

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 PORTAGE COUNTY :
 Involving Certain Employes of : Case 2
 PORTAGE COUNTY : No. 37284 ME-107
 : Decision No. 6478-C

Appearances:

Mr. Paul F. Jadin, Personnel Manager, Portage County, 1516 Church Street, Stevens Point, Wisconsin 54481, appearing on behalf of the County.
Ms. Cindy S. Fenton, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Council 40, AFSCME, AFL-CIO.

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

Portage County having, on July 14, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employes of Portage County by determining whether certain positions should be excluded from said bargaining unit; and the petition having been held in abeyance while the parties attempted to resolve the matter; and hearings in the matter having been conducted on February 16, 1987, and February 26, 1987, before Examiner Coleen A. Burns, and a stenographic transcript of the proceedings having been prepared, and received on July 28, 1987; and at hearing, the parties having been given the opportunity to present oral arguments and witnesses; and the parties having on August 11, 1987 declined to file written briefs; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Portage County, referred to herein as the County, is a municipal employer having its offices at 1516 Church Street, Stevens Point, Wisconsin 54481.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 348, hereinafter referred to as AFSCME, are labor organizations with offices located at 909 5th Avenue, Stevens Point, Wisconsin 54481.
3. That AFSCME Local 348 is the exclusive bargaining representative of the following bargaining unit:
 All regular full-time and regular part-time nonprofessional employes in the employ of Portage County in its Courthouse, County Home, and Department of Community Human Services and Library, excluding professionals, supervisory, managerial and confidential employes, and employes included in other bargaining units.
4. That the County, on July 14, 1986, filed a unit clarification petition with the Commission wherein it sought to exclude from the bargaining unit described in Finding of Fact 3, supra, the positions of Administrative Secretary II/Library, Administrative Secretary II/Register of Deeds, Administrative Secretary II/Commission on Aging, and Energy Assistance Coordinator/Human Services as managerial and supervisory employes, the position of Computer Programmer/Data Processing as a professional employe, and the position of Payroll Accountant/Business Administration as a confidential employe.
5. That at the first day of the hearing, February 16, 1987, the County and AFSCME stipulated that the positions of Administrative Secretary II/Library, Administrative Secretary II/Register of Deeds, Computer Programmer/Data Processing, and Payroll Accountant/Business Administration were no longer at issue.

6. That on the second day of the hearing, February 26, 1987, the County and AFSCME entered into an agreement whereby the County withdrew its request for unit clarification of the position of Energy Assistance Coordinator/Human Services.

7. That the County, contrary to the AFSCME, seeks the exclusion of the position of Administrative Secretary II/Commission on Aging from the bargaining unit as a supervisory and managerial position.

8. That the Portage County Commission on Aging is a department of the County under the supervision of the Portage County Board of Supervisors; that the Commission has one Director, Pat Stade; that reporting to Stade are six program directors who are members of a professional employe bargaining unit, and the Administrative Secretary II, Bruce Beaman; and that the position description for the Administrative Secretary II contains the following summary of major responsibilities:

The COA administrative secretary II is the manager of clerical and non-programmatic support systems for the agency's staff and board of directors. Primary duties include: fiscal oversight (particularly in the area of Revenues and Accounts receivable); creation of informational and promotional materials; compilation and submission of payroll and maintenance of payroll and personnel records; maintaining inventory of agency equipment and furnishings; purchase of office equipment and supplies; and general clerical support (typing, filing, etc);

that the position description also contains the following section:

Knowledge, skills and abilities:

Knowledge of financial recordkeeping systems;
Knowledge of budgeting procedures;
Knowledge of grant-writing techniques and procedures;
Knowledge of principles of journalism, strong skills in creative and technical writing;
Ability to communicate effectively in written and oral formats;
Typing skills (at least 45 words per minute);
Knowledge of open meeting laws and regulations;
Ability to design and initiate office systems (recordkeeping, office procedures, etc);
Familiarity (minimum) with lay-out techniques, graphics, and design for printed materials;
Knowledge of county government procedures and regulations;
Some data processing experience or familiarity in using computers.

