

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**KENOSHA COUNTY SOCIAL WORK PROFESSIONAL EMPLOYEES,
LOCAL 990, AFSCME, AFL-CIO**

Involving Certain Employees of

KENOSHA COUNTY

Case 259
No. 66859
ME(u/c)-1211

Decision No. 9533-B

Appearances:

Michael J. Wilson, Staff Representative, Wisconsin Council 40, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1093, appearing on behalf of Kenosha County Social Work Professional Employees, Local 990, AFSCME, AFL-CIO.

Lorette Pionke, Senior Assistant Corporation Counsel, 912 56th Street, Kenosha, Wisconsin 53140, appearing on behalf of Kenosha County.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

On March 27, 2007, Kenosha County Social Work Professional Employees, Local 990, AFSCME, AFL-CIO, filed a unit clarification petition with the Wisconsin Employment Relations Commission seeking to add certain professional positions/employees to an existing Local 990 bargaining unit of "social work professional employees" employed by Kenosha County.

Hearing in the matter was held in Kenosha, Wisconsin on May 16, 2007 before Commissioner Susan J.M. Bauman serving as Hearing Examiner. A transcript of the proceedings was filed with the Commission on May 29, 2007. The parties filed written arguments on August 1, 2007 and waived the filing of reply briefs. On September 17, 2007, the Examiner posed additional questions to the parties. Responses were received by

No. 9533-B

October 11, 2007 and on October 19, 2007, the parties concurred that a stipulation on these facts had been reached. On October 25, 2007, all documents referenced in the stipulation were received. The record was supplemented with additional information on January 3, 2008.

Local 990 seeks to add two full-time Juvenile Court Intake Workers, six part-time Juvenile Court Intake Workers, and one full-time Family Group Conference Facilitator to the professional employee bargaining unit it represents. The County contends inclusion of these employees in the Local 990 unit is not appropriate because: (1) all the employees at issue do not fall within the scope of the existing contractual description of the Local 990 bargaining unit; (2) the job responsibilities of all these employees conflict with those of employees already included in the Local 990 unit to an extent that inclusion is inappropriate; (3) the employees lack a community of interest with other employees in the Local 990 unit; (4) the full-time Juvenile Court Intake Workers and the Family Group Conference Facilitator are supervisors; and (5) the part-time Juvenile Court Intake Workers are independent contractors.

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

FINDINGS OF FACT

1. Kenosha County, hereinafter the County or the Employer, is a municipal employer providing a variety of governmental services, which maintains its principal offices at 912 56th Street, Kenosha, Wisconsin 53140.

2. Kenosha County Social Work Professional Employees, Local 990, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization that serves as the exclusive bargaining representative for certain professional employees of Kenosha County described in the 2006-2008 between the Union and the County as:

. . .Kenosha County social work professional employees employed in Brookside, Aging and Social Services Departments, but excluding Board appointed administrative officials, building service employees, clerical employees, and supervisory employees for the purpose of bargaining on all matters pertaining to wages, hours and all other conditions of employment. Effective January 1, 2006, two (2) Victim Witness Assistant positions are accreted into this bargaining unit.

The scope of this bargaining unit has evolved over time. The 1971 collective bargaining agreement between the County and the Union provided:

The County hereby recognizes the Union as the exclusive bargaining agent for all professional employees in the Kenosha County Welfare Department, but excluding the Directors, Administrative Assistants, elected officials, County Board appointed administrative officials, building service employees, clerical

employees, and supervisory employees for the purpose of bargaining on all matters pertaining to wages, hours and all other conditions of employment.

The 1976 agreement between the parties reads the same except that the clerical employees are included rather than excluded.

In 1982, the Union and the County entered into the following agreement:

“Local 990 – Professional will include all professional social workers in the employ of the County currently represented by Local 990 Welfare, Professional and Clerical. Local 990 – Courthouse and Social Services Clerical will include all others currently represented by Local 990 including clerical and income maintenance workers.”

