

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME
Involving Certain Employees of
GREEN LAKE COUNTY

Case 91
No. 68628
ME-1265

Decision No. 32824

Appearances:

Daniel R. Pfeifer, Consultant, Wisconsin Council 40, AFSCME, AFL-CIO, N8835 Lakeshore Drive, Van Dyne, Wisconsin 54979, appearing on behalf of Green Lake County Professional Employees, Local 514D, AFSCME, AFL-CIO.

John B. Selsing, Corporation Counsel, 120 East Huron Street, Berlin, Wisconsin 54923, appearing on behalf of Green Lake County.

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

On February 3, 2009, Green Lake County Professional Employees, Local 514D, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission seeking to clarify the Aging/Disability Resource Center Coordinator into a collective bargaining unit of Green Lake County employees represented for the purposes of collective bargaining by Local 514D. The County contends the Coordinator is a supervisor and thus cannot be included in the Local 514D bargaining unit.

Hearing on the petition was held on March 18, 2009 in Green Lake, Wisconsin by Commission Examiner Michael R. O'Callaghan. The parties filed post-hearing argument and the record was closed on receipt of the hearing transcript on April 27, 2009.

No. 32824

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

FINDINGS OF FACT

1. Green Lake County, herein the County, is a municipal employer. The County maintains a Health and Human Services Department to provide social services to its residents. The Department includes an Aging and Long Term Care Unit headed by Unit Manager Susan Giesen. Giesen reports to the Department's Deputy Director Leroy Dissing who, in turn, reports to Department Director Linda Van Ness.

2. Green Lake County Professional Employees, Local 514D, AFSCME, AFL-CIO, herein the Union, is a labor organization that serves as the collective bargaining representative of employees in a bargaining unit described in the 2007-2009 labor agreement between the Union and the County as:

. . . all full-time and regular part-time professional employees of Green Lake County, excluding supervisory, managerial, confidential, executive, temporary, craft and casual employees.

3. Pursuant to an agreement between the County, Marquette County and Waushara County, an Aging and Disability Resource Center (ADRC) was created to provide certain services to residents of the three counties. Employees of each of the three counties work a portion of their work week providing ADRC services. When they are providing ADRC services, the work of the employees in each of the three counties is directed by County employee Veronica Ottow, Aging/Disability Resource Center Coordinator. When they are not providing ADRC services, the work of these employees is directed by other individuals from the county that employs them.

4. Ottow does not have the effective authority to hire, discipline or discharge County employees.

5. Ottow does have authority to direct and assign the work of four County employees when they are performing ADRC services. Three of the four employees provide ADRC services on a half-time basis with the fourth providing such services full-time.

6. When the four County employees are performing ADRC work, Aging and Long Term Care Unit Manager Susan Giesen has lesser supervisory authority over said employees than Ottow and the County's Health and Human Services Department Deputy Director Leroy Dissing has more supervisory authority than Ottow over said employees in such circumstances.

7. Ottow's level of compensation is based both on her skills and her responsibility to direct and assign County employees performing ADRC work.

8. Ottow primarily supervises an activity as opposed to employees.
9. Ottow does not spend a majority of her time supervising employees
10. Ottow exercises independent judgment when directing and assigning the work of the four County employees who provide ADRC services.
11. Ottow does not have supervisory authority in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The Aging/Disability Resource Center Coordinator Veronica Ottow is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Aging/Disability Resource Center Coordinator is hereby included in the collective bargaining unit set forth in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 6th day of August, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

GREEN LAKE COUNTY

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

The County, contrary to the Union, asserts that the Aging/Disability Resource Center Coordinator is a supervisor and thus cannot be included in the Union's professional employee bargaining unit.

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

. . . 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 applying Sec. 111.70(1)(o)1, Stats., to the evidence presented, the Commission considers the following factors when determining if the occupant of a position is a supervisor:

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 other 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 skills or for supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether the supervisor spends a substantial majority of the time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

Not all of the above factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient

combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

We begin our analysis by agreeing with the County that Ottow has substantial responsibility for the successful operation of the ADRC. However, pursuant to Sec. 111.70(1)(o)1, Stats., her status as a supervisor is determined by her authority over employees rather than the importance of her role.

In a related argument, the County asserts that if Ottow is not a supervisor and is included in the Union bargaining unit, she will be unable to effectively meet her ADRC responsibilities. First, we note that the impact of inclusion in the Union bargaining unit is speculative on this record. More fundamentally, it is important to point out that it is the County that gives Ottow whatever supervisory authority she has over employees, whether or not that responsibility is sufficient to give Ottow supervisory status within the meaning of Sec. 111.70(1)(o)1, Stats.

Additionally, the County contends that an analysis of Ottow's supervisory status must consider the authority she exercises over the employees of Marquette County and Waushara County when they are performing ADRC duties. We disagree. Through use of the phrases "in the interest of the municipal employer" and "other employees," we conclude Sec. 111.70(1)(o)1, Stats. reflects a legislative intent to restrict supervisory status to those individuals with the requisite authority over employees of the same employer that employs the supervisor. This construction is also most consistent with the general purposes behind the exclusion of supervisors from the definition on "municipal employee", because the County's employer-related interests lie in Ottow's relationship with its own employees and cannot be affected significantly by Ottow's relationship with employees of other employers.