that the description of duties for this position allots a percentage of time to each of the primary areas of responsibility, and these areas and percentages are as follows:

- A. Fiscal - 20%
- B. Payroll/Personnel - 20%
- C. Newsletter - 15%
- D. Writing and Design - 20%
- E. Equipment/Supplies - 5%
- F. Miscellaneous - 20%

that the job description breaks down each of the areas of responsibility into the following components:

A. Fiscal

- 1. Prepare daily deposits and submit to county treasurer's office donations, Holly Shoppe sales money, fees, grant payments, and other revenue.
 - a) keep deposits journal and file treasurer's receipts in chronological order with COA internal receipt forms attached.

2. Supervise bookkeeper I and assign work tasks as necessary.
 - a) conduct annual performance evaluation.
3. Submit monthly financial reports to Area Agency on Aging on IIIB, C-1, C-2, and SCS funding (bookkeeper prepares IIIB, C-1, and SCS reports; administrative secretary prepares C-2 report).
4. Submit monthly vouchers to COA board chairman for approval and then submit to accounting office.
5. Work with bookkeeper and other staff in preparing annual agency budget (administrative secretary is responsible for drafting portions of budget such as the line items for newsletter printing and postage, office supplies, Xerox, repairs to office equipment, etc.).
6. Draft budgetary portions of annual county aging plan to convert county budget into aging plan format.
 - a) draft annual re-budgeting documents for aging plan.
7. Review monthly print-outs of disbursements and revenues; if errors or problems are observed, bring to the attention of the bookkeeper or COA director.
8. Write or assist in writing grant applications for federal, state, or local funding.
9. Report to COA board's finance committee at their monthly meeting and address inquiries it may have concerning fiscal issues or records.
10. Submit monthly or special per diem reports to county clerk's office for COA board members.
11. Maintain petty cash fund.

B. Payroll/Personnel

1. Compile bi-weekly payroll report from staff timesheets and submit to accounting office.
2. Maintain staff payroll records listing accumulated regular hours, sick, comp., vacation, and other time paid.
 - a) periodically issue notices to staff listing their balances of sick, vacation, comp., or other time.
3. After annual staff evaluations have been conducted, prepare "options" chart for COA board with salary recommendations.
4. Maintain staff personnel files and update the salary progression chart in each (plot quintiles, note grade changes, and so forth) after salary reviews have been approved by COA board.
5. Prepare and submit salary review forms to personnel office.

C. Newsletter

The COA publishes a monthly or bi-monthly newsletter for the older population of Portage County.

1. Write and/or edit news articles, notices, calendars submitted by staff.

2. Select graphics, type camera-ready copy, and do lay-out, and submit completed copy to printer with instructions as to number of copies required and delivery date.
3. Maintain computerized mailing-list and do monthly updating for changes-of-address, deletions, and additions.
4. Prepare bulk mail postage form for post office.
5. Draft annual agreement and printing schedule with printer.

D. Writing and Design

1. Write weekly "Senior Spotlight" news column and submit to Stevens Point Journal and WSPT Radio.
2. Write news releases and public service announcements for media.
3. Design, do graphic and lay-out work, write copy for, and type promotional or information brochures, flyers, posters, booklets.
4. Design forms for internal office use.
5. Edit and/or write articles, do lay-out and typing of Holly Shoppe newsletter (twice yearly).
6. Write/edit office correspondence.

E. Equipment/Supplies

1. Work with county purchasing agent in ordering office equipment/furniture and office supplies.
 - a) maintain inventory of capital equipment by updating whenever new purchases are made, delete discarded items, etc.; complete inventory forms and submit to purchasing agent and put property tags on equipment.
2. Where applicable, administer maintenance contracts on office machines.
3. This position is the primary key operator for the photocopier machine and if necessary receives special training in operation so that whenever possible operating problems can be solved in-house without recourse to calling in repairmen.
4. Liase between the COA and the county data processing department on purchase and use of computers, software, printers, etc.