In October 1992, the County and Local 990, Professionals, AFSCME, AFL-CIO entered into a side letter of agreement which stated that the County:

“. . .voluntarily agrees to accrete the non-supervisory Social Workers employed by the County of Kenosha at their Brookside Care Center facility into Local 990, AFSCME, AFL-CIO, Kenosha County Social Work Professional Employees employed in Brookside, Aging and Social Services Department (hereinafter called the Union), such unit consisting of

ALL KENOSHA COUNTY WELFARE DEPARTMENT
PROFESSIONAL EMPLOYEES, EXCLUDING THE BOARD
APPOINTED ADMINISTRATIVE OFFICIALS, BUILDING
SERVICES EMPLOYEES, CLERICAL EMPLOYEES, AND
SUPERVISORY EMPLOYEES.

Such Social Workers employed at the Brookside Care Center facility shall be in addition to the minimum number of Kenosha County Welfare Department Professional Employees specified in the SIDE LETTER AGREEMENT BETWEEN THE Employer and the Union dated 5/2/89...”

In January 1996, the County Executive reorganized several departments and created a Department of Human Services. The Department consists of several Divisions: Workforce Development, Disability Services, Aging Services, Children & Family Services, Health, Brookside Care Center, and Veterans Services. Following this reorganization, all employees in the Local 990 bargaining unit were employed within the Department of Human Services.

As noted in the above-quoted portions of the parties’ 2006-2008 contract, in 2006 the parties agreed to expand the unit by adding two Assistant Victim/Witness Coordinators who work in the District Attorney’s office which is not part of the Department of Human Services.

3. Juvenile Court Intake Services is a free standing County department which consists of Director Beier, two full-time Juvenile Court Intake Workers (Dawn Weiss and Jeanine Riess), an Office Associate, a Restitution Coordinator and six active part-time Juvenile Court Intake Workers. The Office Associate and the Restitution Coordinator are included in a non-professional employee bargaining unit.

4. Director Beier has held her position since 1988. The most recent position description for her position accurately describes her general duties as: "Administers, supervises and provides the general and specific Juvenile Intake program services for the Kenosha County Circuit Court." The listed distinguishing features of the position are accurately stated as: "The employee in this class administers, manages, supervises and provides the juvenile intake, restitution and dispositional services for the Juvenile Court. The nature of the work involves supervision of employees, planning, policy and procedure setting, providing leadership for and performing intake, restitution and dispositional tasks under the direct supervision of the Circuit Court Judge. The Juvenile Intake Director is on call 24 hours a day 7 days a week to respond to emergency situations."

The training and experience for the position are accurately listed as: "Possession of a Bachelor's Degree in Social Work, Criminal Justice or a related field and experience in a social service agency in a supervisory capacity or; any combination of training and experience which provides the required knowledge, skills and abilities."

In January 2001, Director Beier wrote a memo to the Director of the Division of Personnel and Labor Relations requesting a limited term employee during her up-coming maternity leave. In pertinent part, this memo stated the following:

In my absence, Dawn [Weiss] and Jeanine [Riess] will also have the primary responsibility of supervising the office and after hours/weekend staff. They must have the assistance of another individual to make sure their regular duties are carried out fully.

...

Lastly, please note that while I'm on leave, I do plan to keep in close telephone contact with my office as I did last time. After the first month or so, I plan to come into the office periodically to perform work that I do not intend on delegating. Dawn and Jeanine will be rotating Chief Intake Worker of the day responsibilities have been instructed to contact me at home with urgent situations. They have each been employed with my office for more than ten years and I am confident that the daily functions of the office should run smoothly in my absence, as long as we have the assistance of another individual.

Consistent with her job description and the January 2001 memo, Beier is the supervisor of the other Intake Services employees because she has the authority to effectively recommend

hiring, discipline, transfer, layoff or promotion of Intake Services employees and to adjust their grievances.

5. The most recent posting and position description for the position of Juvenile Court Intake Worker accurately describes the nature of work and the qualifications for the position as follows:

This position is responsible for providing intake services for the purpose of screening children taken into custody. Work is performed under the direct supervision of the Juvenile Intake Director. The Juvenile Intake Worker is on call 24 hours a day, 7 days a week to respond to emergency situations. Duties may include some or all of the following: Interviews children taken into physical custody and other available concerned parties. Consults with parents and responsible adults concerning children's situations. Makes determination on release or custody of children. Makes recommendations to the Juvenile Court on children in custody during their interim status. Provides crisis counseling during the intake process, when necessary. Makes referrals of cases to other agencies, including recommendation to the District Attorney and Corporation Counsel concerning the initiation of formal proceedings. Keeps records and make reports. Meets with school officials, police officers, and social workers regarding problems pertaining to juveniles. Attends seminars and workshops to keep abreast of changes in the law. Performs other duties as required or assigned.