Lastly, it is important to note the parties' agreement that when the four County employees are not performing ADRC work, Unit Manager Giesen is their supervisor. The Union goes further by contending that Giesen is always the actual supervisor of these four employees while the County contends that Giesen and Ottow are co-supervisors as to those four employees. However, both parties agree that a determination of Ottow's supervisory status focuses on her authority over employees when they are performing ADRC work.

Consistent with the foregoing, we proceed to consider the record evidence of Ottow's supervisory authority over County employees when they are performing ADRC work.

Factor 1 considers Ottow's authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. The evidence presented appropriately focuses on Ottow's role in hiring and discipline, as these are critical pieces of the supervisory analysis, there have been no promotions during Ottow's tenure, and the only transfer preceded Ottow's assumption of the Coordinator position.

As to hiring, no employees have been hired during Ottow's tenure but the record clearly and credibly establishes that she will play a significant role in the interviewing process for any employee who will perform ADRC services and will make a recommendation as to which candidate should be hired. However, the evidence in the record persuades us that the County Human Services Board has historically exercised independence from staff recommendations when making hiring decisions. Given this independence, we conclude that Ottow does not effectively recommend hiring.

As to discipline and discharge, there has been no formal discipline of employees performing ADRC work during Ottow's tenure. However, the record persuades us that as to such employees, Ottow has the authority to make disciplinary recommendations to the Department's Deputy Director and Director. Nonetheless, the record does not contain evidence establishing that the Deputy Director and/or Director would necessarily follow Ottow's disciplinary recommendation. Therefore, we conclude that Ottow does not effectively recommend discipline.

To the extent that evaluations play a role in potential transfers, promotions or discipline, the record reflects that Ottow will evaluate County employees as to their ADRC work.

Factor 2 considers the authority to direct and assign the work force. Ottow does have independent authority to direct and assign the work of four County employees when they are performing ADRC services. Three of the four employees provide ADRC services on a half-time basis, with the fourth providing such services full-time.

Factor 3 focuses on the number of employees supervised and the number of persons exercising greater, similar or less authority over the same employees. Ottow directs the work of four County employees. Although Ottow has day to day authority to direct the work of County employees when they are performing ADRC work, Aging and Long Term Care Unit Manager Susan Giesen still plays a supervisory role in the context of responding to sick leave and vacation requests and Human Services Department Deputy Director Leroy Dissing has more supervisory disciplinary authority than Ottow over the County employees when they are performing ADRC work.

Another indicia of supervisory authority referenced in Sec. 111.70(1)(o) 1, Stats. is the authority to "adjust grievances." The parties' 2007-2009 contract provides that grievances shall initially be presented to the employee's "immediate supervisor". The next step in the contractual grievance process is presentation to the "appropriate governing committee." In this contractual context, the record does not establish whether the "immediate supervisor" is Ottow, Giesen or Dissing. However, as the answer to this question would not alter our ultimate disposition of this unit clarification proceeding, we need not reopen the record to obtain same.

Factor 4 seeks an evaluation of whether Ottow's level of pay reflects compensation for her skills or for supervision of employees. Because Ottow's \$52,000 yearly salary after six

months of employment as Coordinator is approximately \$5000 higher than the six month employee compensation provided in the existing labor agreement for the Social Worker II whose ADRC work she directs, we conclude that her level of compensation partially reflects her day to day responsibility to direct those County employees performing ADRC services and partially reflects her skills.

Factors 5 and 6 ask for an evaluation of how the employee spends their time and the extent of their authority when they are directing the work of employees. From Ottow's testimony, job description, the reality that she only directs the work of County employees when they are performing ADRC work, and fact that she is dividing her time roughly equally between work in Green, Marquette and Waushara counties during the normal work week, it is clear that she spends a small portion of her overall work week directing the work of County employees. The evidence noted above further persuades us that even during that portion of her work week attributable to County employees performing ADRC work, only 25% of that time is spent directing the work of those County employees.

Factor 7 is a consideration of the amount of independent judgment Ottow exercises when supervising employees. As noted earlier herein, when directing the work of County employees who are performing ADRC work, Ottow exercises substantial independent judgment. However, as also determined earlier herein, she does not effectively recommend discipline or hiring and thus does not exercise independent judgment as to these components of the statutory definition of a supervisor.

Considering all of the above, we conclude that Ottow does not possess supervisory authority in sufficient combination and degree to be a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats. Although she exercises independence in the day to day direction of County employees performing ADRC work and will evaluate the quality of the work performed, the number of employees whose work she directs is small (four individuals amounting to 2.5 FTE of ADRC work), the amount of time she spends directing that work is limited, and she lacks the effective authority to discipline or hire. Thus, on balance, we conclude Ottow is not a supervisor and we have ordered her inclusion in the bargaining unit.

Dated at Madison, Wisconsin, this 6th day of August, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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32824