Miscellaneous

1. From data submitted by program directors compile quarterly program reports on IIB, C-1, C-2, and SCS services and submit to AAA.
2. Maintain central agency files and staff resource library.
3. Compile monthly in-house staff calendar.
4. Issue agendas and minutes to COA board meetings and notify media.
 - a) take minutes at board meetings.
5. Perform routine typing, filing, copying and calculating.

6. Perform other duties as assigned by COA director.

9. That the 1987 "administrative" portion of the Commission on Aging budget drafted by Beaman is as follows:

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COA-ADMINISTRATION	1985 ACTUAL	1986 BUDGET	1986 ACTUAL 6 MOS	1986 ESTIMATE 6 MOS	1986 TOTAL PROJECTION	1987 PROPOSED
SALARIES	46,996	48,737-	23,532	25,205	48,737	49,920-
LONGEVITY	141	125-		125	125	250-
RETIREMENT	5,864	6,171-	2,904	3,267	6,171	6,488-
SOCIAL SECURITY	3,598	3,771-	1,871	1,950	3,771	3,874-
HEALTH INSURANCE	1,634	2,790-	1,814	976	2,790	3,124-
LIFE INSURANCE	158	193-	96	97	193	193-
DISABILITY INS		172-	86	86	172	172-
MEALS-NON OVERNITE STAY	11		23		23	
STAFF TRAVEL	349	468-	173	272	445	468-
OFFICE SUPPLIES	2,420	1,805-	787	1,018	1,805	1,785-
TELEPHONE	2,007	3,025-	1,493	2,332	3,339	2,670-
REPAIRS TO OFFICE EQUIPMT	856	685-	35	650	685	685-
DUES-FEES-REGISTRATION	127	75-	74		76	75-
XEROX	1,688	2,090-	674	1,142	1,816	2,127-
BOOKS-SUBSCRIPTIONS	75	55-	20	35	55	55-
POSTAGE	164	20-	5	15	20	20-
STAFF TRAINING	87	165-	106	59	165	165-
COMPUTER SERVICES		3,400-	1,753	1,647	3,400	2,741-
AUDIT	1,700	2,500-	2,773		2,773	2,500-
OUTLAY	3,360	260-	260		260	
PROGRAM TOTAL	76,907	77,315-	35,453	38,876	74,329	77,106-

10. That Beaman is responsible for drafting the "administrative" portion of the Commission on Aging budget, which at the time of hearing was projected at approximately \$77,000.00 for 1987; that Beaman does not determine the appropriations for budget items which are governed by the labor contract, such as salaries, longevity, retirement, social security, life insurance or disability expenses; that non-union employee wage allocations are based upon projections made by the Director or Personnel Manager; that, at the time of hearing, the "administrative" portion of the budget devoted to salaries and fringe benefits was approximately \$64,000; that the approximately \$13,000 remaining in the budget is allocated among line items including staff travel, office supplies, telephone, repairs to office equipment, dues/fees, xerox, books and subscriptions, postage, staff training, computer devices, audit, and outlay; that the staff travel allocation is determined by the Director; that the County Clerk's office provides Beaman with information on telephone costs for the coming year, and Beaman breaks down the total cost into the number of phones budgeted in the administrative area; that the dues, fees, and registration allocation is determined by staff request and Director approval; that xerox expenses are provided by the purchasing agent at a per page rate, with an estimate made of usage for the year in question; that books/subscriptions and staff training allocations are ultimately the decision of the Director; that the computer services allocation is determined by the Data Processing Department; that the audit allocation is determined by the audit firm; that the decision to omit capital outlay was made by the individual program directors, and heads of the agency; that Beaman is responsible for assessing and allocating line items for office supplies, repairs to office equipment, and postage, the total of which is approximately \$2400.00 for 1987; that County guidelines provide that Beaman may transfer, at his discretion, up to 10% of any line item over which he has control; that any amounts over 10% must be approved by the Director and the County Personnel Committee; that Beaman estimates the administrative budget process occupies 35-40% of his time annually; that other program managers prepare similar budgets for their departments; that all draft budgets are reviewed by the Director, the six managers and Beaman in a joint meeting, with any necessary adjustments made on the basis of a consensus; that the final budget is approved by the Director, reviewed by the Commission board, sent to the County Finance Committee, and then through the normal adoption process; that in past years the County has informed the Commission of what the percentage increase or cut would be; and that in 1987, the Commission was not given a specific budget limit, but that the Director and her staff were aware that the County was seeking to reduce overall spending.