Qualifications: Bachelor's Degree in social work, counseling, psychology, or related field, supplemented by 30 hours of intake training and experience in counseling and working with youths; or any combination of education, training, and experience which provides the required knowledge, skills, and abilities. Ability to deal with juveniles and adults under difficult circumstances. Knowledge of social agencies and law enforcement agencies in the community. Knowledge of laws pertaining to juveniles. Knowledge of applicable court procedures. Ability to make independent judgments. Possession of a valid Wisconsin driver's license. Kenosha County residency required within one year of employment.

6. The Local 990 bargaining unit position of Assistant Victim/Witness Coordinator performs the following work and has the following qualifications as accurately described in a job announcement for this position dated February 11, 2003:

This position performs a variety of duties requiring professional and administrative skills in the implementation and day-to-day operation of the Kenosha County Victim/Witness Program as specified in Chapter 950 of the Wisconsin Statutes. Primary responsibilities include meeting the personal needs of crime victims and families of crime victims, and assisting prosecution staff,

law enforcement personnel, and social service agencies. Direct supervision is provided by the Victim/Witness Coordinator. Duties may include some or all of the following: Review felony and misdemeanor files for case identification. Assist both victims and witnesses with personal problems. Prepare victims/witnesses for the criminal justice process. Coordinate transportation arrangements for victims/witnesses. Assist victims in securing financial recovery for certain expenses. Coordinate community services for crime victims. Educate the community about crime victim issues. Assist the prosecution staff and law enforcement agencies as required. Determine, prepare, and record state witness fees; maintain daily and monthly fiscal records of witness records of witness fee expenses. Assist in the preparation of the annual department budget. Assist with gathering facts, data, and statistics in preparation of required reports. Advise Victim/Witness Coordinator regarding status of security problems. Screen telephone calls. Serve as Victim/Witness Coordinator in his/her absence. Perform other duties as required or assigned.

The qualifications for the position listed were:

Bachelor's degree in Criminal Justice, Police Science, or related field, with coursework in Sociology and/or Psychology, plus a minimum of two (2) years experience in social work, criminal justice, or corrections, or any combination of training, education and experience which provides the required knowledge skills and abilities. . . .

7. Juvenile Court Intake Worker Weiss is certified as a social worker. She provides direction and advice to the Office Associate, Restitution Coordinator and part-time Intake Workers as needed. Generally only when Director Beier is absent, Weiss approves leave requests for the Associate and Coordinator. Her disciplinary authority is limited to verbal counseling. She does not have independent or effective authority to hire, suspend, discharge or reprimand (in written form), promote, transfer, layoff or adjust employee grievances.

Weiss' duties require that she make independent custody decisions which sometimes are contrary to the preference of social workers in the Local 990 bargaining unit. Weiss has had discussions with social workers and the worker's supervisor when she believes some corrective action as to the social worker is needed.

Juvenile Court Intake Worker Weiss does not possess supervisory authority in sufficient combination and degree to be a supervisor.

8. Juvenile Court Intake Worker Riess has a Master's degree in Public Administration, a Bachelor's degree in Sociology, and is a certified social worker and gang specialist. Her responsibilities and authority as to the Office Associate, Restitution Coordinator and part-time Intake Workers are the same as those of Weiss.

Juvenile Court Intake Worker Riess does not possess supervisory authority in sufficient combination and degree to be a supervisor.

9. The Juvenile Court Intake Services' offices are located at 912 56th Street, the Molinaro Building. The Victim Witness Coordinators in the Local 990 unit work out of the same location. The work locations for other current Local 990 bargaining unit members include the social workers in the Divisions of Aging and Children and Family Services at 8600 Sheridan Road, Kenosha and the social workers at Brookside Care Center at 3506 Washington Road, Kenosha.

10. The two full-time Juvenile Court Intake Workers are paid in accordance with the non-represented employee pay plan. Effective January 1, 2007, their minimum yearly pay rate was \$48,230.00 and the maximum was \$67,155.00.

