whether the employees share a stronger “community of interest” with the employees in one of the two bargaining units.
2. The duties and skills of employees as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees as compared to wages, hours and working conditions of other employees.
4. Whether the employees share separate or common supervision with other employees.
5. Whether the employees share a workplace with other employees.
6. Whether the result sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

MADISON METROPOLITAN SCHOOL DISTRICT, DEC. NO. 12654-E (WERC, 1/02).

We have used the phrase “community of interest” as it appears in Factor 1 above 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 long standing and has received the approval of the Wisconsin Supreme Court. *ARROWHEAD UNITED TEACHERS v. WERC, supra*.

Factor 6 reflects our statutory obligation under Sec. 111.70(d)(d)2.a., Stats., to “avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.”

Factor 7 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. *MARINETTE SCHOOL DISTRICT, DEC. NO. 27000 (WERC, 9/91)*

Based upon long-standing Commission precedent, it is well established that within the unique factual context of each case, not all factors deserve the same weight and thus a single factor or a combination of factors listed above may be determinative.

As to Factor 1, both bargaining units share a common purpose of providing social services to citizens and thus this factor does provide support for either result.

As to Factors 2-5, a mixed picture emerges. The duties of the Parent Aides are linked more directly to those of the professional employees in the Teamster unit (and used to be performed in the context of the Teamster unit), but their non-professional skills are more directly linked to those of the exclusively non-professional employees in the AFSCME unit. The wages of the Parent Aides are now substantially less than those of those of the Social Worker I or II but that is of little consequence here where the work in question was previously compensated at the higher Social Worker II level. Comparison of hours and fringe benefits provides little guidance. Supervision and work place comparison support inclusion in the Teamsters' unit.

Factor 6 is not relevant to our analysis as the number of bargaining units remains the same under either result.

Like Factors 2-5, Factor 7 also produces a mixed picture because the work in question has historically been performed by Teamster-represented employees while the Parent Aide position itself has always been included in the AFSCME unit.

Considering all of the foregoing, we do not find Factors 1-7 to provide definitive guidance as to the appropriate result here.

While it is a close question, we are ultimately persuaded that it is the non-professional status of the Parent Aides that is result determinative. Section 111.70(4)(d) 2.a., Stats. requires that professional employees be given the choice of whether they wish to be included in a collective bargaining unit with non-professional employees.² The creation of this choice reflects a legislative judgment that there are inherently different communities of interest between professional and non-professional employees. The Teamster unit is at least predominately professional in composition while the AFSCME unit is exclusively non-professional. Given these unit compositions, we conclude that it is most appropriate to include the non-professional Parent Aides in the non-professional employee AFSCME unit.

² Section 111.70 (4)(d) 2.a., Stats. provides in pertinent part:

The Commission shall not decide that any other group of municipal employees constitutes an appropriate bargaining unit if the group includes both professional employees and non-professional employees, unless a majority of the professional employees vote for inclusion in the unit.

Therefore, we conclude that the position of Parent Aide-Independent Living Skills/Community Services shall continue to be included in the AFSCME bargaining unit.

Dated at Madison, Wisconsin this 9th day of June, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

Chairperson Judith Neumann did not participate.