11. That Beaman is responsible for drafting the budgetary portions and program descriptions of the annual report to federal and state agencies for the county aging plan; that the preparation of the annual plan takes up approximately 20-25% of his work time annually; that the document is necessary for federal and

state funding purposes, and informs the federal and state agencies of the manner in which the Commission intends to use the monies received; that the source of the monetary information is the State Bureau on Aging, or the County budget; that Beaman, is responsible for translating the County budget format to the format required by the plan; that the goals and objectives portion of the plan is prepared by the Director; and that the final plan goes to the board of directors, and then to the Commission on Aging in Rhinelander for review and approval.

12. That Beaman is the editor of the agency newsletter, The Post, and the Autumn Offerings brochure; that Beaman drafts that portion of the Senior Center budget dealing with the costs of printing, postage and distribution of the newsletter; that the newspaper budget for 1987 is \$6300; that in past years, the Director and the Senior Center Director determined that the newsletter would be distributed bi-monthly because of budget restrictions; that they subsequently decided to go back to a monthly distribution this year; that Beaman receives from the program directors items which they wish to include in the coming month's issue; that the items are first reviewed by the Director for their appropriateness, and priority; that Beaman edits or rewrites the submitted articles for inclusion in the newsletter; that Beaman writes the post notes and calendar sections of the newsletter; that Beaman types the copy, does the layout, and submits a camera ready copy to the printer; that the Director always reviews the layout prior to being sent to the printer; that Beaman has responsibility for preparing bid specifications, putting out the printing process for the newsletter for bid, and directing the printer as to how many copies should be printed for each edition; that circulation of the newsletter is over 3500 per year; and that Beaman is responsible for issuing money to the post office account for the purpose of covering the bulk mailing expense for the newsletter.

13. That Beaman's writing background allows him to provide writing assistance to other program directors in the areas of news releases, brochures, posters, and correspondence; that Beaman types correspondence for the Director; and that the Director informs Beaman of the contents of the correspondence and Beaman is responsible for the composition of correspondence.

14. That in 1985, Beaman drafted a policy and procedures handbook for employes which includes a copy of a code of ethics adopted by the Commission for its staff and members, and provides information on payroll, timesheets, requests to take or earn time, staff training, vouchers and purchasing procedures, and various other policies; and that the policies and procedures incorporated in the handbook were existing County policies.

15. That Beaman coordinates and recommends the purchase of items ranging from minor cost supplies to capital equipment for the agency; that he has authority to expend monies that have been allocated to data processing; that within the past year, he was responsible for the purchase of a personal computer for the agency; that Beaman personally determined that the agency was in need of a computer for word processing; that the nutrition program director was interested in using a computer for her work, consulted with Beaman on the type of software available, and asked for his recommendation; that Beaman consulted with various staff members, including the nutrition program director, to determine whether funding for the computer was available from various program budgets; that Beaman was responsible for assessing the computer needs of the agency and evaluating the available software and hardware to meet the needs; that the agency Director left the decision as to how much money to allocate to the purchase of the computer to Beaman; that after he identified the appropriate hardware and software for the agency and made a determination that the funds were available, Beaman consulted with the County agent in charge of purchasing; that with the Director's approval, Beaman made an oral presentation to the board recommending the purchase of the computer and developed a written analysis of his Research and ultimate recommendation for the board's review; that the board questioned Beaman thoroughly on his proposal and approved it without modification, and that the board approved the purchase of the computer allocating funds in a separate trust account as well as using funds from the budget of the nutrition program.