The 2006-2008 collective bargaining agreement between Local 990 and the County provides the following pertinent classification and rate schedule for employees in the Local 990 unit the period January 1, 2007 through December 31, 2007:

Classification	Prob	After 6 mo	After 12 mo	After 24 mo	After 36 mo	After 48 mo	After 60 mo	After 72 mo	After 84 mo	After 96 mo	After 120 mo	After 132 mo
Social Worker I	18.37	19.72	20.81	21.34	22.52	23.02	23.54	24.04	24.57	25.31	25.90	n/a
Social Worker II	20.22	20.75	21.99	22.55	23.88	24.45	25.06	25.68	26.27	27.05	2.63	n/a
Social Worker IV	20.30	21.82	23.10	23.67	24.96	25.60	26.19	26.78	27.37	28.21	28.79	n/a
Social Worker V	22.31	22.89	24.23	24.79	26.12	26.67	27.33	27.90	28.55	29.41	29.97	30.51

By agreement of the parties, the Assistant Victim/Witness Coordinators in the Local 990 unit are paid at the Social Worker IV and V level.

11. There are six active part-time Juvenile Court Intake Workers. They work nights, weekends and holidays and have the same core professional responsibilities as the two full-time Intake Workers. The following chart indicates the name, date of hire, and shifts scheduled for these workers between January and April, 2007:

<i>Name</i>	<i>Date of Hire</i>	<i>Shifts Scheduled in 2007</i>			
		<i>Jan.</i>	<i>Feb.</i>	<i>Mar.</i>	<i>April</i>
Catherine Smith	October, 1997	3+	2+	2+	2+
Boyd Schwartz	February, 1999	5	5	5	5
Michael Wagner	August, 2001	5	3	4	5

Bertha Renteria	April, 2004	5	5	5	5
Ruthie Farmer	April, 2004	5	5	5	5
Rachel Marino	March, 2006	5	4	5	5

The part-time employees are not required to go to an office, but carry a pager and are responsible for responding when paged. They are paid by the shift and case according to the following schedule:

<i>Type of Shift</i>	<i>Description</i>	<i>Rate</i>
Weeknight	15 hr full-shift	\$ 36.00
Weeknight	Hour(s)	\$ 2.40
Weekend	24 hr full-shift	\$ 58.00
Weekend	Hour(s)	\$ 2.40
Special Day	24 hr full-shift	\$ 86.00
Special Day	15 hr full-shift	\$ 54.00
Holiday	24 hr full-shift	\$115.00
Holiday	Hour(s)	\$ 4.80
Capias	Case(s)	\$ 29.00
Non-Capias	Case(s)	\$ 36.00

The six active part-time Juvenile Court Intake Workers work with sufficient regularity to be regular part-time employees.

12. Andrea Peratt holds the position of Family Group Conference Facilitator in the Department of Human Services, Division of Children and Family Services. Peratt started in her position on March 16, 2006 at an hourly rate of \$23.077. She holds a Bachelor's degree in psychology and a Master's degree in clinical social work. The posting for the position, which is grant funded, accurately describes the nature of the work as follows:

This position works with families in the child welfare system to facilitate family group conferences. The employee will work with the family to build a family support team, use the team's assistance to resolve differences and build consensus, guide the team in the formation of a successful family plan, create a trusting environment to promote open communication which will accurately assess the family's needs, engage people in a strength-based approach, and identify creative community supports. Duties may include some or all of the following: Prepare and assist families with family group conferences. Coordinate and facilitate family group conferences. Develop and implement a case plan, modifying the plan with the team as necessary. Maintain appropriate records and complete required paperwork. Prepare and present reports. Attend court hearings as required. Collect statistics in accordance with Division requirements. Attend in-service training and staff development activities.

Perform other duties as required or assigned. May be required to work non-traditional hours.

Referrals to the family group conferencing program come from social workers within the child protective service unit, court service unit, or on-going social service unit. Peratt reviews the case information, discusses it with the social worker, and determines whether a conference is appropriate. If a conference is to occur, she advises the social worker as to what can, and cannot, be said during the conference. Peratt functions as the facilitator at the conference with includes the social worker, the extended family, and other service providers that are working with the family. After the conference, Peratt prepares the plan, based on the discussion at the conference. She signs off on the plans, whereas the case manager social worker does not have the authority to do so and cannot veto the plan.

Peratt also runs the family integrated court program. When program families are involved in the Department of Human Services and also the court system, be it criminal or family, one judge hears all of the cases. Currently two juvenile judges are participating in the program. It is a pilot program, and only five families are participating at this time. Peratt searches the database to find families and then contacts the District Attorney's office to determine if there are pending criminal charges. She then contacts the judge and the clerk and asks if they are willing to accept the case. She then contacts the family to find out if they are interested in having one judge handle the family, criminal and juvenile cases.

Peratt does not directly supervise any employees. She does report performance concerns about social workers to their supervisors and meets with supervisors once every two months. Peratt does not have the independent or effective authority to hire, discipline, promote, layoff, or transfer any County employee or to adjust their grievances.

The Family Group Conference Facilitator does not possess supervisory authority in sufficient combination and degree to be a supervisor.

13. In addition to the Union and bargaining unit at issue herein, the County has collective bargaining agreements with the following labor organizations covering the following bargaining units:

Kenosha County Deputy Sheriff's Union represents "all sworn deputy sheriffs and detectives of the Kenosha County Sheriff's Department, but excluding the Sheriff, Chief Deputy Sheriff, all employees holding rank of Sergeant and above, Civil Jail Guards and all clerical employees. . ."

Kenosha County Employees, Local 70, AFSCME, AFL-CIO, Highway Department represents "all Kenosha County Highway employees, except the yearly salaried supervisory employees. . ."

Service Employees International Union, Local 68 represents maintenance and custodial workers in a unit described as “All regular full-time and part-time Kenosha County Courthouse, Job Center Building, Public Safety Building, Kenosha County Center, Molinaro Building, Old Unemployment Compensation Office, Kenosha County Administration Building, the downtown Pretrial Facility, the Corporation Counsel’s Office and the Detention Center custodians and maintenance employees, excluding supervisory, confidential, managerial, executive, seasonal, temporary and casual employees...”

Local 990, Wisconsin Council 40, AFSMCE, AFL-CIO, represents a unit described as all employees of the Kenosha County Sheriff’s Department, excluding deputies with the power of arrest, employees already represented by AFSCME 990 in the courthouse and Social Services Department bargaining unit, and further excluding managerial, supervisory and confidential employees.

Kenosha County Local 990 AFSCME, AFL-CIO (Courthouse and Social Services Clerical), represents a bargaining unit described as “. . . Kenosha County Courthouse employees and Job Center/Human Service employees references in this Agreement, excluding elected officials, County Board Appointed administrative officials, and building services employees. . . “

Kenosha County Institutions Employees, Local 1392 AFSMCE, AFL-CIO represents a bargaining unit described as “...all Brookside employees except supervisory employees, administrator’s stenographer and registered nurses...”

Kenosha County Federation of Nurses and Health Professionals Local 5061, AFT, AFL-CIO, represents a bargaining unit described as “...all regular full-time and part-time Registered Nurses, including graduate nurses, and Registered Music Therapists...”

Kenosha County Employees, Local 1090, AFSCME, AFL-CIO represents a bargaining unit described as “...all full-time employees of the County Parks, except the yearly salaried Park Director, Assistant Park Director, Administrative Assistant, and Supervisor II Employees...”

14. The Juvenile Court Intake Workers and the Family Group Conference Facilitator are the only “social work professional employees” of the County who are not supervisors, managerial or confidential employees.

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

CONCLUSIONS OF LAW

1. There is no agreement between the County and the Union that precludes inclusion of the Juvenile Court Intake Workers or the Family Group Conference Facilitator in the Local 990 bargaining unit described in Finding of Fact 2.

2. There is no conflict of interest between the employees in the Local 990 bargaining unit and the Juvenile Court Intake Workers or Family Group Conference Facilitator which is sufficient to preclude inclusion of the Workers or the Facilitator in the Local 990 bargaining unit.

3. The Juvenile Court Intake Workers and the Family Group Conference Facilitator have a stronger community of interest with the social workers and Assistant Victim/Witness Coordinators in the Local 990 bargaining unit than with employees in any other County bargaining unit.