16. That Beaman is responsible for the purchase, replacement, or repair of office equipment for the agency; that he was involved in the purchase of two xerox machines, a mimeograph machine, transcribing equipment, typewriters, calculators, and furniture; that the actual decision to purchase a xerox machine for use in the agency was made by the county purchasing agent; that Beaman is responsible for assessing whether an office machine can be repaired or requires replacement; that

Beaman determines whether to call a repair person and personally makes the contact; that if Beaman determines that a piece of equipment must be replaced, he will go to the board for approval; that Beaman can recall only one occasion when the board denied a recommendation to purchase equipment, i.e. a VCR.

17. That Beaman serves as the primary liaison between Commission on Aging employes and the Personnel Department; that he provides new employes with the Policies and Procedures Handbook, and shows them how to find supplies and forms; that Beaman is responsible for knowing the contents of the bargaining agreements of the two unions representing Commission employes and the County's policies for nonrepresented employes; and that Beaman provides information and answers questions regarding personnel policies, insurance, vacation, and wages contained in the various agreements and policies.

18. That Beaman attends the bi-weekly staff meetings with Stade and the six Program Directors, and is considered a part of the management team by Stade; that at the staff meetings Beaman is involved in discussions regarding personnel policies and budgetary matters; that he has made suggestions which have been acted upon and implemented, and consults with Program Directors about funding for future projects; that he advises Program Directors about the availability of funds in their budgets for future spending, and is considered an office manager by the Director; that he monitors income and expenses of the agency for the purpose of advising the Director about the status of the budget and is responsible for all fiscal reports of the agency; that he completes or oversees the completion of reports to state and federal agencies; and that Beaman does not sufficiently participate in the formulation, determination and implementation of policy or have sufficient authority to commit the County's resources so as to render him a managerial employe.

19. That the clerical staff of the Commission on Aging consists of 2 full-time Typist II positions, and one part-time Bookkeeper I position; that one of the Typist II positions is supervised by the Senior Center Director, while the other is assigned to the Retired Senior Volunteer Program Director; that Beaman supervises the Bookkeeper I position, assigns her work tasks, monitors her work to ensure accurate performance, and conducts her annual performance evaluation; that generally the bookkeeper has discretion to determine work priorities; that, when in doubt, the bookkeeper will ask Beaman for advice; that Beaman has exercised his authority to determine work priority for the bookkeeper; that Beaman at one time supervised the Typist II position at the Senior Center, but recommended to the Director that the Senior Center Director take over the supervision because the employe was located at the Senior Center and Beaman was not directly involved in assigning her work; that, at times, the Commission on Aging hires temporary student workers; that Beaman has supervisory authority over these students who are not considered to be regular permanent employes.

20. That effective August 1, 1987, and according to the 1987 bargaining agreement between the County and AFSCME, the Administrative Secretary II position pays an hourly wage of \$8.02; that the Bookkeeper I position pays an hourly wage of \$7.13; that the current bookkeeper is working a 20 hour week with flexible hours which she can determine; that Beaman has the authority to determine the bookkeeper's work hours as the needs of the agency require, but is constrained by the total number of hours she may work on an annual basis as a half-time employe; that Beaman served on the interviewing team for the Bookkeeper I position; that the current bookkeeper had been a County employe prior to coming to work for the Commission; that Beaman has served as a member of the interviewing team for the Receptionist II position on three earlier occasions and for temporary student workers; that the team will normally have a planning session before the interviews to develop questions for prospective applicants, and the team members split up the questions during the actual interviews; that the applicants are initially screened by the Personnel Department; that after the interviews the team meets and goes over the results by using a rating sheet; that each team member will make a recommendation of a candidate for the position, giving the criteria for that recommendation; that the final decision is made by the Director if a consensus by the team is not reached.