4. Establishment of a separate bargaining unit of Juvenile Court Intake Workers and the Family Group Conference Facilitator would be contrary to the directive in Sec. 111.70(4)(d) 2.a., Stats., that the Commission should avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force.

5. Juvenile Court Intake Workers Weiss and Riess are not supervisors within the meaning of Sec. 111.70 (1)(o)1, Stats., and therefore are municipal employees within the meaning of Sec. 111.70 (1) (i), Stats.

6. Family Group Conference Facilitator Peratt is not a supervisor the meaning of Sec. 111.70(1)(o)1, Stats. and therefore is a municipal employee within the meaning of Sec. 111.70 (1) (i), Stats.

7. The six active part-time Juvenile Court Intake Workers are regular part-time employees of the County.

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 Juvenile Court Intake Workers and the Family Group Conference Facilitator shall be included in the bargaining unit represented by Kenosha County Social Work Professional Employees, Local 990, AFSMCE, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 4th day of February, 2008.

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

KENOSHA COUNTY

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

Based on the positions taken by the parties in this litigation, there are threshold issues as to whether the existing description of the bargaining unit (set forth in Finding of Fact 2) or the professional responsibilities of the Intake Workers and/or Family Group Conference Facilitator preclude inclusion of these employees in the Local 990 bargaining unit.

If we conclude that resolution of these threshold issues does not preclude inclusion of the employees in question, we will then determine whether inclusion of the employees is generally appropriate based on the community of interest or lack thereof that these employees have with employees in the Local 990 unit and the statutory directive that we avoid fragmentation of bargaining units.

If we conclude that inclusion in the Local 990 unit is generally appropriate, we will then resolve the issues of whether the full-time Juvenile Court Intake Workers and the Family Group Conference Facilitator are supervisors who therefore cannot be included in the unit and of whether the part-time Juvenile Court Intake Workers are independent contractors who therefore should not be included in the unit.

THRESHOLD ISSUES

The evolution of the Local 990 bargaining at issue in this proceeding is set forth in Finding of Fact 2. As is apparent from that evolution, and from the inclusion of employees in the District Attorneys' office (the Assistant Victim/ Witness Coordinators) who are not social workers and are not "employed in Brookside, Aging and Social Services Departments", the language of the existing contractual recognition clause cannot reasonably be understood as an agreement that bars the Union from seeking to include other professional employees who are not classified as "social workers" or who are not "employed in Brookside, Aging and Social Services Departments." We further note in this regard that the contractual recognition clause refers to "social work professional employees" not to "professional social workers." Given this broader reference and the inclusion of the Assistant Victim/Witness Coordinators (who need not be certified social workers) in the existing unit, we reject the County argument that the unit is restricted to those whose responsibilities require that they be certified social workers or who are organizationally attached to the entities listed in the 2006-2008 contractual recognition clause.

Turning to the conflict of interest issue, the record establishes that the Juvenile Court Intake Workers and the Conference Facilitator are responsible for raising issues regarding the job performance of employees already included in the Local 990 unit. The record further establishes that the Intake Workers and Facilitator have the responsibility to, and in fact do, reject the recommendations of Local 990 unit social workers as to custody and program

participation matters. Neither of these responsibilities preclude inclusion of the Intake Workers or Conference Facilitator in the Local 990 unit. The responsibility to raise performance issues is a responsibility commonly possessed by “lead workers” whom we have historically included without incident in the same unit as the employees whom they “lead” DOOR COUNTY, DEC. No. 24016-G (WERC, 3/03). As to the propriety of including employees in the same unit as employees with whom they disagree from time to time over professional judgments, the Union persuasively argues that there is no reason to believe that any of the employees at issue will alter those professional judgments simply because they happen to be included in the same bargaining unit. Further, if that were to occur, the employer/public interest is amply protected by the right of the County to discipline the involved employees.

IS INCLUSION OTHERWISE APPROPRIATE ?