21. That, as part of his supervisory function, Beaman conducts an annual evaluation in December of each year of the person in the Bookkeeper I position; that Beaman does not evaluate any other employes at this time; that the evaluation looks at job performance, goals and objectives for the coming year, positives and negatives, and any employe problems which may be occurring; that the evaluation is

an informal process and involves only Beaman and the employee; that Beaman then prepares a written evaluation which he and the employee sign; that the employee is given an opportunity to respond to the evaluation; that the evaluation is used primarily for assessing performance, and is not used in salary decisions; and that the evaluation may provide a record for disciplinary action if such became necessary.

22. That Beaman has the authority to discipline the bookkeeper through oral and/or written reprimands; that an incident occurred in 1985 which resulted in an oral and written reprimand of the bookkeeper as part of her 1985 performance evaluation in December of that year; that Beaman estimates he has had occasion to discipline different employees four to six times in his ten years with the Commission; that these disciplinary actions were initiated as a result either of his own personal observations of the behavior in question, or of his investigation of a report by another staff member; that at least one incidence of having to discipline an employee occurred approximately three years ago and involved a receptionist he was then supervising; that the Director is advised of such disciplinary action; that as part of the disciplinary procedure, Beaman will review the written memo regarding the incident with the employee, and then with the Director, prior to the memo being placed in the employee's file.

23. That although Beaman has the right to recommend suspension or discharge of an employee, he does not have the right to suspend or discharge and in fact has never had to recommend either action; that Beaman may recommend a promotion of an employee to the Director, who could then recommend the promotion to the Commission, although the final decision would be made by the County Personnel Committee; that Beaman has no authority, nor does any program director, to determine layoffs or the amount of time a person would be laid off; that specifically with regard to the bookkeeper, Beaman approves her vacations and sick leave requests, although he has never denied a paid sick leave or vacation request; that, because the position is currently part-time, he cannot authorize overtime; that at the time of hearing, Beaman was planning to recommend to the Finance Committee that the bookkeeper's hours be increased from twenty to twenty-five hours per week; that ideally the agency would like the position to become full-time, and if the position were increased to full-time, Beaman would be able to authorize overtime; that the bookkeeper works for other staff members as well as for Beaman; that the bookkeeper spends approximately 8 to 15 hours per month working on the monthly and quarterly fiscal reports for the Commission, which are part of Beaman's ultimate responsibility; that they also work routinely together on the voucher process, in which vouchers are submitted by program directors to the bookkeeper, who prepares them and gives them to Beaman for review and approval; that the bookkeeper determines her own workload, but will confer with Beaman if scheduling of work becomes necessary; that Beaman and the bookkeeper also work together on special projects as they arise; and that Beaman exercises supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employee.

CONCLUSIONS OF LAW

1. That Beaman, the individual occupying the position of Administrative Secretary II/Commission on Aging, is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats.

2. That Beaman is a supervisory employee within the meaning of Sec. 111.70(1)(o)1, Stats. and is appropriately excluded from the collective bargaining unit represented by AFSCME.

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

ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Administrative Secretary II/Commission on Aging shall be, and hereby is, excluded from the collective bargaining unit of employes in the employ of Portage County, and presently represented by Wisconsin Council 40, AFSCME, AFL-CIO, Local 348, described in Finding of Fact 3, supra.

Given under our hands and seal at the City of
Madison, Wisconsin this 28th day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

[Signature]
Herman Torosian, Commissioner

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(Footnote 1 continued on Page 10)

(Footnote 1 Continued)

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

PORTAGE COUNTY

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

BACKGROUND

Portage County filed a petition on July 14, 1986 wherein it sought to exclude six positions from an existing bargaining unit. The County having withdrawn its request for unit clarification on five of the six positions, the only remaining issue is whether the position of Administrative Secretary II should be excluded from the unit on the basis of being managerial and supervisory. The County contends that exclusion is appropriate. The Union asserts that the position is neither managerial nor supervisory, and therefore is appropriately included in the existing unit.