Having concluded that there are no threshold issues that bar the inclusion of the disputed employees in the Local 990 unit, we turn to the question of whether such inclusion is otherwise appropriate. As discussed earlier herein, the existing unit may reasonably be viewed as including all those who are “social work professionals.” Viewed from this perspective, it is apparent that inclusion of the disputed employees would be appropriate given the language of the contractual recognition clause and the disputed employees’ job responsibilities. However, because the language of contractual recognition clause is less than clear, it is appropriate to assess whether inclusion in the Local 990 unit is appropriate based on community of interest and anti-fragmentation grounds. When doing so, we consider the following factors:

1. Whether the employees in the unit sought share a “community of interest” distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought share separate or common supervision with all other employees.
5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.

7. Bargaining history.

ARROWHEAD UNITED TEACHERS V. WERC, 116 WIS.2D 580 (1984).

We have used the phrase “community of interest” as it appears in Factor 1 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.

As to Factor 1, although the employees in question perform different functions with respect to juvenile offenders and families in crisis than do the social workers and Assistant Victim/Witness Coordinators already in the unit, there is no question that all these employees share an overlapping group of clients and similar purpose of providing assistance to County residents in need of social services.

As to Factor 2, the employees in question have duties and skills similar to those of the social workers and Assistant Victim/Witness Coordinators. As evidenced by the duties of the Assistant Victim/Witness Coordinators, it also clear that there are already employees in the Local 990 unit who do not perform “social work” in the narrow sense of that phrase and are not required to be certified as “social workers.”

As to Factor 3, the wages and working conditions of the full-time employees in question are comparable to those of the existing members of the bargaining unit. As to hours, although the full-time Juvenile Court Intake Workers are on call 24 hours a day, as a general matter the social workers, Assistant Victim/Witness Coordinators and the full-time employees in question all regularly work a standard day time shift.

As might be expected given their part-time status, the wages of the part-time employees are substantially less than those of the full-time employees and the part-time employees work nights, weekends and holidays.

The County points out that the Juvenile Court Intake Workers are selected by County judges, rather than through the civil service process applicable to other County employees. This fact does not warrant exclusion from the bargaining unit. As we found in BROWN COUNTY, DEC. NO. 11983-J (WERC, 3/06), the fact that judges make the final hiring decisions does not preclude employee inclusion in a bargaining unit if such inclusion is otherwise appropriate.

As to Factor 4, the Intake Workers do not share common supervision with employees in the existing unit. The Family Group Conference Facilitator does share common supervision with other Local 990 unit employees.

As to Factor 5, the employees in question share a common work site with the employees in the Local 990 bargaining unit. The Conference Facilitator works at the same site as the social workers in the Divisions of Aging and Children and Family Services at 8600 Sheridan Road and the Intake Workers work at the same site as the Assistant Victim/Witness Coordinators in the District Attorney's offices, at 912 56th Street, the Molinaro Building.

Factor 6 reflects our statutory obligation under Sec. 111.70(4)(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." A review of the extensive list of unrepresented County employees placed in evidence by the parties reveals that there are no other employees in the social services-related area who are not, at least by title, supervisory or managerial employees. Thus, at least based on the record before us, the employees in question (subject to our subsequent determination as to whether the full-time employees in dispute are supervisors) are the only social services-related County employees who are not included in a bargaining unit. Given the small number of employees in question, and the large number of existing units, and the community of interest they share with employees in the existing Local 990 unit, failure to include these employees in the Local 990 unit (the resultant potential future creation of a separate unit consisting of these employees) would be contrary to the "avoid fragmentation" directive noted above.

Factor 7 – (bargaining history) 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). The employees at issue here have been unrepresented but have not had their wages, hours and working conditions established on a group basis.

Considering all of the foregoing, we conclude that there is a strong community of interest between the employees in question and the employees in the Local 990 unit and that inclusion in that unit is consistent with the "avoid fragmentation" statutory directive. On this record, we further conclude that there is no other existing bargaining unit into which these employees would be a better "community of interest" fit. Therefore, inclusion of these employees in the Local 990 unit is generally appropriate.

SUPERVISORY STATUS

Juvenile Court Intake Workers

The County asserts that the full-time Juvenile Court Intake Workers are supervisors. Section 111.70 (1)(o) 1, Stats. defines a "supervisor" in pertinent part 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 this statutory definition, 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 other person exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the above factors need to reflect supervisory status for an employee to be found a supervisor. Rather, the inquiry in each case is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05).

Applying the foregoing factors to this case, it is clear the two full-time Intake Workers at issue in this proceeding are not supervisors. Rather, as reflected in Finding of Fact 4, Director Beier has retained all significant supervisory over Juvenile Court Intake Services employees.

As to Factor 1, the Intake Workers do not have the independent or effective authority to hire, promote, or transfer employees. Contrary to the County's arguments, the record evidence establishes that their disciplinary authority is limited to verbal counseling both as to Juvenile Court Intake Services employees and Local 990 social workers with whom they

interact. Resolving/acting upon any serious issues of misconduct/job performance would be the responsibility of Director Beier as to Juvenile Court Intake Services employees, and of the direct supervisor of the Local 990 social workers.

With respect to Factor 2, the Intake Workers (along with Director Beier) do provide direction to the other employees in the office, the part-time Intake Workers, and other Local 990 employees.

With respect to Factor 3, the office consists of the Director, the two full-time positions at issue herein, an Office Associate, a Restitution/Community Service Work Coordinator, and the six active part-time Intake Workers. As noted above, Director Beier exercises all significant supervisory authority over all of these employees. While the full-time Intake Workers exercise the limited supervisory authority of approving leave requests in Beier's absence, Finding of Fact 4 makes clear that even when absent, Beier remains firmly in control of all significant supervisory matters.

With respect to Factor 4, the Intake Workers are paid substantially more than the Office Associate, Restitution Coordinator and the part-time Intake Workers. However the fact that the pay of the Workers is comparable to that of the admittedly non-supervisory social workers and Assistant Victim/Witness Coordinators in the Local 990 unit supports the conclusion that the Intake Workers are paid for their skill and professional responsibilities but not for supervision.

As to Factor 5, it is apparent that the full-time Intake Workers supervise an activity, not employees. Their role with respect to the part-time Intake Workers is to respond to questions about particular cases. They are providing the information necessary for the part-time Intake Workers to perform their work. With respect to the other employees in the office, the full-time Intake Workers provide direction and assistance as needed but do not supervise the employees in any significant way.

As to Factors 6 and 7, the two full-time Intake Workers do not spend any significant amount of time directing the work of others. However, when they do so, they do exercise independent judgment.

Given all of the foregoing, we conclude that the two full-time Intake Workers are clearly not supervisors and have therefore been clarified into the Local 990 unit.

Family Group Conference Facilitator

The Family Group Conference Facilitator is a new position within the Division of Children and Family Services, Department of Human Services. The County acknowledges that the incumbent, Andrea Peratt, does not directly supervise anyone at this time. Thus, any supervisory authority is exercised over Local 990 social workers, who have their own direct supervision. We note that her pay rate is less than that of the Local 990 social workers. While Peratt has some authority to direct the work of social workers and can bring job performance

issues to the attention of the social workers' direct supervisor, this authority falls far short of that necessary to establish supervisory status under Sec. 111.70 (1)(o) 1, Stats. Therefore, inclusion of the Facilitator in the Local 990 unit is appropriate and we have so ordered.

PART-TIME INTAKE WORKERS

The last issue before us involves the status of the six active part-time Intake Workers. The County's primary arguments against inclusion are the same "conflict of interest" and "recognition clause" and "community of interest" based arguments we have discussed and rejected earlier herein. The County briefly suggests that these employees might be "independent contractors," but clearly the County exercises sufficient "right of control" to establish that these individuals are County employees. NORTHERN PINES UNIFIED SERVICES CENTER, DEC. NO. 17590 (WERC, 2/80).

Finding of Fact 11 supports the conclusion that these employees work with sufficient regularity to qualify as regular part-time as opposed to casual employees. TOMAHAWK SCHOOL DISTRICT, DEC. NO. 22495 (WERC, 3/85). Thus, given all of the foregoing, inclusion of six active part-time Intake Workers is clearly appropriate and we have so ordered.¹

Dated at Madison, Wisconsin, this 4th day of February, 2008.

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

¹ Given our conclusion, we need not respond to the Union's argument that the contractual unit description does not limit the scope of the unit to "regular full-time and regular part-time" employees and, thus that, even if the part-time Intake Workers are not "regular part-time employees" but instead are casual employees, their inclusion is not barred.