MANAGERIAL STATUS OF ADMINISTRATIVE SECRETARY II/COMMISSION OF AGING

In determining managerial status, the Commission considers whether the employe participates in the formulation, determination, and implementation of public policy and whether the employe has the effective authority to commit the employer's resources by establishing an original budget or allocating funds for purposes different from such an original budget. 2/ However, the power to make ministerial expenditures 3/ and, the preparation of a budget, per se, does not constitute effective authority to commit the employer's resources. The Commission will not confer managerial status on an employe whose budget preparation duties primarily involve projecting the cost of implementing the policy decisions of another. To be considered managerial, these duties must involve authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations. Such authority includes the determination of the following: the kind and level of services to be provided; the kind and number of employes to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided. 4/ To possess effective authority to commit an employer's resources, an employe preparing a budget must, therefore, possess the authority to effectively recommend the amount and the manner in which funds will be expended in support of each of the services provided. 5/ Budgetary duties primarily involved with projecting the cost of continuing current operations are ministerial in nature. 6/

The County maintains that the occupant of the position of Administrative Secretary II/Commission on Aging, Bruce Beaman, is a managerial employe and properly excluded from the collective bargaining unit. In support of its contention, the County points out that Beaman drafts and recommends a budget for the Administrative Secretary of the Commission, that Beaman is responsible for purchasing major equipment for the department, and that he acts as editor for the Commission's newsletter and other agency documents. Further, the County argues that Beaman serves as an essential part of the management team consisting of the Director and other professionals in the department, and is regarded as an equal by them. The Union disputes this contention.

2/ Nicolet College and Technical Institute, Dec. No. 23366 (WERC, 3/86); Juneau County, Dec. No. 18728-A (WERC, 1/86); Milwaukee VTAE District, Dec. No. 16483 (WERC, 8/78).

3/ Eau Claire County v. WERC, 122 Wis.2d 363, at 367-68, 362 N.W. 2d 429 (CtApp. 1984).

4/ Kewaunee County, Dec. No. 13185-D (WERC, 1/86) aff'd, Dec. No. 86-1800 (CtApp III, 1987).

5/ Kewaunee County v. WERC, Dec. No. 86-1800 (CtApp III, 1987).

6/ Id. at 11.

The record reflects that Beaman has authority to draft and recommend the 'administrative' portion of the Commission's budget to the Director and the Commission's board, and that the budgetary process consumes 35-40% of his work time. However, of the approximately \$77,000 proposed for the 1987 budget, only \$2400 was within Beaman's control to allocate for office supplies, repairs to office equipment, and postage. While Beaman may transfer, at his discretion, up to 10% of any of these line items over which he has control, this authority to transfer is set by County policy. Any proposed transfer over 10% must be approved by the Director and the County Personnel Committee. Many proposed figures for line items in the 1987 budget, such as staff travel, xerox, dues/fees/registration, office supplies, and staff training, were determined by projecting the costs of continuing current operations. The budgetary duties performed by Beaman do not include the authority to establish an original budget, and his authority to allocate funds for purposes different from the original budget is ministerial, rather than managerial.

The County correctly asserts that Beaman is responsible for purchasing major equipment for the agency. While he has control over data purchasing expenditures, and was instrumental in the purchase of a computer for agency use, Beaman does not determine the budget allocation for such expenditures. In the purchase of the computer, Beaman consulted with the County agent in charge of purchasing, and, with the Director's approval, made an oral and written recommendation to the board. The record is clear that the purchase of any major item of equipment proposed by Beaman requires the board's approval.

As editor of the agency's newsletter and Autumn Offerings brochure, Beaman is mainly responsible for editing and/or rewriting articles which are submitted by other staff members, and initially reviewed by the Director for appropriateness and priority. Decisions as to the type of material included and the frequency of publication are made by the Director and program directors, not Beaman. While Beaman can publish and write the calendar and post notes sections of the newsletter, his basic role is editorial. Beaman also has the responsibility of preparing the layout for the printer, and putting the printing process out for bid. However, the Director always reviews the layout before it is sent to the printer.

The County argues that Beaman is part of a management team, and is considered an equal by the Director and program directors. The record is clear that Beaman attends bi-weekly staff meetings where he actively participates in discussions regarding the budget and personnel. It is also clear that in the course of these meetings Beaman is free to offer his opinion on any matter of discussion, and that he considers it his responsibility to advise program directors in matters related to their respective budgets, as well as the overall agency budget. However, Beaman is not responsible for implementing any program, developing a program budget, and recommending program and policy changes. Furthermore, all departments must ultimately seek the approval of the Director and Commission board in matters regarding program policy changes and budget. Beaman's participation at the biweekly staff meetings does not involve the formulation, determination, and implementation of management policy to any significant degree.

As the record does not establish that Beaman has sufficient authority to commit the employer's resources in a manner which significantly affects the nature and direction of the employer's operations, or that he significantly participates in the formulation, determination and implementation of public policy, Beaman does not have sufficient managerial authority to warrant his exclusion from the collective bargaining unit.

SUPERVISORY STATUS OF ADMINISTRATIVE SECRETARY II/COMMISSION ON AGING

The County also contends the Administrative Secretary II/Commission on Aging position should be excluded from the bargaining unit on the basis of its supervisory status. Section 111.70(1)(o)1, Stats., defines "supervisor" as follows:

As to other than municipal and county firefighters, 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 employes, 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.

In determining whether a position is supervisory, the Commission has consistently applied the following criteria:

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

The record reveals that Beaman is authorized by the Director to supervise the half-time Bookkeeper I position. As supervisor, he has authority to schedule her work hours, assign her work, approve vacation and sick leave requests, and conduct her annual performance evaluation, and has exercised this authority for several years. Beaman also has authority to discipline the bookkeeper through oral and/or written reprimands, and has done so on one occasion. In his ten years with the Commission, Beaman has supervised at least one other position, and has disciplined different employes four to six times. He has authority to recommend the promotion, suspension, or discharge of an employe to the Director, although he has not had occasion to do so. Given County policy, he has no authority to recommend or approve overtime, determine lay offs, or increase the total hours of a part-time position, such as the one occupied by the bookkeeper. However, Beaman has recommended to the Director that the bookkeeper's hours be increased, and should the position be increased to full-time, Beaman would be able to authorize overtime.

Beaman estimates that 35-40% of his work time involves the preparation of the annual budget, with an additional 20-25% developing and drafting the annual county aging plan. A substantial portion of this work is done in conjunction with the bookkeeper under Beaman's direct supervision. The bookkeeper also routinely prepares vouchers for Beaman's approval. Beaman exercises authority and independent judgement in reviewing and evaluating the bookkeeper's work product. While the bookkeeper receives work from other program directors, and uses discretion in determining the priority of work, Beaman has authority to determine work priorities and has exercised this authority as necessary.

The record reflects that Beaman served on the interviewing team for the Bookkeeper I position, and that Beaman was involved in the hiring of the Receptionist II position on three separate occasions. Although the Director has final hiring authority, the record demonstrates that Beaman has been integral in the hiring of these four agency employes.

7/ Nicolet College and Technical Institute, supra; Dane County, Dec. No. 21397-B (WERC, 7/85); Waukesha County Technical Institute, Dec. No. 19751 (WERC, 6/82).

Given the foregoing, we conclude that Beaman possesses sufficient requisite indicia of supervisory status to be excluded from the collective bargaining unit as a supervisory employe.

Dated at Madison, Wisconsin this 28th day of October, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner