

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

: :
In the Matter of the Petition of : :
: :
WISCONSIN COUNCIL 40, : :
AFSCME, AFL-CIO : : Case 2
: : No. 41293 ME-296
Involving Certain Employes of : : Decision No. 6478-D
: :
PORTAGE COUNTY : :
: :

Appearances:

Mr. Philip H. Deger, Personnel Manager, Portage County, 1516 Church Street, Stevens Point, Wisconsin 54481, appearing on behalf of the County.
Mr. David White, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1973 Strongs Avenue, Stevens Point, Wisconsin, 54481, appearing on behalf of the Union.

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

Wisconsin Council 40, AFSCME, AFL-CIO, having on November 11, 1988, 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 included in said bargaining unit; and hearings in the matter having been conducted on January 23, 1989, and February 10, 1989 before Examiner Coleen A. Burns; and a stenographic transcript of the proceedings having been prepared, and received on March 9, 1989; and the record having been closed upon receipt of briefs on April 28, 1989; 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 and has its offices at 1516 Church Street, Stevens Point, Wisconsin 54491.
2. That Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Local 348, referred to herein as the Union, are labor organizations with offices located at 1973 Strongs Avenue, Stevens Point, Wisconsin 54481.
3. That on September 26, 1963, (Dec. No. 6478, WERC) the Commission certified the Union as the exclusive collective bargaining representative of "all employes of the County, excluding elected officials, supervisory personnel and law enforcement personnel"; that on June 29, 1981 (Dec. No. 18792, WERC) the Commission amended the bargaining unit description to read as follows:

All regular full-time non-professional employes in the employ of Portage County in its Courthouse, County Home, and Department of Community Services, but excluding professional employes, licensed practical nurses, summer, seasonal, temporary and part-time employes, employes included in other bargaining units, confidential, supervisory, and managerial employes.

that on November 11, 1981, (Dec. No. 18792-C, WERC) the Commission amended the bargaining unit description to read as follows:

All regular full-time non-professional employes in the employ of Portage County in its Courthouse, County Home, and Department of Community Human Services, and Library System, but excluding professional employes, licensed practical nurses, summer, seasonal, temporary and part-time employes, employes included in other bargaining units, confidential, supervisory and managerial employes.

that on February 19, 1985 (Dec. No. 22235, WERC), the Commission amended the bargaining unit description to read as follows:

All regular full-time and regular part-time non-professional employees in the employ of Portage County in its Courthouse, County Home, and Department of Community Human Services and Library, excluding craft, professional, supervisory, managerial and confidential employees and employees included in other bargaining units.

and that in Article I of the parties' 1988-1989 collective bargaining agreement, the Union is recognized as the sole and exclusive bargaining agent for "all regular full-time and regular part-time non-professional employees in the employ of Portage County in its Courthouse, Health Care Center, Department of Community Human Services, and Library, excluding professionals, supervisory, managerial and confidential employees, and employees included in other bargaining units."

4. That on November 11, 1988, the Union filed a unit clarification petition which requested that the following positions be included in the collective bargaining unit represented by the Union:

Administrative Assistant/Business Administration (1 employe)
Administrative Assistant/County Clerk Office (1 employe)
Administrative Assistant/District Attorney's Office (Victim/Witness Coordinator)(1 employe)
Consumer Fraud Investigator (1 employe)
Administrative Assistant/Community Human Services (3 employes)
Office Manager-County Home (1 employe)
Child Support Investigator (2 employes)
Senior Bookkeeper/Highway Department (1 employe)
Program Counselor-Portage House (3 employes)
Night Coordinator/Portage House (2 employes)
Site Manager-Lincoln Center/COA (4 employes)
Lead Driver (1 employe)
Driver (2 employes)

that prior to hearing on January 23, 1989, the parties agreed to voluntarily accrete the following positions into the bargaining unit represented by the Union:

Administrative Assistant/Business Administration
Senior Bookkeeper/Highway Department
Site Manager-Lincoln Center/COA
Lead Driver
Drivers

that in consideration of this agreement, the Union withdrew its petition for unit clarification with respect to the Administrative Assistant/Business Administration, Senior Bookkeeper/Highway Department, Site Manger-Lincoln Center/COA, Lead Driver and Drivers; that at hearing on February 10, 1989, the Union withdrew its petition for unit clarification with respect to the position of Office

Manager/County Home; and that the remaining positions sought to be included herein and the basis upon which the County opposes the inclusion are as follows:

<u>Position</u>	<u>at time of Hearing</u>	<u>Incumbent</u> <u>For Exclusion</u>	<u>Stated Reason</u>
Administrative Assistant (County Clerk's Office)		Shirley Simonis	Supervisory
Administrative Assistant/ Victim Witness Coordinator (District Attorney's Office)		Sally Haas	Supervisory Professional Confidential
Child Support Program Coordinator		John Carlson	Supervisory Managerial Professional
Administrative Assistant (Community Human Services Department)		Patricia Hintz	Supervisory
Administrative Assistant (Community Human Services Department)		Pamela Helgemo	Supervisory
Administrative Assistant (Community Human Services Department)		Susan Rutta Confidential	Professional
Child Support Specialist		Linda Check	Professional
Child Support Specialist		Evet Hartvig	Professional
Program Counselor (Portage House)		Carolyn Wayerski	Supervisory Professional
Program Assistant (Portage House)		Nancy Vandeloop	Professional
Night Coordinator (Portage House)		Lisa Hergert	Professional
Night Coordinator (Portage House)		Jane Miller	Professional

that the positions in dispute are not currently included in any collective bargaining unit; that the position of Child Support Specialist is referred to in the petition as "Child Support Investigator"; and that the position of Child Support Program Coordinator is referred to in the petition as "Consumer Fraud Investigator" and is also identified as Child Support Services Coordinator.

5. That Shirley Simonis has been employed as the Administrative Assistant in the County Clerk's office since 1976; that the County Clerk is the Department Head and has delegated responsibility for the day-to-day operation of the County Clerk's office to Simonis; that in the County Clerk's absence, Simonis is acting County Clerk; that since mid-1994 or 1985, three individuals have worked in the County Clerk's office, i.e. the County Clerk (Roger Wrycza), Kathy Genovese (Administrative Secretary), and Simonis; that at the time Simonis commenced her employment as Administrative Assistant, the County Clerk's office employed two full-time clerical employees and one part-time clerical employee, as well as the County Clerk; that on election night, the County Clerk's office employs three to six temporary election workers; that at election time, Simonis also works closely with the 27 municipal clerks and, on election day, provides information on voting requirements and procedures to any of the 100 poll workers who may telephone for advice; that neither the municipal clerks nor poll workers are County employees; that Simonis selects, trains, and directs the work activity of the temporary election workers; that the temporary election workers are generally full-time County employees who perform election work as overtime; that Simonis has been involved in the hiring of each of the 14 clerical employees who have been hired into the County Clerk's office during Simonis' 13 years of employment in the County Clerk's office; that Simonis prepares the questions to be asked during employment interviews; that Simonis conducts the employment interviews and the County Clerk asks any follow-up questions which he may have; that Simonis administers and evaluates the typing test which is normally a part of the application process; that Simonis

recommends the applicant to be hired; that the County Clerk has always accepted Simonis' hiring recommendations; that Simonis and Genovese may flex their normal work schedule to work either 7:30 a.m. to 4:00 p.m., or 8:00 a.m. to 4:30 p.m.; that Simonis' wage rate is approximately \$9.36/hour; that Genovese's wage rate is \$1.41/hour less than Simonis' wage rate; that Genovese, who is a member of the Union's bargaining unit, is a long term employee who performs her normal work duties with little or no direction from Simonis; that Genovese may request Simonis to proofread her work to ensure accuracy of content and form, but is not required to do so by Simonis; that the workload of the County Clerk's office fluctuates throughout the year; that when there is an increase in workload, such as would occur at election time, Simonis has directed Genovese to set aside her normal work duties and has assigned Genovese to other tasks, such as working on election supplies; that, annually, Simonis and the County Clerk meet with Genovese and provide Genovese with a performance evaluation; that the evaluation may commend good work performance and/or indicate areas where improvement is needed; that, at times, Simonis and the County Clerk have placed a letter of commendation in Genovese's personnel file; that Genovese's salary is governed by the Union's labor contract; that Simonis and the County Clerk do not have the authority to provide Genovese with any financial reward for work performance; that because Genovese is a good employee, Simonis has never had an occasion to reprimand or discipline Genovese, but Simonis has such independent authority; that when Genovese was on an extended leave of absence, Simonis orally reprimanded the replacement LTE for being tardy; that in 1984, when the County Clerk was on a medical leave of absence due to heart surgery, an employee in the County Clerk's office contacted Simonis to report that the employee had used County funds for the employee's personal use; that Simonis conducted an investigation and reported the results to the District Attorney and the County's Personnel Manager; that Simonis recommended that the employee be retained for at least one week to assist in a further investigation and then be terminated; that the District Attorney (DA) agreed with Simonis' recommendations; that Simonis composed and typed a letter requesting the employee to resign; that in accordance with Simonis' customary practice, the letter was issued under the signature of the County Clerk; that the employee responded by tendering a letter of resignation; that the County Clerk was not informed of the incident until after the employee had resigned; that Simonis does not have authority to lay off employees; that Simonis has authority to direct Genovese to work outside of her normally scheduled work hours; that Simonis has requested Genovese to work Saturdays to assist with marriage license applications and to work after her normal work day to assist County Board members and to assist on election night; that unless Simonis is unavailable, Genovese contacts Simonis to request sick leave and vacation; that Simonis authorizes Genovese's overtime and leave requests; that when the County Clerk was on a medical leave of absence, Simonis asked Genovese not to use any vacation time; that when there were two secretaries in the County Clerk's office, Simonis would not permit both secretaries to take vacation at the same time, unless Simonis knew that both she and the County Clerk would be in the office; that neither Genovese nor any other employee in the County Clerk's office has filed a grievance during Simonis' tenure as Administrative Assistant; that if there were a grievance, the first step grievance would be filed with Simonis; that on one occasion, an employee complained to Simonis about the "atmosphere in the office"; that Simonis discussed the complaint with the County Clerk and the problem was resolved; between 25 to 30 percent of the County Clerk's work time is devoted to work which is performed outside of the office; Simonis devotes no more than 10% of her work time to directly supervising Genovese; and that Simonis, the occupant of the position of Administrative Assistant in the County Clerk's office, possesses and/or exercises supervisory authority and responsibilities in sufficient combination and degree as to render her a supervisory employee.

6. That Patricia Hintz is employed as an Administrative Assistant in the Client Support Services Division of the County's Department of Community Human Services; that Hintz, who has occupied this position for at least eight years, is supervised by Lucy Kluck, the Department's Business Manager; that the Client Support Services Division contains the Department's switchboard, reception area, and client retention area and also handles the Department's accounts receivables and state reporting functions; that Hintz determines the work duties and develops the work procedures for the nine employees who work in the Client Support Services Division; that the nine employees are members of the Union's collective bargaining unit; that the three employees who work in the accounts receivable area are Vicki Karner (Bookkeeper II), Jackie Acoseau, (Account Clerk II), and Linda Pallen (Account Clerk II); that Deb Seroski, an Information Specialist, enters information onto and transmits state reports; that the remaining five employees are in Typist H positions of which there are two receptionists, a switchboard operator, a file clerk, and an employee who assists on the switchboard and in the file room; that when there is a vacancy in Client Support Services, Hintz contacts the Department's personnel liaison to provide information for the posting; that applicants for vacancies from within the Union's bargaining unit are interviewed by Hintz; applicants from outside the unit are screened by the County Personnel Department, which also administers a typing test; that the Personnel Department refers these applicants to Hintz, who conducts the interview; that prior to tendering an offer of employment, Hintz meets with her supervisor, Kluck, to advise Kluck of the applicant who Hintz has selected for employment; that Kluck does not participate in the interview process; that during her tenure as Administrative Assistant, Hintz has interviewed and hired four regular employees and five LTE employees; that Hintz has authority to relieve the nine employees of their normal work duties and to assign the employees other work duties; that Hintz conducts an annual performance evaluation of each of the nine employees; that as a part of this evaluation process, Hintz issues a written evaluation which may commend an employee's work performance or indicate areas where the employee needs improvement; that the evaluation is placed in the employee's personnel file; that if Hintz considers an employee's work performance to be unsatisfactory, Hintz will meet with the employee to discuss the matter; that on one occasion following such a discussion, an employee's work performance did not improve to Hintz' satisfaction and Hintz independently placed a written reprimand in the employee's personnel file; that thereafter, the employee's work performance improved to Hintz' satisfaction; that although Hintz has never had occasion to recommend suspension or dismissal of an employee, Hintz has the authority to effectively recommend such action; that Hintz has successfully recommended the reclassification of one Typist II to the higher classification of Account Clerk; that if a grievance were to be filed in the Client Support Services Division, Hintz, in consultation with her supervisor, would provide the first step response to the grievance; that no grievances have been filed during Hintz' tenure as Administrative Assistant; that Hintz and the majority of the other employees in her division normally work between 7:30 a.m. and 4:00 p.m.; that one employee works between 8:30

a.m. and 5:00 p.m.; that on Tuesdays, one employe works noon to 8:30 p.m.; that Hintz has authority to vary the work hours of the other nine employes as needed to meet the needs of the office; that Hintz has authority to determine whether overtime work is needed and to authorize employe overtime work; that Hintz receives and approves employe vacation requests; that Hintz has denied vacation requests when, in her opinion, the employe is needed to maintain adequate staffing; that if more than one employe requests vacation at the same time, and staffing needs do not allow for the approval of all the employe request.9, vacation time is approved on the basis of seniority; that Hintz does not have authority to transfer any employe; that Hintz has a wage rate of \$10.97/hour; that Hintz' hourly rate is at least \$3.00 more than the hourly rate of pay of the other nine employes in Client Support Services; that when Hintz is unavailable, Hintz' supervisor, Kluck, exercises supervisory authority over the nine employes; that 40% to 45% of Hintz' work time is devoted to supervisory activities; and that Hintz, the occupant of the position of Administrative Assistant in the Department of Community Human Services, possesses and/or exercises supervisory authority in sufficient combination and degree as to render her a supervisory employe.

7. That Patricia Helgemo has been an Administrative Assistant in the Community Human Services Department for approximately 11 years; that Helgemo works in the word processing area with four other employes; that three of these employes are in Typist 11 positions working directly on word processing equipment; that the fourth employe is a part-time Typist I who does mimeo/photocopy work; that Helgemo is supervised by the Department's Business Manager, Lucy Kluck; that Helgemo has a private office and the other four employes work in a common area; that when there are vacancies in the word processing area, applicants are referred to Helgemo by the County Personnel Department; that Helgemo conducts employment interviews and selects the applicant to be hired without the assistance of any other County employe; that each of the other four employes in word processing have routine duties; that Helgemo assigns work in addition to these routine duties and monitors the employes' work product to ensure that the work is accurate and complete; that Helgemo conducts an annual performance evaluation of each employe; that if Helgemo is not satisfied with an employes work performance, Helgemo will discuss the matter with the employe and direct the employe to improve her work performance; that on one occasion, an employe failed to improve her work performance to Helgemo's satisfaction and Helgemo independently issued a written reprimand; that thereafter, when the employe failed to improve her work performance to Helgemo's satisfaction, Helgemo met with Helgemo's immediate supervisor and the Director of the Community Human Services Department and recommended that the employe be terminated; that the recommendation was accepted and the employe was terminated; that there have not been any grievances filed during Helgemo's tenure as Administrative Assistant; that if a grievance were to be filed, Helgemo would provide the employer's first step response; that on one occasion Helgemo recommended that an employe be reclassified, but the request was not honored; that Helgemo works from 7:00 a.m. to 3:30 p.m. while the other full-time employes work various eight hour shifts between 7:00 a.m. and 4:30 p.m. and the part-time employe works afternoons; that Helgemo has authority to adjust the employes' normal work schedule to meet the needs of the Department and has exercised such authority; that Helgemo may authorize overtime which is compensated by time off and has exercised this authority; that Helgemo approves the vacation requests of the employes in her office and has, on one occasion, denied a vacation request on the basis that remaining staff would be insufficient to provide the necessary work coverage; that Helgemo has authority to direct word processing employes to abandon their normal work duties and to assign them other duties; that in Helgemo's absence, the word processing employes are supervised by Helgemo's immediate supervisor, Business Manager Kluck; that Helgemo's rate of pay is \$9.78/hour while a Typist I receives \$6.87/hour and a Typist 11 receives \$7.21/hour; that prior to the reorganization in 1988, Helgemo supervised an additional five employes; that currently three of these employes are supervised by Patricia Hintz and two are supervised by Lucy Kluck; that Helgemo devotes approximately 10 to 15 percent of her daily work time to such activities a.; hiring employes, assigning work to employes, directing and evaluating the work of employes, and disciplining employes; and that Helgemo, the occupant of the position of Administrative Assistant in the Department of Community Human Services, possesses and/or exercises supervisory authority and responsibilities in sufficient combination and degree as to render her a supervisory employe.

8. That Susan Rutta has occupied the position of Administrative Secretary in the Department of Community Human Services since 1980; that in addition to serving as the administrative assistant to Judy Bablitch, the Director of the Community Human Services Department, Rutta functions as the Department's Community Relations Program Manager, Safety Officer and Affirmative Action Coordinator; that while Rutta possesses a BA degree in General Studies, as well as a Master's Degree in Management, her position does not have any college degree requirement; that Rutta's immediate supervisor is Department Director Bablitch; that Rutta's duties as Community Relations Program Manager occupy between 30 and 35 percent of her work time; that the function of the Community Relations Program is to educate the public about community concerns and to publicize the Department's resources and programs; that at one time, community relations work was performed by a member of the County's professional bargaining unit; that Rutta does not determine the Department's educational focus, but does arrange for speakers to present programs and workshops; that Rutta solicits funding for such programs and workshops and, with the assistance of other Department employes, develops informational brochures; that less than five percent of Rutta's work time is devoted to Safety Officer and Affirmative Action Coordinator duties; that as Safety Officer, Rutta investigates accidents, devises safety and emergency procedures, and provides for employe safety training; that Rutta also monitors the employer's premises to detect safety hazards and recommends safety improvements to the employer's premises; that as Affirmative Action Coordinator, Rutta coordinates employe training and, biannually, in consultation with appropriate federal and state agencies, evaluates and recommends changes in the Department's affirmative action plan; that Rutta would not implement any remedial affirmative action without first obtaining the approval of the Director; that Rutta maintains Department personnel files for each of the Department's 125 employes; that Rutta functions as the liaison between the Department and the County's Personnel Department; that when there are vacancies within the Department, Rutta has the responsibility to ensure that the County Personnel Department has an accurate job description for the vacancy; that, on occasion, Rutta will check employment references; that Rutta consults with the County's Personnel Department when she, or the Director, have questions concerning administration of the

Union's collective bargaining agreement; that Rutta has authority to respond to Department employe questions concerning provisions of the Union's collective bargaining agreement and to provide the employes with the Department's interpretation of the provision; that when Rutta determines that there is a need to change a labor contract provision, Rutta will recommend such changes to the Director; that approximately once a year, a Department employe files a grievance; that the Director, who is responsible for delivering the second step response to the grievance, relies upon Rutta to investigate the grievance and to recommend a response to the grievance; that Rutta types all of the Director's confidential material, including material relating to employe grievances, employe discipline, and other personnel matters, not all of which material is made available to the Union; that the Director is a member of the County team which negotiates the Union's collective bargaining agreement; that on one occasion, when the Director was unable to be present for the entire session, Rutta attended the bargaining session as the Director's representative; that the Director discusses negotiations strategy with Rutta and relies upon Rutta to advise the Director of the ramifications of various bargaining proposals; that on one occasion, members of the public and the County Board complained that a supervisory employe and a subordinate employe were involved in a personal relationship which affected the work place; that Director Bablitch relied upon Rutta to conduct an investigation of the complaint; that Director Bablitch relies upon Rutta to study alternative methods of implementing policies, some of which involve personnel policies such as the merger of employe positions and/or reassignments of job duties; that the Department has four divisions, *i.e.*, Health, Restorative Care, Long Term Care, and Shared Services; each division is headed by a Coordinator; that the Director, the four Coordinators, the Department's Business Manager, and Rutta comprise the central management team; that the central management team meets once a week for approximately two hours; that the members of the central management team assist the Director in the formulation of Department policies, goals and objectives; that the central management team assists the Director in evaluating the Union's collective bargaining agreement and recommends changes to be negotiated in successor agreements; that on one occasion, budgetary constraints caused the central management team to consider employe layoffs; that Rutta made a lay-off recommendation which would have been implemented if the Department had not received additional funding; that Rutta is the official recording secretary for the Community Human Services Board, which Board has ultimate control and authority over the Community Human Services Department; that the Board is comprised of 11 members, seven County Board members and four citizen members; that Rutta attends all Board meetings, including executive sessions, prepares the minutes, and types all of the Board's correspondence; that among the topics which are discussed during executive sessions are employe evaluations, the status of contract negotiations and grievances, and problems involving specific employes; that for at least six or seven years, Rutta has served on the performance evaluation project and task force; that at the present time, this group is reviewing evaluation techniques for the purpose of developing an evaluation procedure for the Department; that Rutta is privy to information concerning labor contract administration and collective bargaining which is not available to bargaining unit employes or the Union; and that in her position as Administrative Secretary, Rutta has sufficient access to, knowledge of or participation in confidential matters relating to labor relations so as to render her a confidential employe.

9. That John Carlson has been an employe of the County since 1979; that prior to unofficially assuming the duties of his current position in February of 1988, Carlson worked as a Consumer Fraud Investigator in the DAIS office; that Carlson was officially reclassified to his current position of Child Support Program Coordinator in September of 1988; that this position is also known as the Child Support Services Coordinator; that from May 1988 until August 1988, Carlson and Administrative Assistant Sally Haas directed all non-professional employes in the DA's office due to a vacancy in the position of District Attorney; that the current DA, William M. Murat, was appointed DA in August of 1988 and elected DA effective January 10, 1989; that although Carlson's current position does not have any college degree requirement, Carlson has a BS degree and 30 graduate credits; that Carlson is a state certified law enforcement officer, but such certification is not a requirement of his current position; that the knowledge, ability and skill requirements set forth in the Child Support Services Coordinator job description are: knowledge of law in area of responsibility, ability to organize facts, ability to exercise administrative control of other employes, skill in investigation techniques and negotiations, discretion and sensitivity concerning sensitive interpersonal relations, ability to maintain confidentiality of information and resources, and ability to communicate with private citizens, attorneys, public officials and others; that Carlson's immediate supervisor is the County District Attorney (DA); that because Murat does not have the time to direct the activity of the employes in Child Support Services, he has delegated day-to-day direction of the workforce activity to Carlson; that the DA relies upon Carlson to advise the DA of any problems in Child Support Services; that approximately 18 months prior to hearing, the former DA made the decision to reorganize the Child Support Services function; that Carlson did not have any voice in this decision; that as a result of this reorganization, Carlson was reclassified and two Child Support Services clerical positions and one Specialist position were created; that additionally, Child Support Services was assigned a full-time rather than a half-time assistant district attorney; that at the time of hearing, Child Support Services had two full-time Child Support Specialists, *i.e.*, Linda Check and Evett Hartvig, who, pursuant to our Order in this proceeding, are members of the Union's bargaining unit, and two and one-half secretarial positions, whose incumbents are members of the Union's bargaining unit; that the incumbents in the secretarial positions are Kathy Berg, a full-time legal secretary, Michelle Laucke, a receptionist-typist whose work time is apportioned 75% to child support and 25% to other functions of the DA, and Jacqueline Cisewski, a legal secretary whose work time is apportioned 50% to child support and 50% to other functions of the DA; that Carlson does not have any responsibility with respect to the non-child support services work performed by the three secretarial employes; that Carlson has participated in filling of the only child support vacancy, a secretary/ receptionist since his reclassification to Child Support Program Coordinator; that Carlson, the DA, and the Department's Administrative Assistant have participated in the employment interview, all of whom asked questions during the interview; following the interview, Carlson, the DA, and the Administrative Assistant discussed applicant qualifications; that Carlson and the Administrative Assistant expressed the same opinion as to which applicant should be hired; that when the interview process is complete, the DA will determine which applicant will be hired; that Child Support Services will be hiring temporary employes to assist in the computerization of data and it is contemplated that Carlson will have involvement in the hiring process; that while it is evident that the current DA included Carlson in the employment interview process, the record does not reasonably demonstrate that Carlson has the

authority to effectively recommend the hiring of employees; that Evett Hartvig and Kathy Berg were hired by the former DA during the period between Carlson's unofficial assumption of his current position and his official reclassification; that the former DA, unlike the current DA, did not choose to have Carlson participate in hiring decisions; that approximately 50% of Carlson's work time is devoted to performing the same duties as the two Child Support Specialists, i.e., managing child support cases; that Carlson handles approximately 300 cases while Hartvig handles approximately 700 cases and Check handles approximately 800-900 cases; that Carlson and the two Specialists are assigned a section of the alphabet and cases are assigned according to the first letter of the custodial parent's last name; that as an exception to this general method of case assignment, paternity cases are assigned to one specialist and URESA cases to the other; that Carlson has authority to reassign cases to ensure an equitable distribution of the workload; that for the most part, the duties of the Child Support Specialists are well-defined and performed without close supervision; that, as Carlson deems necessary, he has authority to intervene in the management of the Specialists' cases and direct the Specialists' work activity; that as new duties arise or procedures are changed, Carlson has authority to determine who will perform the duties and the manner in which the changes will be implemented; that generally, child support cases remain open until the child is 18 years old; that cases may be closed earlier, e.g., if there is a death or termination of parental rights; that Carlson reviews all of the case closings to ensure that the closing is appropriate; that Carlson has authority to determine which Child Support Service duties will be performed by each secretary, such as who will handle mail or court scheduling; that Carlson has authority to determine the priority of the secretaries' work assignments; that Carlson periodically reviews employe work performance to ensure that the work is performed properly and has authority to direct employees to improve their work; that employees who have been directed to improve their work performance have improved their work performance; that if, following such a discussion, an employe did not improve his/her work performance, Carlson would not take any further disciplinary action without consulting with the DA; that under the current DA, Carlson does not have authority to effectively recommend suspension or discharge of an employe; that in the Spring of 1988, Carlson wrote several letters of reprimand to an employe concerning the employe's work performance; that prior to issuing the letter of reprimand, Carlson discussed the matter with the former DA, who agreed that the written reprimands were appropriate; that employe leaves or vacations are accommodated informally within the Child Support office; that Carlson, who receives an annual salary of approximately \$23,000, receives compensatory time off for overtime which he works; that legal secretaries are paid \$7.84/hr.; that employe evaluations are conducted in July; that Carlson has not participated in previous evaluations of employees and has not been advised as to whether he will have any responsibility in future evaluations; that in January of 1989, when Carlson responded to the Supervisory Job Classification Questionnaire prepared by the County, the DA informed Carlson that, when higher authority is not available, Carlson would have authority to promote employees or to effectively recommend promotion; that Carlson does not have authority to transfer employees; that while no grievances have been filed during Carlson's tenure as Child Support Services Coordinator, such grievances would be initially filed with Carlson; that Carlson has the authority to address informal employe concerns and complaints; that Carlson's office is open 7:30 a.m. to 4:30 p.m. and the employees are permitted to flex their eight hour shift between those hours, subject to the DA's directive that two clerical workers are to be present at all times that the office is open; that Carlson has authority to determine if overtime is needed and to authorize overtime; that Carlson has denied employe overtime requests and has approved employe overtime requests; that Carlson prepares collection and expenditure reports which are forwarded to the state; that Carlson is the security officer for the Child Support computerized data system; that Carlson coordinates the Child Support function with other County entities such as the Clerk of the Court and Income Maintenance; that the County's Child Support function is governed by federal statutes and regulations and the County is permitted little, if any, discretionary authority to deviate from those federal requirements; that Carlson has discretion to determine office procedures to implement the federal directives; that Carlson prepares the proposed budget for Child Support Services by determining the previous year's expenditures and, in consultation with the DA, determining whether individual line item appropriations should be increased or decreased; that generally the categories of expenditures remain the same from budget to budget; that the 1989 Child Support budget is \$270,548, of which over \$239,000 is devoted to employe wages and fringe benefits; that Carlson does not have any responsibility for or authority to establish employe wages and fringe benefits; that Carlson does recommend to the DA the overtime appropriation by making a judgment as to whether the previous year's allocation is sufficient to meet anticipated needs; that the 1989 budget allocation for overtime was \$900; that Carlson uses this same procedure to allocate monies to the remaining budget categories which in 1989 were as follows:

	<u>ANNUAL BUDGET</u>
Professional Services /Expert Witnesses	1,094.00-
Professional Services /Absent Parent Locate	1,000.00-
Legal Services	200.00-
Telephone	4,500.00-
Cost Allocate-Computer Service	2,600.00-
Off ice Supplies	3,000.00-
Photocopying	3,000.00-
Publications, Subsc & Dues	300.00-
Travel Expenses	300.00-
Meal-% Non Overnite Stay	300.00-
Operating Matls/Sply /Law Books	200.00-
Operating Matls/Sply /Blood Tests at Hospi	500.00-
Operating Matls/Sply /Office Admin Exp	6,000.00-
Operating Matls/Sply /Court Filing Fees	2,500.00-
Small Items Eq/Furniture	450.00-
Outlay-Eq/Furniture	200.00-
Conferences-In State	2,664.00-
	3,000.00-

that Carlson's recommendations concerning the remaining budget categories have been accepted without dispute by the DA; that Carlson would not transfer funds from one budget category to another without first obtaining the DA's approval; that Carlson has authority to expend monies for purposes for which the money has been appropriated; that Carlson does not approve major purchases without first consulting with the DA; that Murat also serves as the County Corporation Counsel and the Child Support Administrator; that Carlson does not possess and/or exercise supervisory authority in sufficient combination and degree as to render him a supervisory employe; that Carlson does not participate sufficiently in the formulation, determination, and implementation of policy or possess sufficient authority to commit the County's resources to render him a managerial employe; and that although Carlson's duties as Child Support Program Coordinator involve a measure of discretion and independent judgment, the duties are not predominantly intellectual and do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital.

10. That Linda Check has worked in the County's Child Support Program for approximately four years; that prior to that time, Check worked for 11 years in the County Clerk of Court's office, clerking in the court rooms; that Check has functioned as a Child Support Specialist for approximately one year, although the position was, until recently, entitled Child Support Investigator; that prior to assuming her current position, Check was a legal secretary in the District Attorney's office; that the Child Support Investigator job description has the following Education, Training and Experience requirements:

Any combination of training and experience equivalent to four years of college or four years of professional work experience as a civil or criminal investigator.

Professional training in various techniques and problems of criminal investigation, child support, paternity suits, and welfare fraud is desirable.

A valid Wisconsin driver's license.

and the following Knowledge, Ability and Skill requirements:

Knowledge of Wisconsin law in the area of paternity, non-support, and welfare fraud is highly desirable; knowledge of administrative rules of child support programs would be beneficial; knowledge of investigative procedures and techniques and interview techniques.

Position requires the ability to be firm with parents not meeting their support obligations, obtaining payments as high as feasible under the circumstances; requires the ability to mediate between divorced or separated parents facilitating payment and an ability to creatively negotiate settlements and compromises on matters related to the payment of support.

Skills in investigative techniques and negotiations; discretion concerning sensitive interpersonal relations; skill in working thoroughly and accurately and establishing work priorities.

that the job description, entitled Child Support Investigator, accurately reflects the duties and responsibilities of the Child Support Specialist; that Check is a high school graduate and has attended a variety of seminars; that while Check has knowledge of paternity procedures, paternity cases are generally assigned to the other Specialist, Hartvig; that Check's primary function is to obtain, monitor and enforce support orders; that if there is not an existing child support order, Check must first locate the non-custodial parent; that if the non-custodial parent is in Wisconsin, Check has the Child Support Services attorney draft a Motion to Compel support; that Check provides the information for the motion by reviewing the referral file or interviewing the custodial parent; that referrals are made by officials responsible for providing AFDC; that if the non-custodial parent is outside the state, Check attempts to locate the parent, with the assistance of state and federal parent locator services; that if Check is able to locate the parent, Check initiates support proceedings in the resident state; that periodically Check reviews her cases and if the non-custodial parent has an increased income and the custodial parent is on AFDC, AFDC standards require Check to seek an increase in the support order; that with non-AFDC cases, Check would not seek to change the existing support order unless requested to do so by the custodial parent; that the Clerk of Courts provides Child Support Services with a monthly report on the status of support payments; that if there is an arrearage, Check will investigate the matter to determine the reason for the arrearage and exercise judgment in determining whether it is appropriate to take further court action; that in determining whether further court action is warranted, Check considers such factors as whether the non-custodial parent has been ill or out of work; that Check determines whether the delinquency warrants an application for income withholding or wage assignment; that by statute, the application is untimely if filed less than 10 days after the support payment was due; that Check has a general policy of waiting at least 30 days before proceeding to court on the application; that if Check determines to take court action on the delinquency, the case is referred to the Child Support Services attorney who may, but seldom does, disagree with Check's determination; that when Check determines that there has been a change in circumstances warranting a revision in the support order, the Child Support Services attorney makes the final determination as to whether the change in circumstances is legally sufficient to proceed to court; that Check testifies in court to affirm the information relied upon by the Attorney in seeking a court order; that Check's work is directed by John Carlson; that Check has an annual salary of approximately \$20,800; and that as the URESA (Uniform Reciprocal Enforcement Support Act) specialist, Check is required to comply with the timelines set forth in the federal regulations, which regulations provide penalties for failure to comply with the timelines.

11. That at the time of hearing, Evett Hartvig was employed by the County as a Child Support Specialist; that the position was previously entitled Child Support Investigator; that Hartvig has had experience in the County Clerk of Courts office as an administrative secretary and has functioned as the Deputy County Treasurer; that Hartvig understands that this prior experience was a determining factor in her selection for her current position; that Hartvig is a high school graduate and attended a technical college for one year; that the vast majority of Hartvig's cases are referred to her by the County's social services department and relate to obtaining support orders and paternity determinations for children of women on AFDC; that the AFDC referral is supposed to contain information as to whether there is an existing support order; that if there is no support order, Hartvig interviews the custodial parent to ascertain the location of the non-custodial parent; that if the non-custodial parent is located, the non-custodial parent is interviewed for information concerning employment and financial status; that where the divorce decree does not establish the support payment, Hartvig makes a determination as to whether the non-custodial parent's financial situation will allow the parent to make support payments; that Hartvig has discretion to review delinquencies in child support payments to determine whether there are extenuating circumstances which militate against taking further court action; that for women receiving AFDC, the State has set standards for determining the amount of support; that for non-AFDC women, which generally involve support payments arising from divorce decrees, Child Support personnel attempt to mediate a satisfactory agreement between the two parents; that absent such an agreement, the matter is referred to the courts for determination of the appropriate amount of support; that in non-AFDC cases, Child Support Services personnel do not seek any change in support payments unless requested to do so by the custodial parent; that in paternity cases, Hartvig photographs and fingerprints individuals who are at the hospital to have paternity blood tests; that Hartvig verifies the individual's identity, takes custody of the blood sample, and mails the sample to the testing lab; that prior to commencing a paternity action, Hartvig interviews the mother and reviews the AFDC file to obtain information regarding paternity; that if Hartvig believes that the mother is not cooperating, Hartvig has authority to file a non-cooperation notice with Human Services, the effect of which is to reduce the AFDC benefits until Hartvig is satisfied that the woman is cooperating; that if Hartvig has enough information to pursue a paternity suit, she drafts the paternity petitions; that there are forms for drafting stipulations and orders; that when the form is not appropriate, Check and Hartvig will modify the form as necessary; that all of the legal documents drafted by Hartvig and Check are signed by an attorney; that Hartvig's involvement in orders to show cause and wage assignments is the same as that of Check; that Hartvig is responsible for notifying the State of the number of paternity actions established by the County; that Hartvig obtains, monitors and enforces support orders in the same manner as Check; that Hartvig receives an hourly wage of \$8.95/hour; and that John Carlson directs Hartvig's work.

12. That although the duties of the Child Support Specialist involve a measure of discretion and independent judgment, the duties are not predominantly intellectual, and do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital; and that the employees occupying the position of Child Support Specialist have not completed a course of specialized intellectual instruction described in subd. 1.d. of Sec. 111.70(1)(L), Stats.

13. That at the time of hearing, Sally Haas occupied the position of Administrative Assistant/Victim Witness Coordinator in the office of the County's District Attorney; that Haas has occupied this position since March of 1988; that Haas is supervised by the District Attorney (DA); that Haas serves as the DA's liaison to other Departments, such as Human Services; that

Haas, Carlson and the DA are currently involved in the interviewing of applicants for a legal secretary vacancy; that Haas has asked questions of the applicant and has explained the duties and responsibility of the position; that Haas did not determine which candidates were selected for the interview; that following each interview, Carlson, the DA, and Haas have discussed the applicant's qualifications and have expressed an opinion as to these qualifications; that when the interview process is completed, the DA will make the decision as to which applicant will be hired; that Haas assigns work to Debbie Gilbert, Jackie Cisewski and Michelle Laucke; that Haas will also be assigning work to the new legal secretary when she is hired; that Gilbert performs only DA work; that Cisewski and Laucke perform DA work and child support services work; that Gilbert, Cisewski and Laucke are members of the Union's collective bargaining unit; that Gilbert and Cisewski have held their positions for approximately 15 years and require little work direction; that Laucke, the receptionist, is relatively new and does receive work direction from Haas; that in an emergency situation, Haas has authority to redirect the work activity of any of these employees and, in emergency situations, has directed employees to cease their work and to perform another task assigned by Haas; that Haas does not routinely monitor the clerical employees work, but if Haas were to determine that an employee was not performing work in a satisfactory manner, Haas would discuss the employee's work performance with the employee; that to date, Haas has never been dissatisfied with an employee's work performance; that there have not been any grievances filed during Haas' tenure as Administrative Assistant; that Haas would receive the first step grievance; that any such grievance would be handled by Haas and the DA; that on one occasion an employee complained to Haas regarding work distribution and Haas determined that no redistribution was necessary; that with the exception of Gilbert, who begins one half hour earlier than Haas, all of the clerical employees in the DA's office work the same hours as Haas; that Haas maintains leave records and would discuss sick leave abuse with an employee if she suspected that there had been abuse, but does not exercise any other authority over the use of sick leave; that the clerical employees submit their vacation slips to Haas; that Haas has never denied a vacation request, but would do so if necessary to ensure that two people would be present in the front office; that employees are aware of the Department's staffing requirements and request vacations accordingly; that the only employee for whom overtime money is budgeted is Gilbert, and the other clerical employees receive compensatory time off for overtime hours; that generally these employees do not work overtime unless there is an emergency; that these employees know when it is permissible to work overtime and do not need Haas' approval prior to working such overtime; that there are currently three Assistant DAs and the County is in the process of hiring a fourth; that the Assistant DAs are not represented by a union; that although Haas has not had an occasion to do so, if the DA were to issue a disciplinary letter to any employee in the DA's office, such as a letter of reprimand or suspension, Haas would type the letter; that the duties of the Victim/Witness Coordinator include the following:

1. Prepare a personal record of victims and witnesses.
2. Talk to victims and witnesses and answer any questions they may have regarding their case.
3. Refer victims to appropriate agencies if necessary, i.e. Human Services, Family Crisis Center.
4. Explain the State Crime Victim Compensation Program and assist the victim in filling out the application form.
5. Contact victims and witnesses before and after any hearing or trial.
6. Document all contacts with victims and file this information in the appropriate case files.
7. Have the Victim Witness secretary prepare subpoenas for witnesses and have them sent out for service.
8. Send out informational pamphlets to victims and witnesses.
9. Advise victims and witnesses of any changes in the hearing or trial date.
10. Arrange for transportation for victims and witnesses for court appearances.
11. Provide in court support for victims.
12. Contact the victim's or witness's employer at their request.
13. Contact doctors, clinics or hospitals on behalf of victims in regard to any bills they may have with them.
14. Advise victims and witnesses of the disposition of their case.
15. Contact the Probation and Parole Department in regard to the defendant's restitution payment schedule and advise victims of this information.

16. Advise the Sheriff's Department and Police Department when cases are disposed of so that they can return any property that belongs to victims.
17. Prepare a monthly worksheet of services offered to victims and witnesses.
18. Prepare a budget request for reimbursement from the Department of Justice semi-annually.
19. Prepare an annual report for the Department of Justice giving a projected budget figure for the following year.
20. Attend training sessions given by the Department of Justice.
21. Keep up to date on legislation dealing with victims and witnesses.
22. Give speeches to various organizations in regard to the Victim/Witness Program.

that Haas prepares the reports required by the Victim Compensation Program administered by the Department of Justice; that Haas collects information concerning victim's damages and prepares the restitution claim; that Haas' current position does not have any college degree requirement; that Haas has the equivalent of two years of college and is licensed as a paralegal in the State of Oregon; that Haas also has a remedial reading instructional license in a state other than Wisconsin; that Haas has approximately four years experience as a paralegal with the federal court system; that Haas has an additional five years paralegal experience in defense work/legal services work; that every six months, Haas reports victim/witness expenditures to the State; that the State reimburses the County for a percentage of all such expenses, including Haas' salary; that the percentage of reimbursement fluctuates; that the percentage of reimbursement has been as high as 90% and as low as 75%; that Haas attends meetings of Department Heads as the DA's representative; that Department Head meetings are held once a month; that Haas has attended the previous four meetings and is designated to attend future meetings when the DA is unavailable; that a Department Head may not designate a bargaining unit employe to represent the Department Head at the Department Head meeting; that personnel matters are discussed at the Department Head meetings; that the County Personnel Director has discussed the status of collective bargaining negotiations at Department Head meetings attended by Haas; that at meetings attended by Haas, the Department Heads have also discussed wage compensation and enforcement of departmental policies; that specific employe conduct has not been discussed at any Department Head meeting attended by Haas; that as the DA's administrative assistant, Haas also performs the following duties:

Contacts witnesses in mental/alcohol commitments and obtain a statement from them in regard to the commitment;

Helps the assistant district attorney determine who will be needed to testify at the mental/alcohol commitment hearing;

Consults with doctors regarding the mental/alcohol commitments; and

Reviews mental commitment files with Human Services for possible recommitment.

that Haas determines whether the three affidavits required by law are legally sufficient to support a commitment action; that the attorney handling the commitment proceedings relies upon Haas to determine the legal sufficiency of the affidavits and relies upon Haas' recommendation as to whether a commitment action is warranted; that Haas represents the DA's office in meetings with social service providers to develop guidelines and policies for alcohol/mental commitments; that Haas' predecessor, Maureen Heckman, was involved in a number of employe grievances, and was exclusively assigned such work to ensure that the information was confidential; that as the County Corporation Counsel, Murat provides legal opinions to the County Board, which opinions may involve personnel matters; that in the past Murat has rendered opinions on specific allegations of discrimination and is presently preparing information for the County Board to use in future labor contract negotiations; that written opinions to the County Board are typed by Haas, who has been designated to type material involving grievances and County Board matters; that as Department Head, the DA consults with the Personnel Department and/or County Board regarding reclassifications of Department employes; that the DA's written recommendations concerning such reclassifications would be typewritten by Haas; and that Haas has sufficient access to, knowledge of and participation in confidential matters relating to labor relations so as to render her a confidential employe.

14. That Portage House is a residential treatment program for adult male criminal offenders with facilities for 10 residents; that Michael Houlihan, the current Director of Portage House, has been at Portage House since he started the program approximately 17 years ago; that Houlihan has a Bachelor's Degree in Community Education; that it is the philosophy of the Portage House program to involve residents in decision-making affecting the operation of the program; that Portage House staff screens prospective applicants and selects the applicants to be interviewed for admission to the program; that the Portage House staff, i.e., the

Director, the Program Counselor, the Program Assistant, the Night Coordinators and relief staff, as well as the current residents, interview prospective applicants and, by majority vote, approve admission to the program; that during the interview process, the applicant, staff and residents make suggestions as to applicant behavior which needs to be modified; that the applicant accepts or rejects these suggestions; that if the applicant accepts the suggestion, he enters into a "commitment" to work toward modifying the behavior; that while the bulk of the residents' "commitments" are made during the interview process, the resident may modify "commitments" during the course of the resident's stay at Portage House; that while all residents and staff have a voice in determining treatment directives, i.e., methods of modifying behavior, the Program Counselor has the primary responsibility for and the final authority to determine treatment directives; that in selecting prospective residents, the Director avoids those who are actively psychotic; that individuals admitted into the program do have a variety of behavioral problems involving, inter alia, manipulation, low self-esteem, anger, addiction and aggression; that additionally, many of the residents have sexual problems, and are either perpetrators or victims of sexual abuse; that residents and staff share decision-making responsibility for awarding resident privileges, such as weekend passes, and imposing resident punishments, including the decision to remove a resident from the program; that the Program Assistant and Night Coordinators are expected to monitor resident behavior and to keep Program Counselor Wayerski informed of their observations; that Portage House is totally funded from the State Division of Corrections; and that when hiring employees, the Director seeks individuals who have people skills and relevant work experience, rather than academic degrees.

15. That at the time of hearing, Carolyn Wayerski was employed as Program Counselor at Portage House; that Wayerski has been Program Counselor since May of 1988; that the Program Counselor wage rate is \$8.37/hr.; that for four years prior to obtaining the Program Counselor position, Wayerski worked as a Night Coordinator at Portage House; that Wayerski is supervised by Director Houlihan; that Wayerski's position requires a college degree in psychology or sociology, or equivalent training; that Wayerski has attended two years of junior college for which she received an Associate of Arts Degree; that Wayerski has additional college course work in religious studies and has had eight years of experience as a psychiatric technician; that when there is a vacancy in any Night Coordinator or relief staff positions, Wayerski will review employment applications, discuss the applications with Director Michael Houlihan and make a recommendation as to who should be interviewed; that other staff members are also welcome, but not required, to make such recommendations; that while it is the responsibility of Wayerski and Houlihan to interview the applicants, other staff members are welcome, but not required, to attend the interviews; that Wayerski has been involved in the hiring of a Night Coordinator, the only employe to be hired during Wayerski's tenure as Program Counselor; that Wayerski recommended that Lisa Hergert be offered that position and Hergert was hired into the position; that only Wayerski and the Director were involved in this hiring; that the relief employes work Saturday nights and at other times when the regular Night Coordinators are unavailable; that Wayerski and the Night Coordinators do not work the same hours; that Wayerski has authority to assign work to and to direct the work activity of the relief employes and the Night Coordinators, e.g., Wayerski has directed the two Night Coordinators to setup an in-service program for residents to inform the residents of the rules and policies; that Wayerski has authority to change the regular work hours of the Night Coordinators, but has not needed to do so; that the Night Coordinators generally perform their work without direct supervision; that Wayerski, who has the responsibility to ensure the work is performed properly, has never been dissatisfied with the work performance of any Night Coordinator or their relief; that if any of these employes were to perform unsatisfactorily, Wayerski would discuss the matter with the individual employe; that if following such a discussion, the employe did not improve hi,;her work performance to Wayerski's satisfaction, Wayerski has the authority to effectively recommend disciplinary action; that the Portage House staff is small and cooperates well with one another; that coverage for absences due to vacation or illness is normally worked out between employes; that if there were a problem obtaining coverage for a Night Coordinator or relief employe, Wayerski would be contacted and would arrange for coverage; that if either of the Night Coordinators had a complaint concerning working conditions, or a problem handling a particular resident or situation, the Night Coordinators would normally bring such a complaint or problem to Wayerski; that Night Coordinators do not work overtime except in emergency situations, or when the Thursday night house meeting runs late; that the Night Coordinators do not need prior approval for such overtime work; that relief workers are not evaluated on a formal basis; that Wayerski has evaluated Jane Miller, one of the Night Coordinators, and will be evaluating Lisa Hergert, the other Night Coordinator; that the Night Coordinator evaluations are performed annually; that Wayerski does not have authority to promote, transfer, or lay off employes; that Wayerski normally works 10:00 a.m. to 6:00 p.m. on Mondays and Fridays, Noon to 9:00 p.m. on Tuesdays, 12:00 Noon to 8:00 p.m. on Wednesdays and Noon until the end of the staff meeting on Thursdays; that generally, the Director is present during Wayerski's regular working hours; that at the Thursday staff meetings, Houlihan relies upon Wayerski to review the status of each client and to share relevant information obtained in her individual counseling sessions; that at these staff meetings, the Night Coordinators and relief staff receive whatever work direction Wayerski deems necessary; that Wayerski considers her current duties to differ somewhat from the Program Counselor job description; that specifically, the duties set forth under Data Collection and Reporting are currently performed by the Program Assistant; that and the duties set forth under House Operations are currently performed by a Night Coordinator; that Wayerski continues to perform the duties under Client Counseling and Supervision, i.e.,

Reads files of prospective clients and confers with correctional agents. Participates in group interviews of prospective clients and may, on occasion, interview offenders in jail or prison. Refers clients to other agencies for services. Makes follow-up contact with employers and other agency personnel. Keeps probation/ parole agents informed of client progress or problem areas. Keeps other staff informed of client's activities to insure program consistency. Provides individual counseling and assistance regarding employment, education, finances, behavior and personal growth. Is available to discuss important issues with residents while at work. This is a priority. Co-leads house and group meetings. Serves on the house

disciplinary committee.

As well as the duties under staff and student supervision,

i.e. Supervises and provides clinical direction to Night Coordinators, Relief Staff, Work-Study Students, and Student Interns. Must be familiar with county personnel policies and procedures, as they apply to supervising staff.

that Wayerski spends 10 percent of her work time supervising employees, including the supervision of students who work for academic credit and are not employees; that Wayerski devotes 25 percent of her time to meetings with staff and residents, and the remainder to resident treatment and counseling; that Wayerski, in consultation with other staff members, interviews prospective residents and determines eligibility for admittance to the Portage House program; that on a weekly basis, Wayerski meets individually with each resident for counseling; that on Tuesday night, Wayerski conducts a group therapy session; that Wayerski acts as a liaison to other social services providers, as well as to probation and parole officers; that Wayerski is a member of the disciplinary committee which reviews and determines sanctions for resident infractions such as failure to meet curfew or use of alcohol or drugs; that the residents, who share responsibility for determining who may enter and remain in the program, also sit on the disciplinary committee; that Wayerski has authority to determine whether or not residents are entitled to special privileges, such as an extended curfew; that it is not uncommon for Wayerski to be confronted with suicidal or abusive residents; that in responding to such confrontations, Wayerski must determine whether the resident needs to be immediately removed from the treatment facility; that Wayerski conducts in-service training for Night Coordinators and their relief staff; that Wayerski attempts to informally resolve employee complaints and concerns; and that Wayerski, the occupant of the position of Program Counselor, possesses and/or exercises supervisory authority in sufficient combination and degree as to render her a supervisory employee.

16. That at the time of hearing, Lisa Hergert and Jane Miller were each employed by the County as a Night Coordinator at Portage House; that the two Night Coordinators provide staff coverage during the evening and night hours; that except for change of shift, the Tuesday evening group counseling and the Thursday evening house meetings, other staff members are not present during the Night Coordinator's normal work shift; that Director Houlihan and/or Wayerski are available to take calls should either Night Coordinator require assistance; that each Night Coordinator works three shifts per week; that each shift begins at either 4:00 p.m. or 6:00 pm. and ends the following morning at 10:00 a.m.; that the Night Coordinator position does not have any degree or specialized training requirement; that the knowledge, skills and abilities set forth in the position description of a Night Coordinator are:

Ability to relate well with others. Ability to organize and stay on top of details. Ability to assess clients' moods and behavior. Must know when to confront and when to back off concerning behavioral issues. Ability to make appropriate decisions under pressure. Ability to communicate clearly in writing and orally. Knowledge of human behavior. Some knowledge of individual and group counseling techniques is helpful. Knowledge of House rules, policies, and procedures-learned on the job. Skill in interviewing, evaluating, and relating to residents. Basic Math skills.

that the Night Coordinator's duties and responsibilities include the following:

Is responsible for maintaining order and safety while typically being the only staff person on duty during shift. Monitors residents activities and whereabouts.

Sees that house rules, policies, and residents' commitments are followed.

Answers phone, takes messages, and communicates to day staff regarding residents' activities.

Remains in house for entire shift, unless other staff are present, or in circumstances detailed in the P.H. "Request for Exception", which has been approved by the state. (This is governed by state code requirements.)

Monitors visitors during shift.

Remains awake until at least midnight when on duty.

Is available to clients while on duty. Interacts with clients, listens to their problems, concerns, etc.

Accepts and follows through on treatment directives given by Program Counselors.

Confronts clients' negative behavior, and encourages and supports positive behavior.

Responds to rule or policy infractions by writing "Committee Notes", and records actions taken.

Participates in disciplinary committee meetings, and special house meetings while on duty.

Attends and participates at weekly house meetings and weekly staff meetings.

Writes notes of clients' activities in log book, and writes other reports on occasion, such as incident report. Attends supervisory sessions as scheduled.

Participates in recreational activities with clients as time allows.

Performs other related duties assigned by supervisor. Maintains house cleanliness during shift. Launders household items, assigns and posts residents' housecleaning chores, checks to see that chores are done, and alerts day staff of house maintenance needs. Conducts daily room checks. Purchases groceries and household supplies if needed. Checks smoke alarms and fire extinguishers, and conducts fire drills. Monitors residents' activities to insure safety and code compliance.

Performs other duties as assigned.

that while the specific tasks may vary from shift to shift, the Night Coordinator's work shift is primarily devoted to four types of duties, *i.e.*, monitoring resident activity, maintaining safety and order on the Portage House premises, engaging in recreational activity with the residents, *S.&*, playing cards or games, and watching TV, and observing resident behavior; that observations of resident behavior are reported to the Program Counselor; that the Night Coordinators perform these duties as a matter of routine and do not require or receive daily instruction to perform these duties; that at the change of shift, the Night Coordinators are briefed as to any new developments and/or treatment directives; that the Night Coordinator's primary responsibility for implementing treatment directives is to encourage appropriate behavior and discourage inappropriate behavior; that examples of implementation of treatment directives are encouraging a resident to complete homework or to read a book, or confronting a resident who is seeking negative attention and suggesting that there are more positive ways of obtaining attention; that the Night Coordinator has discretion to deny a resident permission to leave the premises if the Night Coordinator is not satisfied with the resident's explanation for his intended absence; that as the only staff members on the premises, the Night Coordinators are required to use independent judgment when confronted with inappropriate behaviors, such as substance abuse, depression, and physical or verbal aggression; that the protocol of responses is an immediate discussion with the resident, referral to another staff member or to a house meeting, or removal to an outside authority, *i.e.*, police, probation and parole, or the mental health unit; that an immediate discussion is the norm unless the resident appears to be hostile to a confrontation; that removal to an outside authority would not occur unless the resident were a danger to himself or others; that serious infractions not involving an immediate danger normally would be referred to the Director or Program Counselor; that the Night Coordinator wage is \$5.34/hour; that Lisa Hergert has a Bachelor's Degree in Psychology with an emphasis in Human Services; that prior to obtaining her position at Portage House, Hergert worked at a psychiatric halfway house; that Jane Miller has a Bachelor's Degree in Psychology; that prior to obtaining her position at Portage House, Miller worked 15 years at a correctional facility for adolescent boys; that the Night Coordinators are paid for a 40 hour week but are on the premises for approximately 54 hours per week; that the Night Coordinators are permitted to sleep from 12 midnight to 8:00 a.m. during their work shift; that while the Night Coordinators are required to be available to respond during their sleep time as needed, the need for such a response is infrequent; and that Miller performs substantially the same duties as Hergert.

17. That at the time of hearing, Nancy Vandeloop was employed by the County as a Program Assistant at Portage House; that the position does not have a degree requirement or any specialized training requirement; that the duties and responsibilities of the Program Assistant are divided into three categories and are as follows:

CLIENT CONTACT AND SUPERVISION

Read files of prospective clients and recommends whether to grant intake interview. Participates in group interviews of prospective clients.

Confers with correctional agents regarding clients, handles referrals and schedules interviews.

Provides information and referral to clients regarding a wide variety of other service providers, including CADAC, other AODA resources, Job Service, Community Human Services, DVR, health care, educational programs, special classes, etc.

Provides on-going follow-up contact with other agency personnel regarding clients. This includes health care providers, employers, BCC agents, etc.

Completes client intakes and provides client orientation regarding rules, policies, procedures, and expectations.

Handles all client budget matters. This includes approving budgets; determining payment plans for fines, restitution, and other debts; conferring with BCC agents; and monitoring compliance with budget agreements.

Participates at Thursday staff and group meetings, which focus on client issues, problems, and progress in the program.

Serves on the discipline committee as needed, and recommends sanctions for rules & policy infractions.

Supervises and monitors client activities & whereabouts, and keeps other staff informed concerning clients' status. Briefs and debriefs staff during shift changes.

Is available to discuss issues with residents while on duty. This is a priority.

ADMINISTRATIVE ASSISTANCE, DATA COLLECTION & REPORTING

Assists Program Director on a variety of administrative projects, such as annual, quarterly, and monthly reports, correspondence, CBRF licensing reports, etc.

Monitors the federal contract and Statement of Work to insure that all required procedures are being followed.

Tracks client referrals, schedules client interviews, and is responsible for safekeeping, photocopying and returning files.

Compiles payroll and attendance records.

Updates resident board, posts committee actions, etc.

Assists with monitoring monthly expenditures.

Monitors petty cash, laundry and house loan accounts, collects and records client rent, and handles monthly federal billing.

Has primary responsibility for storage and retrieval of computer data, and for maintaining the computer, discs, and files.

Completes client computer intake forms, and compiles other program statistics.

Shares responsibility for appointment scheduling, filing, forwarding mail, and answering the phone.

HOUSE MANAGEMENT

Is in charge of scheduling relief staff coverage.

Contacts the Maintenance Department and other vendors for household repairs or other maintenance needs.

Orders supplies and household items from County Purchasing and other vendors.

Posts notices of house meetings, special programs or activities, new policies, etc.

that Vandeloop's work time is apportioned among the various duties approximately as follows: Client Contact and Supervision(65%), Administrative Assistance, Data Collection & Reporting (32%), House Management (3%); that Vandeloop has an Associate Degree in Data Processing and has approximately six years experience working in residential treatment facilities, including a psychiatric half-way house; that Vandeloop's normal work hours are 10:00 a.m. to 6:00 p.m.; that when a new resident arrives at the house, Vandeloop explains house procedures and advises the resident of the residents' rights and grievance procedure; that Vandeloop reviews with each new resident the commitments made at their interview as well as the approaches to be used to meet these commitments; that Vandeloop does not meet with residents on a scheduled basis to provide counseling, as does Wayerski; that on an informal basis, Wayerski will meet with residents, individually or in groups, to discuss problems which the residents wish to discuss with Vandeloop or to inquire about the resident's general welfare and activities; that these conversations may be initiated by Vandeloop or by the resident; that Vandeloop is a member of the disciplinary committee which determines sanctions for rule violations; that Vandeloop has authority to extend a resident's curfew or to grant special privileges; that Vandeloop has not had an occasion to confront a resident suspected of using drugs or alcohol; that if Vandeloop were so confronted, she would discuss the matter with the resident; that if the resident were honest and admitted the use, Vandeloop would refer the matter to the disciplinary committee; that if the client refused to admit the use of drugs or alcohol, Vandeloop could request the Sheriff's Department to run a breathalyzer test, or order a urine analysis for drugs; that

Vandeloop's responsibilities for determining resident treatment plans and implementing treatment directives are substantially the same as the Night Coordinators; that unlike the Night Coordinators, Vandeloop does not normally work alone and, thus, is less likely to be called upon to independently determine responses to resident infractions; that in selecting applicants for admission to the program, Vandeloop is seeking honesty, which is determined by comparing the applicant's responses to the applicant's file; and that Vandeloop's wage rate is \$7.93/hour.

18. That although the duties of the two Night Coordinators and the Program Assistant at Portage House involve a measure of discretion and independent judgment, the duties are not predominantly intellectual and do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital; and that the employees occupying the position of Night Coordinator and Program Assistant have not completed a course of specialized intellectual instruction described in subd. 1.d. of Sec. 111.70(1)(L), Stats.

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

CONCLUSIONS OF LAW

1. That the position of Administrative Assistant (County Clerk's office), occupied at the time of hearing by Shirley Simonis; the two positions of Administrative Assistant (Community Human Services Department), occupied at the time of hearing by Patricia Hintz and Pamela Helgemo; and the position of Program Counselor (Portage House), occupied at the time of hearing by Carolyn Wayerski, are occupied by supervisory employees within the meaning of Sec. 111.70(1)(o)(1), Stats., and, therefore, the occupants of these positions are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. That the position of Administrative Assistant/Victim Witness Coordinator (District Attorney's Office), occupied at the time of hearing by Sally Haas, and the position of Administrative Assistant (Community Human Services Department), occupied at the time of hearing by Susan Rutta, are occupied by confidential employees and, therefore, the occupants of the two positions are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

3. That the position of Child Support Program Coordinator (DA's office), occupied at the time of the hearing of John Carlson, is not occupied by a supervisory employee within the meaning of Sec. 111.70(1)(o)(1), Stats., or by a professional employee within the meaning of Sec. 111.70(1)(L), Stats., or by a managerial employee and, therefore, the occupant of the position is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

4. That the positions of Child Support Specialist, occupied at the time of hearing by Linda Check and Evett Hartvig; the positions of Night Coordinator (Portage House), occupied at the time of hearing by Lisa Hergert and Jane Miller; and the position of Program Assistant (Portage House), occupied at the time of hearing by Nancy Vandeloop, are not occupied by professional employees within the meaning of Sec. 111.70(1)(L), Stats.; and that the occupants of these positions are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

5. That the positions of Child Support Program Coordinator, Child Support Specialist, Night Coordinator (Portage House) and Program Assistant (Portage House) are appropriately included in the bargaining unit represented by the Union.

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

ORDER CLARIFYING BARGAINING UNIT 1/

1/ Pursuant to Sec. 227.49(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,

1. That the position of Administrative Assistant (County Clerk's Office), occupied at the time of hearing by Shirley Simonis; the positions of Administrative Assistant (Community Human Services Department), occupied at the

any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

Continued

(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.

(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.

time of hearing by Patricia Hintz and Pamela Helgemo; the position of Program Counselor (Portage House), occupied at the time of hearing by Carolyn Wayerski; the position of Administrative Assistant/Victim Witness Coordinator (District Attorney's Office), occupied at the time of hearing by Sally Haas, and the position of Administrative Assistant (Community Human Services Department), occupied at the time of hearing by Susan Rutta, shall continue to be excluded from the bargaining unit represented by the Union.

2. That the positions of Child Support Specialist, occupied at the time of hearing by Linda Check and Evett Hartvig; the position of Child Support Program Coordinator (DA's Office), occupied at the time of hearing by John Carlson; the positions of Night Coordinator (Portage House), occupied at the time of hearing by Lisa Hergert and Jane Miller; and the position of Program Assistant (Portage House), occupied at the time of hearing by Nancy Vandeloop, are hereby included in the bargaining unit represented by the Union.

Given under our hands and seal at the City of Madison, Wisconsin this 26th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

I fully concur as to all positions
except that of Child Support
Program Coordinator as to
which I dissent.

William K. Strycker /s/
William K. Strycker, Commissioner

PORTAGE COUNTY

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

DISCUSSION

SUPERVISORY STATUS

The Commission considers the following factors in determining whether a position is supervisory. Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described below are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.

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 employes supervised, and the number of other persons exercising greater, similar or less authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her 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 he or she spends a substantial majority of his or her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employes. 2/

2/ Town of Conover, Dec. No. 24377-A (WERC, 7/87); Portage County, Dec. No. 6478-C (WERC, 10/87); Dane County, Dec. No. 14844-C (WERC, 1989).

Administrative Assistant (County Clerk's Office) (Shirley Simonis)

Union Position

The incumbent, Shirley Simonis, is not involved in any County labor relations activity. The activity relied upon by the County, involving citizen complaints about County committees, does not involve a confidential activity within the meaning of the decisions of the Commission. Contrary to the assertion of the County, Simonis is not a confidential employee.

Simonis' involvement in the hiring of employees involves writing interview questions, asking questions of the applicants, administering a typing test, correcting the test and discussing the same with the County Clerk. Simonis has been involved in the hiring of 14 employees, of whom the last four were not regular employees. Simonis has not hired a regular employee since 1983. The County Clerk also participates in the interview and makes the decision to hire. Simonis' participation in the hiring process is not indicative of supervisory authority since all important decisions are left to the County Clerk.

As Simonis testified at hearing, with one exception, she has not had occasion to issue reprimands. Simonis' authority to discipline employees is generally limited to disciplining casual employees for such minor infractions as tardiness. The one exception occurred in 1994, at a time when the County Clerk was on a leave of absence recuperating from a heart attack. Simonis participated in the County's request that an employee resign. The employee apparently had been misappropriating County funds. Simonis' participation in this case does not demonstrate that she had supervisory authority. Simonis discussed the issue with both the District Attorney and with the Personnel Manager. As she testified at hearing "we asked the employee to resign." The letter requesting the employee to resign was written over the signature of the County Clerk.

Other than the County Clerk, Simonis works with only one other employee, i.e., Kathy Genovese, who is an Administrative Secretary. The County Clerk has greater authority over Genovese than does Simonis. Genovese is a very experienced employee who needs and receives virtually no work direction. The only example of work direction by Simonis involves some prioritizing of work at election time. Simonis' role in reviewing Genovese's work is limited to proofing typing and ensuring that correspondence is routed in the proper manner. These activities are entirely routine and clerical in nature, and lack the element of independent judgment needed to constitute supervisory authority.

As set forth in her job description, the majority of Simonis' time is spent performing clerical duties. While Simonis is paid somewhat more than Genovese, Simonis is paid at about the same rate as other classifications in the bargaining unit. Simonis is not paid for supervisory duties, but rather for having the level of skill of many of the higher level clerical employees in the bargaining unit. Simonis lacks a sufficient combination and degree of supervisory authority to justify the conclusion that she is a supervisor. Contrary to the argument of the County, Simonis is a municipal employee and, therefore, is appropriately included in the Union's bargaining unit.

County Position

The incumbent, Simonis, currently supervises one full-time employee and, since 1976, has also supervised up to 2.5 FTE employees in the bargaining unit, as well as numerous temporary employees.

Simonis has the authority to effectively recommend the hiring of employees, as demonstrated by the fact, from 1976 to the present, she has conducted interviews and typing tests on 14 occasions for both permanent and LTE positions. This authority is further reflected by the fact that Simonis has had involvement in the selection, hiring, and training of three to six temporary employees each election day. Simonis has authority to direct and assign work, as well as the authority to change work schedules, authorize overtime, and approve time off (i.e. sick leave and vacation requests). Simonis has the authority to evaluate employee performance. However, pay increases for bargaining unit employees supervised by this position, as well as by other supervisory positions, are governed by the labor agreement. Simonis has the authority to discipline and was involved in the discharge of a bargaining unit employee in 1984. Simonis has authority to address employee complaints and concerns and the authority to adjust grievances.

At hearing, the County Clerk, Simonis' supervisor, indicated that he is primarily responsible for coordinating County Board matters and, therefore, is out of the office for 25-30% of his work time. He has, therefore, effectively delegated daily office management, including supervision of permanent and temporary unit employees, to Simonis. Simonis' salary is at least 20% higher than the pay of any of the unit employees under her supervision. According to her estimate, she spends 50% of her work time on supervisory duties.

It should be noted that in 1985, the County and the Union voluntarily agreed to exclude the position from the bargaining unit. The Union, however, reserved the right to request inclusion should her job duties change. At the hearing, the County and the Union agreed to enter the current position description into evidence. The Union now erroneously concludes that the position, although substantially unchanged since 1985, should be placed in the bargaining unit at this time.

Simonis has been delegated supervisory authority by her supervisor, County Clerk Wrycza. Simonis has had supervisory authority for several years, but may not have had an opportunity to exercise this supervisory authority frequently simply because she is

an effective supervisor. With respect to the 1984 termination of an employee, Simonis' exercised supervisory authority, as previously delegated to her by the County Clerk. Proper protocols were followed, including discussions with the District Attorney and Personnel Manager and a termination letter issued under signature of the County Clerk.

The Union's argument that all important decisions are left to the County Clerk is not substantiated by the testimony of either the County Clerk or the Administrative Assistant. Nor does the record demonstrate, as the Union argues, that the County Clerk has greater authority over Genovese than does Simonis. Simonis has testified that she has evaluated work assignments given to Genovese regarding DNR records. Simonis is a supervisory employe and, therefore, is not appropriately included in the bargaining unit represented by the Union. The County withdraws its request that Simonis be excluded on the basis that she is a confidential employe.

Discussion

At the time of hearing, the position of Administrative Assistant (County Clerk's Office) was occupied by Shirley Simonis. During her 13 year tenure as Administrative Assistant, Simonis has participated in the hiring of each of the 14 clerical employes who have been hired into the County Clerk's office. Simonis' participation in the hiring process includes preparing employment interview questions, conducting the interview, and making a hiring recommendation to Simonis' supervisor, the County Clerk. As of the date of hearing, all of Simonis' hiring recommendations have been accepted by the County Clerk. Given the County Clerk's limited involvement in the employment interview process, as well as the fact that the County Clerk has accepted each of Simonis' hiring recommendations, the Commission is satisfied that Simonis has authority to effectively recommend the hiring of County employes.

While Simonis has never had an occasion to discipline Kathy Genovese, the one employe currently supervised by Simonis, Simonis has issued an oral reprimand for tardiness to an LTE worker who replaced Genovese while Genovese was on an extended leave of absence. Additionally, Simonis conducted an investigation of an employe who had misappropriated County funds and, upon conclusion of the investigation, made the decision to request the employe to resign. It is true that the resignation occurred during a period of time in which Simonis was functioning as the acting County Clerk. However, it is evident that Simonis' supervisor, County Clerk Wrycza, would, at the very least, give Simonis' recommendations great weight. 3/ Thus, we are persuaded that Simonis has authority to effectively recommend the discipline and/or discharge of County employes.

Genovese is a long term employe who is able to perform her regular work with little or no work direction from Simonis. As the workload necessitates, Simonis has authority to direct Genovese to set aside her normal tasks and to perform other duties assigned by Simonis. Simonis also has authority to direct Genovese to work outside of her normal work hours and to approve Genovese's vacation, sick leave, and overtime requests. In the past, Simonis has had occasion to tell Genovese that she would not be able to take vacation during a period in which the office was short staffed. Simonis also assists the County Clerk in the conduct of Genovese's annual performance evaluation. The Commission is satisfied that Simonis has authority to direct and assign the work force and, in exercising this authority, Simonis is primarily supervising an employe, rather than an activity.

At the time of hearing, Simonis had supervisory responsibility for one County employe. Inasmuch as the County Clerk is out of the office between 25 and 30 percent of the work time, it is evident that Simonis is frequently the only County employe available to supervise Genovese. As the Union argues, the record does not warrant a finding that Simonis devotes a substantial majority of her work time to supervising employes. However, the Commission is satisfied that Simonis, in her capacity as Administrative Assistant, possesses and/or exercises supervisory authority and responsibilities in sufficient combination and degree as to render her a supervisory employe.

Administrative Assistant/Community Human Services Department (Patricia Hintz)

Union Position

The incumbent, Patricia Hintz, spends the vast majority of her time performing various routine clerical duties, as described in her job description. According to her job description, she spends 25% of her time in the "Supervision of staff". However, in County Exhibit 2, it is claimed that she spends approximately 40% of her time performing supervisory duties. These two documents were prepared within two weeks of one another. Given the record as a whole, it appears that Hintz is actually spending far less time than claimed on anything that could be described as supervisory.

In eight years, Hintz has been involved in the hiring of only three employes, the most recent of which was two years ago. Hintz' assignment of work is of a routine nature and her role in promotion is admittedly very limited, and must be viewed in light of the Union's contract. Hintz has no power to transfer employes and no rewards are available. Hintz has not disciplined anyone in three years nor has she had any occasion to suspend or discharge employes. Hintz has not adjusted any grievances and she has no power

to lay off or rehire. Hintz is not a supervisor, but rather functions as a lead worker. Contrary to the position of the County, Hintz is a municipal employe.

County Position

The incumbent, Hintz, currently supervises nine permanent employes within the bargaining unit. Hintz has exercised authority to effectively recommend the hiring of four permanent and five LTE employes since 1981. Hintz has authority to direct and assign work. Hintz does have authority to change work schedules, authorize overtime, approve time off, or evaluate employe performance. Hintz also has authority to discipline and discharge and, in fact, has issued written disciplinary warnings, but has had no opportunity to terminate an employe. Hintz has authority to address employe complaints and concerns and also has authority to adjust grievances. To date, no actual grievances have been filed. Hintz has authority to promote or otherwise reclassify employes and also has authority to recommend specific positions for work force reduction layoffs. The testimony of Hintz' supervisor, Kluck, confirms that Hintz has assumed supervisory responsibilities. Hintz' salary is at least 40% greater than the pay of the Union employes under her supervision. This pay differential rebuts the Union's argument that Hintz is a "lead worker", especially given the much smaller lead differentials provided for in the Union contract. As the record demonstrates, Hintz devotes nearly one half of her work time on supervisory/managerial duties. Hintz is a supervisory employe and, therefore, is appropriately excluded from the bargaining unit represented by the Union.

Discussion

At the time of hearing, Patricia Hintz occupied the position of Administrative Assistant in the Client Support Services Division of the Community Human Services Department. During her eight year tenure as Administrative Assistant, Hintz has been involved in the hiring of four regular employes and five LTE employes. Hintz is responsible for interviewing applicants for vacancies within the Client Support Services Division. Hintz' immediate supervisor, Business Manager Lucy Kluck, does not participate in the interview process. It is true that, prior to tendering an offer of employment, Hintz' advises Kluck of the applicant who Hintz has selected for employment. However, given Kluck's limited involvement in the hiring process, the Commission is satisfied that Hintz has authority to effectively recommend the hiring of employes.

When Hintz considers an employes work performance to be unsatisfactory, Hintz will meet with the employe to discuss the matter. On one occasion following such a discussion, an employe did not improve her work performance to Hintz' satisfaction and Hintz issued a written reprimand. Thus, the Commission is satisfied that Hintz does have authority to independently effectuate lesser disciplinary actions, i.e., oral and written warnings. We are also satisfied that Hintz can effectively recommend that more serious disciplinary action be taken.

While Hintz does not have any authority to transfer employes, 4/ on one occasion Hintz effectively recommended that an employe be promoted. Hintz determines the work duties and develops the work procedures for the nine employes who work in her Division. Hintz conducts the annual performance evaluation of each of these employes. Hintz has authority to adjust the work hours of the nine employes, as well as to relieve the employes of their normal work duties. Hintz also has authority to authorize overtime and vacations. Hintz has denied employe vacation requests when, in her opinion, the employe is needed to maintain adequate staffing levels. The Commission is satisfied that Hintz has authority to direct and assign the nine employes and that in exercising this authority, Hintz is supervising employes, rather than an activity.

In Hintz' absence, Hintz' supervisor, Kluck, will exercise supervisory authority over the nine employes. When Hintz is available, the nine employes are supervised by Hintz. While it is evident that Hintz does not devote the majority of her work time to supervisory activities, the Commission is satisfied that Hintz, in her position as Administrative Assistant, possesses and/or exercises supervisory authority in sufficient combination and degree as to render her a supervisory employe.

Administrative Assistant/Community Human Services Department (Patricia Helgemo)

Union Position

The incumbent, Helgemo, has been involved in the hiring process during her eleven years of service in her present position. However, her position was reorganized in September, 1988 and, since that time, she has not been involved in any hiring decisions. The reorganization resulted in the elimination of any responsibility for five employes. Helgemo has not been involved in any disciplinary action during the past four years. The one disciplinary action with which she had involvement occurred in 1985 when an employe was terminated. Helgemo's involvement in the termination was quite limited and the termination was effectuated by Director Bablitch, rather

than by Helgemo. As set forth in the testimony of Business Manager Lucy Kluck, Director Bablitch is the only individual to have authority to discharge employees. Helgemo's only other involvement in discipline involved talking to an employe who had come in late.

Helgemo and County Exhibit 3 estimate that she devotes no more than 10% of her time to the alleged supervisory functions. Given the record as a whole, this estimate appears to be rather high. With the exception of the routine assignment of duties, Helgemo has not had an occasion to perform any of the "supervisory" functions noted on County Exhibit 3. This routine assignment of duties is not truly supervisory, as it does not involve the exercise or use of independent judgment.

The vast majority of Helgemo's time is devoted to the performance of various routine clerical duties, such as typing correspondence and operating printing devices. Helgemo functions as a lead worker, not a supervisor. Contrary to the argument of the County, Helgemo is a municipal employe.

County Position

The incumbent, Helgemo, currently supervises four permanent bargaining unit employes. Helgemo has effectively recommended the hiring of 20-25 employes since 1979. She has authority to direct and assign work. Employes currently supervised by Helgemo do not receive work assignments from any other source, unless Helgemo is absent. Helgemo has authority to change work schedules, authorize overtime work, and approve time off. Helgemo's supervisor, Kluck, only makes such authorizations when Helgemo is absent. Helgemo has authority to evaluate employe performance and the authority to discipline and discharge employes. Helgemo has authority to adjust grievances, but to date, no grievances have been filed. Helgemo has authority to promote, or otherwise reclassify employes. Helgemo also has authority to recommend specific positions for work force reduction layoffs. The testimony of Helgemo's supervisor, Kluck, confirms that Helgemo has assumed supervisory responsibilities. Helgemo's salary is at least 25% greater than the pay of unit employes under her supervision. Helgemo estimates that she spends up to 50% of her work time directly with her staff.

Discussion

Patricia Helgemo has been an Administrative Assistant in the Community Human Services Department for approximately 11 years. When there are vacancies in the word processing area, Helgemo interviews applicants and selects applicants to be hired. No other County employes participate in either the interview or the selection of the applicant to be hired. The Commission is satisfied that Helgemo has authority to effectively recommend the hiring of employes.

If Helgemo is not satisfied with an employes work performance, Helgemo will discuss the matter with the employe and direct the employe to improve the employes work performance. On one occasion, an employe failed to improve the employes work performance to Helgemo's satisfaction and was issued a written reprimand by Helgemo. Thereafter, when the employe failed to improve to Helgemo's satisfaction, Helgemo met with her supervisor and the Department Director and recommended that the employe be terminated. Helgemo's recommendation was accepted and the employe was terminated. The Commission is satisfied that Helgemo has authority to effectively recommend the discipline and/or discharge of employes.

It is true that each of the four Typists in word processing have routine duties, the performance of which involves little or no direction from Helgemo. Helgemo, however, has authority to assign other work as needed and to direct the employes to abandon their normal tasks to perform this other work. Helgemo has authority to adjust the employes' normal work schedule and to authorize overtime. Helgemo approves the employes' vacation requests and, on one occasion, has denied a vacation request on the basis that the remaining staff was inadequate to provide the necessary work coverage. On a daily basis, Helgemo monitors the employes' work product to ensure that it is accurate and complete. Helgemo also conducts an annual performance evaluation of each employe.

In Helgemo's absence, Helgemo's supervisor, Lucy Kluck, may exercise supervisory authority over the word processing employes. When Helgemo is available, such authority is exercised by Helgemo. The Commission is satisfied that Helgemo has authority to direct and assign the County's work force and that, in exercising this authority, Helgemo is primarily supervising employes, rather than an activity.

Prior to the reorganization in 1988, Helgemo did supervise an additional five employes. It is not evident, however, that the reorganization has lessened Helgemo's supervisory authority over the four employes who remain subject to her supervision.

While Helgemo does not devote a substantial majority of her work time to supervisory activities, the Commission is satisfied that Helgemo exercises the indicia of supervisory authority in sufficient combination and degree as to render her a supervisory employe.

Child Support Program Coordinator (John Carlson)

Union Position

Termed the Consumer Fraud Investigator on the Petition, the position is now known as the Child Support Program Coordinator. The incumbent, John Carlson, has been officially designated the Coordinator of the Portage County Child Support Agency since September, 1989. Unofficially, Carlson performed the duties of that position between February and September of 1988.

As set forth on County Exhibit 8, Carlson has no authority to hire employees. His role in interviewing applicants for employment has been limited to one instance which was still in progress at the time of hearing. The position being filled is the secretary/receptionist position. Also participating in the interview were Haas and Carlson's supervisor, District Attorney Bill Murat. During the interview Carlson asked the applicant questions. Following the interview, Carlson discussed the applicant with the District Attorney and Haas. Both Carlson and Haas expressed an opinion. However, the hiring decision was made by the District Attorney. Carlson has been involved in the discipline of one employe. His involvement consisted of writing several letters of reprimand to the employe. It should be noted, however, that this occurred during a very unusual period in which the District Attorney had resigned and no successor had been appointed. In Carlson's opinion, it is the District Attorney who would have to make any decisions regarding discipline.

Carlson's authority to direct and assign the work force is that of a leadworker, involving the routine division of labor and setting the priority of duties. For example, child support cases are divided between Check, Hartvig, and Carlson, according to the first letter of the last name of the client. If Carlson receives a call about a case, he might then ask a Specialist to write a memo. These duties do not involve any significant degree of independent judgment.

The two Child Support Specialists and the three secretaries who work with Carlson are supervised by the District Attorney. Carlson's rate of pay, \$11.27 per hour, is not significantly different than Check's rate of pay, \$10.03 per hour. Hartvig's rate of pay, \$8.95 per hour, reflects the fact that she is a new employe and has not progressed through the wage schedule. Notwithstanding the claim of Exhibit 8 that Carlson spends 50% of his time performing supervisory duties, the record clearly indicates that this could not be an accurate estimate. First, Carlson has a case load that is roughly one half the size of the Specialists. Carlson has testified that his work takes approximately 50% of his time. Carlson also has other responsibilities, such as making reports and interacting with other agencies, as well as the other nonsupervisory duties which he described in his testimony and which are listed in his job description. It is reasonable to conclude that these duties take a considerable portion of his time. Carlson's alleged supervisory activities could not possibly take more than a few minutes of his time each day. Carlson's involvement in hiring has been negligible. The assignment of work to employes, being a strictly routine exercise, cannot take much time. In any event, these duties cannot be said to be supervisory. Carlson has never been involved in performance evaluations and he has never received any employe grievances or complaints. Carlson has no real power to promote, nor has he exercised such power. Carlson has no power to transfer employes and, as discussed above, has a limited role in employe discipline. It is the District Attorney and the County Board who determine if there will be layoffs and who will be affected by those layoffs. Carlson does not have supervisory authority in sufficient combination and degree to warrant a finding that he is a supervisor. Contrary to the argument of the County, Carlson is a municipal employe.

Carlson's policy making involvement is minimal to the point of being nonexistent. Carlson interacts with various County Departments to develop office procedures. This is not formulation, determination and implementation of public policy. Similarly, Carlson's role in the budget process falls short of what is required for a finding of a managerial status. Carlson does not establish an original budget, nor can he allocate funds for purposes which differ from such an original budget. Carlson's budget preparation duties primarily involve projecting the cost of implementing the policy decisions made by the District Attorney. It is the District Attorney alone who determines the kind and level of services to be provided, the kind and number of employes to be utilized in providing services, and the kind and number of capital improvements to be made and the systems by which the services will be provided. Carlson does not participate in the formulation, determination and implementation of public policy.

While Carlson does possess impressive academic credentials, his position does not require a college degree. Carlson has estimated that he spends approximately 50% of his time on his own Child Support case load, which includes approximately 300 cases. In addition to these duties, which are performed by Child Support Specialists, Carlson makes reports to the State regarding collections and expenditures, and reviews cases closed by Specialists to determine whether closing was appropriate. In making this determination, Carlson considers whether a parent has moved out of the County, whether there has been a death of a parent or termination of parental rights, whether there are arrearages owed to the custodial parent or to the State, and whether the child has turned 18. This involves little more than a routine check list and does not involve the exercise of discretion in judgment. On the whole, Carlson's position of Child Support Program Coordinator is not a position which requires knowledge of an advanced type which is customarily required by a prolonged course of specialized intellectual instruction and study in an institution of higher education. Carlson's duties are not predominantly intellectual and varied in character nor do they involve the consistent exercise of discretion and judgment in the performance of these duties. Accordingly, Carlson is not a professional employe, but rather is a municipal employe.

County Position

This position, currently occupied by Carlson, should be excluded from the bargaining unit on the basis that the position is

supervisory, managerial and/or professional. Carlson currently supervises two professional and three bargaining unit employees. Carlson has the authority to effectively recommend the hiring of employees. The District Attorney and Administrative Assistant may also be involved in such hiring decisions since the bargaining unit clerical staff is "shared" within the various sections of the department. Carlson has authority to direct and assign work, to change work schedules, to authorize overtime, and to approve timeoff. Carlson also has authority to evaluate employee performance, to discipline employees, and to address employee concerns and complaints. Carlson has authority to adjust grievances, but no actual grievances have been filed at this time. Carlson's supervisor, the District Attorney, confirms that he has delegated daily supervisory responsibilities to Carlson for two professionals and three unit clericals within the department. In addition, the two Child Support Specialists have identified Carlson as their immediate supervisor. Carlson's salary is at least 15% greater than the pay of unit and non-unit employees under his supervision. According to Carlson, he spends approximately 50% of his work time on supervisory/managerial duties, and the remaining 50% handling a professional case load.

According to Carlson's supervisor, the District Attorney, the Child Support Program is a "department within a department". Although this program is under the supervision of the District Attorney, Carlson effectively supervises the employees and manages the budget of the program. Legislation is pending which would require removal of both Child Support and Corporation Counsel functions from the District Attorney's office. Carlson establishes program policy with other departments, ensures compliance with federal and state regulations, and formulates and administers the child support program budget, including reallocation of resources overtime, office equipment and professional witness fees).

In addition to the supervisory/managerial duties discussed above, Carlson handles a case load of approximately 300 cases. Each Child Support Specialist handles between 700 to 900 cases. The child support case load duties are properly characterized as professional in nature. Although the positions do not require a college degree, the definition of professional employees is not limited to employees who possess college degrees. Carlson's education and experience i.e. college degree, law enforcement officer certification, plus ten years investigator experience, permit him to consistently exercise discretion and judgement in the performance of his duties. Such knowledge skill and ability is customarily acquired through the type of specialized educational instruction described in Sec. 111.70(1)(L), Stats.

Discussion

In September of 1988, John Carlson was officially reclassified from Consumer Fraud Investigator to Child Support Program Coordinator. From February, 1988 to September, 1988, Carlson had been acting in the capacity of Child Support Program Coordinator.

Child Support Services, which is located in the District Attorney's office, employs two full-time Child Support Specialists and one full-time legal secretary. Two other full-time clerical employees have their work time apportioned between Child Support Services and other DA functions. A receptionist-typist is 75% Child Support Services and a legal secretary is 50% Child Support Services.

Only one vacancy in Child Support Services, a secretary/receptionist, has existed since Carlson became Coordinator. Carlson, the DA, and the Department's Administrative Assistant all participated in the interview of applicants. Following the interview, Carlson discussed applicant qualifications and expressed an opinion as to which applicant should be hired, as did the Administrative Assistant. When the interview process is completed, the DA will determine the applicant to be hired. While it is evident that the current DA values Carlson's opinion, the record does not demonstrate that the DA's reliance on Carlson's hiring opinion is such that one may reasonably conclude that Carlson has authority to effectively recommend the hiring of employees.

On occasion, Carlson has had occasion to direct employees to improve their work performance. Employees so directed have improved their work performance. If an employee did not improve his/her work performance, Carlson would not take any further disciplinary action without consulting with the DA. In the Spring of 1988, Carlson wrote several letters of reprimand to an employee. Prior to issuing the written reprimands, Carlson discussed the matter with the DA, who agreed that the written reprimands were appropriate.

The two Child Support Specialists are primarily involved in managing Child Support cases. Carlson devotes approximately 50% of his time to performing the work of a Child Support Specialist. Carlson and the two Specialists are each assigned a section of the alphabet and receive cases on the basis of the first letter of the custodial parent's last name. As an exception to this method of case assignment, paternity cases are assigned to one Specialist and URESA cases are assigned to another Specialist. Carlson has authority to reassign cases to ensure an equitable distribution of the case load.

For the most part, the duties of the Child Support Specialists are well-defined and performed without close supervision. However, as Carlson deems necessary, Carlson has authority to intervene in the management of the Specialists' cases and to direct the Specialists' work activity. As new duties arise, or procedures are changed, Carlson has authority to determine who will perform the duties and the manner in which the changes are to be implemented. Carlson has authority to determine which Child Support Services work will be performed by each of the clerical employees and has authority to determine the priority of their work. Carlson also has authority to determine when overtime is needed and to authorize overtime. Carlson has not been advised as to whether he will have any responsibility to formally evaluate employees. Carlson, however, does periodically review the work of the Child Support Services

employees to ensure that the work is performed properly. Carlson has authority to direct and assign the Child Support Services employees. Here the Commission is convinced that in exercising this authority, Carlson is primarily supervising a work activity and not employees.

It is evident from the testimony of the current DA that he relies heavily upon Carlson to advise the DA of any problems within Child Support Services. Carlson testified that he would not independently suspend or take disciplinary action without consulting the DA. The DA testified that Carlson would not be required to consult with him prior to initiating disciplinary action if he were not available. However, the DA testified that "I'm often in the office but when I'm in the office I'm usually unavailable because of obligations that I have in Court." Thus, while the DA is occupied with his own professional work load and thus unavailable for overall supervision of employees' activities, he is available for the rare disciplinary situation which may arise.

Overall, we interpret most of Murat's testimony with respect to supervisory duties as involving supervision of employee work activity rather than the supervision of employees. Further, we note that at the time his testimony was given, he had been in the office for only some four months. Accordingly, we regard his description of Carlson's responsibilities with respect to supervision of employees as more reflective of Murat's future intentions (which may or may not come to fruition) instead of existing circumstances. In any event, it appears such responsibilities as detailed by Murat will take a minimal amount of Carlson's time.

Given the testimony of Carlson and the DA, the fact that there are only three other full-time and two part-time employees in the Child Support Services, the fact that the employees have well defined jobs requiring little supervision, the fact that Carlson spends 50% of his time performing the same case work activity as the Child Support Specialist and most of the remainder on administrative duties, and minimal record evidence of any actual supervision of employees, the majority is convinced that Carlson's supervisory role is primarily that of overseeing the work activity of employees rather than that of supervising employees.

A managerial employee is one who participates in the formulation, determination and implementation of policy to a significant degree, or who possesses effective authority to commit the employer's resources either by exercising the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 5/

As to Carlson's alleged policy involvement, the record establishes that his role is primarily one of attempting to develop solutions to specific problems which arise between the Child Support Agency and other involved departments. In our view, this role as "problem solver" cannot be equated with the broader high level role of policymaker and thus does not provide a basis for finding Carlson to be a managerial employee. As to Carlson's ability to commit the employer's resources, the record reflects that the DA relies upon Carlson's expertise when developing portions of the budget. However, as these portions of the budget are small, as it is the DA who ultimately presents the budget to the County Board for approval and as Carlson needs the DA's approval to move funds from one budget account to another, we conclude that Carlson does not possess sufficient ability to commit resources to be found managerial.

Lastly, we conclude that Carlson is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats. As fully discussed later herein as to the Child Support Specialist positions, his duties when he handles his caseload do not render him a professional. His other responsibilities, including the direction of other employees, do not require "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education" within the meaning of Sec. 111.70(L)1.d. Stats.

Given the foregoing, Carlson is included in the bargaining unit.

DISSENTING OPINION OF COMMISSIONER STRYCKER

I disagree with my colleagues and feel that Carlson qualifies as a supervisor. I have reached this conclusion for several reasons.

The record does support that he participates in hiring decisions. Based upon the District Attorney's testimony about his management style, his great reliance on Carlson, and Carlson's role in filling the only vacancy that has occurred since he assumed his current position, I feel that Carlson is in a position to effectively recommend the hiring of employees.

The record supports that he has the authority to direct, assign and evaluate the work of the Child Support Specialists. He evaluates performance and, when necessary, directs that improvement be made. If improvement is not sufficient, he will follow progressive discipline procedures. While Carlson testified that he would attempt to discuss formal disciplinary actions with the District Attorney, the District Attorney testified that Carlson has the authority to independently discipline, suspend or discharge an employee. I feel that Carlson does have the authority to effectively recommend the discipline or discharge of an employee.

5/ Door County Courthouse, Dec. No. 24016-B (WERC, 8/88); Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 Ct. App. 1986); Kewaunee County v. WERC, 141 Wis.2d 347 (Ct. App. 1987).

The record supports that Carlson has the authority to change work schedules, authorize overtime and reassign work to insure equitable distribution. Carlson has the authority to intervene in the Specialists' cases when he determines that it is necessary. When changes in duties or procedures need to occur, he has the authority and responsibility to make assignments and determine how the changes will be implemented. Further, he has the authority to address and adjust employee concerns, complaints and grievances. While aspects of these efforts may represent the supervision of a work activity, as my colleagues maintain, I feel that these efforts are primarily related to the supervision of employees.

I feel that the testimony of the District Attorney, Mr. Murat, who supervises Carlson, is particularly persuasive. During the hearing Mr. Murat established the following points:

Mr. Carlson is a supervisor with employees who report to him. Murat recognizes Mr. Carlson's expertise in operating the department and relies on him. The DA's management style is one that promotes cooperation and a team approach. He provides Mr. Carlson with the flexibility needed to carry out the responsibilities of his position. Murat is not able to act as the supervisor in any kind of a detailed fashion with respect to each of the three areas that report to him because he is the chief trial attorney for the County. Because of Murat's job duties, he has delegated a considerable amount of supervisory responsibility to Mr. Carlson. Murat works between 60 to 65 hours a week. When Murat is in the office, he is usually unavailable because of court obligations.

For the reasons I have identified, I feel that Carlson qualifies as a supervisor.

Program Counselor (Portage House) (Carolyn Wayerski)

Union Position

The incumbent, Carolyn Wayerski, is the Program Counselor at the Portage House, which is a halfway house for criminal offenders. Wayerski acknowledges that the vast majority of her time is spent working with the residents of the house. Portage House operates on a very democratic structure. Consequently Wayerski's role in the hiring of employees is no greater than any other employee. Wayerski helps select employees to be interviewed by checking the application and cover letter for experience, which are routine duties. Thereafter, all the staff participate in the hiring decision.

Wayerski's involvement in assigning work is not supervisory in nature. Each of the employees are able to perform their duties without significant work direction. At \$8.37 per hour, Wayerski is paid somewhat more than the full-time Program Assistant who is paid \$7.93 per hour, and considerably more than the part-time Night Coordinators, who are paid \$5.34 per hour. Wayerski, however, is paid less than 13 classifications in the Union's unit and far less than professional employees of the County. Wayerski is not paid for her supervisory authority, but rather because of her role as a full-time Program Counselor. Wayerski does not possess sufficient indicia of supervisory authority to warrant the finding that she is a supervisor.

A professional employee is one whose job duties require advanced knowledge of a type customarily acquired through a prolonged course of specialized intellectual instruction at an institution of higher learning, or a hospital. As Director Houlihan testified, it is not the degree he looks for in the Program Coordinator position. Indeed, it must not be, for Wayerski has only an Associate Degree in General Studies. It is evident that the position of Program Counselor is not one which requires knowledge of an advanced type as described above. At \$9.37 per hour, Wayerski is certainly not paid for whatever professional qualifications she may have. Contrary to the argument of the County, Wayerski is not a professional employee.

County Position

Portage House is a residential halfway house for adult male criminal offenders, with a current occupancy of ten residents. In addition to the positions disputed herein, the staff also includes one Program Director and three relief oncall staff. The entire staff participates in behavior modification counseling with residents, including democratic decisionmaking by staff and residents, which provides a role model for residents as they attempt to reintegrate with society. There is no typical day at Portage House and the staff, comprised of a variety of educational and experiential backgrounds, must be prepared to deal with a variety of potential crisis situations such as: determining sanctions for rule violations; granting requests for extended curfews or other special privileges; dealing with verbal and/or physical abuse by residents; discerning alcohol or drug use by residents; dealing with depression or suicidal tendencies by residents; and dealing with sexuality issues. All staff members must be able to act without supervision, if necessary, when they are alone on the premises. Although the positions in dispute may not require a college degree, the definition of professional employees is not limited to employees who possess such a degree. The staffs' varied background permits them to consistently exercise discretion and judgment in the performance of their duties. As Director Houlihan testified, a former resident may be more qualified to work at Portage House than an applicant with a college degree but no relevant counseling experience.

The position of Program Counselor at Portage House is currently occupied by Wayerski. The position should be excluded from the Union's bargaining unit on the basis that the position is supervisory and/or professional. Wayerski has authority to effectively recommend the hiring of employees, as well as the authority to direct and assign work. She has authority to change work schedules, authorize overtime work and approve time off. Wayerski has authority to evaluate employee performance, to discipline and discharge employees and to address employee complaints and concerns. Testimony of Director Houlihan, Wayerski's supervisor, indicates that he has effectively delegated supervisory responsibilities for the Night Coordinator and relief staff to the Program Counselor, Wayerski. The testimony of Hergert indicates that the Night Coordinators perceive Wayerski to be their immediate supervisor. This was confirmed by Director Houlihan. Wayerski estimates that she spends at least 10% of her work time on the above supervisory duties. Twenty-five percent of her work time is devoted to activities with staff (e.g. in-service training) and the remaining 65% with residents (e.g. counseling).

Wayerski is engaged in work characterized as professional in nature. For example, Wayerski interviews prospective residents and engages in individual as well as group counseling. Wayerski makes referrals to agencies, deals with specific client issues, and engages in employment counseling. Wayerski's background, i.e., two years of college, plus 12 years previous counseling experience, permits her to utilize discretion and judgment in the performance of duties. Such knowledge, skill and ability is customarily acquired through the specialized educational instruction described in Sec. 111.70(1)(L), Stats.

Although all employees participate in the interviewing process for prospective employees and residents alike, Wayerski is recognized by her superior and subordinates as having effective authority for such decisions. Wayerski's \$.90 per hour spread over subordinates is more than a lead differential.

Discussion

Carolyn Wayerski, has been employed as Program Counselor since May of 1988. Based on the testimony of Wayerski and her immediate supervisor, Director Houlihan, we find Wayerski to be the supervisor of the two Night Coordinators, and the three relief staff employees.

As Program Counselor, Wayerski will be involved in the hiring of both Night Coordinators and the relief staff. It is Wayerski's responsibility to review employment applications, recommend applicants for interview, interview applicants and recommend an applicant to be hired. There has been one employee hired during Wayerski's tenure as Program Counselor, i.e., a Night Coordinator. The individual who was hired into the position, Lisa Hergert, was recommended by Wayerski. Since Houlihan is consulted when Wayerski reviews employment applications and also participates in the interview process, it is evident that Wayerski does not have independent authority to hire employees. Wayerski, however, does have significant involvement in the hiring process. We are persuaded that Houlihan, who relies upon Wayerski to supervise the Night Coordinators and relief staff, gives great weight to Wayerski's opinions. This general reliance upon Wayerski, as well as the fact that Houlihan accepted Wayerski's recommendation to hire Hergert, persuades the Commission that Wayerski does have authority to effectively recommend the hiring of employees.

While it is true that other staff members are welcome to participate in the hiring of Night Coordinators and relief staff, such participation is not required. While it is not evident that any other employee participated in the hiring of Hergert, if such participation did occur, we are persuaded that such participation would be more a function of Houlihan's democratic nature, rather than a function of any supervisory authority. Moreover, while we have no doubt that Houlihan would consider the opinions of other employees, we are not persuaded that such opinions would be given the same weight as Wayerski's opinions.

As Program Counselor, Wayerski is responsible for ensuring that the two Night Coordinators and the three relief employees

perform their work properly. Wayerski, who assumed her position as Program Counselor approximately seven months prior to hearing, has not been dissatisfied with the work performance of any of the Night Coordinators or relief workers. If Wayerski were to become dissatisfied with the work performance of any of these employees, Wayerski would discuss the matter with the employee. If, following such discussion, the employee did not improve to Wayerski's satisfaction, Wayerski considers herself to have authority to take whatever further disciplinary action she deemed appropriate, including the suspension or termination of an employee. We are persuaded, however, that Wayerski would not suspend or terminate an employee without first consulting with Houlihan. Inasmuch as Houlihan relies upon Wayerski to supervise the Night Coordinators and the relief staff, we are persuaded that Wayerski's opinion on a disciplinary matter affecting either a Night Coordinator or the relief employees would be accorded great weight. We are satisfied that Wayerski does have authority to effectively recommend the discipline and/or discharge of employees.

The Portage House staff is small and cooperates well with one another. Coverage for absences due to vacation or illness are normally worked out between the employees. However, if there were a problem, Wayerski would be contacted and would arrange for coverage. If Wayerski considers it necessary to alter the current work schedule of the Night Coordinators, Wayerski would have authority to alter the normal work schedules of these employees.

The duties of the Night Coordinators and the relief workers, while varied in nature, are routine in the sense that the same types of duties are performed on each shift. The Night Coordinators do not need, or receive, daily assignments from Wayerski. Wayerski meets with all of the staff, including the Night Coordinators and the relief staff, on Thursday evenings to discuss house issues. At that time, Wayerski provides whatever additional work directions she deems necessary.

Given the fact that the vast majority of the Night Coordinators' and relief employees' work is performed outside of Wayerski's normal work hours, it is evident that these employees perform their work with little direct supervision from Wayerski. Wayerski, however, is responsible for ensuring that these employees perform their work properly. If any of these employees were to have a problem or require work direction, they would consult with Wayerski. Wayerski also attempts to informally resolve employee complaints or concerns regarding working conditions. Wayerski provides in-service training to the Night Coordinators and the relief staff. While the relief staff do not receive an annual performance evaluation, Wayerski does formally evaluate each Night Coordinator on an annual basis. The Commission is persuaded that Wayerski has authority to direct and assign the Night Coordinators and the relief employees. The Commission is further persuaded that in exercising this authority, Wayerski is primarily supervising employees, rather than an activity.

While no more than 10 percent of Wayerski's time is devoted to supervising employees, and Director Houlihan could supervise the Night Coordinators and the relief employees, it is apparent that Houlihan has chosen to delegate this responsibility to Wayerski. Given her authority as to hiring, discipline and direction of the workforce, we are satisfied that Wayerski possesses and/or exercises the indicia of supervisory authority in sufficient combination and degree so as to render her a supervisory employee. Having found Wayerski to be a supervisor, we do not consider it necessary to determine whether Wayerski is also a professional employee.

PROFESSIONAL STATUS

Section 111.70(1)(L), Stats., defines the term "professional employe" as follows:

1. Any employe engaged in work:
 - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;
 - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
 - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
2. Any employe who:
 - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d;

- b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

While all of the criteria listed in either Subsection 1. or Subsection 2. must be present in order to find a particular employe to be professional, the category "professional employe" is not limited to employes possessing college degrees. 6/

Night Coordinators (Portage House) (Lisa Hergert and Jane Miller)

Union Position

The Portage House has two Night Coordinators, Lisa Hergert and Jane Miller. Hergert has a Bachelor's Degree in Psychology with an emphasis in human services, but her position does not require such a degree. Significantly, Director Houlihan stated that many of the people who have worked this position are "way over qualified". The job duties of the Night Coordinators' position demonstrate beyond doubt that this is a nonprofessional position. According to Hergert, her duties include monitoring the movement of residents, playing cards and other games with residents, watching television with the residents, observing the behavior of the residents, checking off house duties to be performed by the residents, answering phone calls, maintaining order, and mediating disputes between residents. The Night Coordinators implement treatment directives, work with residents on issues such as self-esteem, and provide the residents with books and homework. Hergert testified that she is paid \$5.17 per hour, although Union Exhibit I indicates that she and Miller are actually paid \$5.34 per hour. In either case, the wages are significantly less than those paid to represented professional employes. Contrary to the argument of the County, the two Night Coordinator positions are not professional employes, but rather are nonprofessional municipal employes.

County Position

The positions of Night Coordinator, currently occupied by Hergert and Miller, are appropriately excluded from the Union's collective bargaining unit on the basis that they are professional. The two Night Coordinators are involved in the implementation of treatment directives and mediation of disputes. The Night Coordinators must be prepared to confront various crisis situations. The position is accurately described as an entry level social work position. Each incumbent brings several years of relevant education and experience to the job. Hergert has a bachelor degree plus previous half-way house experience. Miller has a bachelor's degree plus 12 years previous experience. Such knowledge, skill and ability is customarily acquired through specialized educational instruction described in Sec. 111.70(1)(L), Stats.

Discussion

At the time of hearing, the two positions of Night Coordinator were occupied by Lisa Hergert and Jane Miller. To be deemed professional, the employes performing the work of the Night Coordinator must meet all of the criteria listed in either Subsection 1 or Subsection 2 of Sec. 111.70(1)(L), Stats.

The position of Night Coordinator does not have any degree requirement, nor does it have any specialized training requirement. When hiring into the position, the Director seeks an individual who has people skills and relevant work experience. The two incumbents, Hergert and Miller, each have a Bachelor's Degree in Psychology. Since each has completed a general academic education as opposed to a course of specialized intellectual instruction and study described in subd. 1.d of Sec. 111.70(1)(L), Stats, neither Hergert nor Miller meet all of the criteria listed in Subsection 2 of Sec. 111.70(1)(L) Stats. The question then becomes whether the work of the Night Coordinators meets all of the criteria listed in Subsection 1 of Sec. 111.70(1)(L), Stats.

While the Director considers the Night Coordinator position to be an entry level social worker position, we consider the position to be more akin to that of an institutional aide. While the specific duties may vary from shift to shift, each work shift is primarily devoted to four types of duties, i.e., monitoring resident activity, maintaining safety and order on the Portage House premises, engaging the residents in recreational activities, and observing resident behavior. We do not consider these duties to be predominantly intellectual in character, but rather, we consider these duties to primarily involve routine mental and manual work.

Portage House is not a psychiatric facility, but rather, is a half-way house for adult criminal offenders. At the interview for admission to the program, which is attended by all of the staff and current residents, the applicant describes his life history. Based upon the observations of the applicant's conduct during the interview, the staff and the residents make suggestions as to behaviors which need to be modified, e.g., aggression, low self-esteem, manipulation, etc. The applicant has the right to accept or reject these

suggestions. If the applicant accepts the suggestion, he enters into a "commitment" to work toward modifying the behavior. While the "commitments" may be modified during the course of the residents stay, the bulk of these "commitments" are determined at the initial interview session. The nature of the behaviors targeted for modification, the fact that the behaviors are identified on the basis of a single interview session, and the fact that the residents assist in the identification of the behaviors, persuade us that the behaviors targeted for modification are behaviors which are obviously inappropriate, the recognition of which does not require knowledge of an advanced type within the meaning of subd. 1. of Sec. 111.70(1)(L), Stats. Accordingly, we do not consider the Night Coordinator's involvement in targeting behaviors to be modified to be indicative of professional status.

The Night Coordinators, as well as the other staff and residents, have a right to suggest treatment directives, i.e., methods of modifying behaviors. However, as Hergert testified at hearing, Program Counselor Wayerski "makes the final decision on what should be done and people are expected to follow that." 7/ While we do not doubt that Wayerski values the Night Coordinators' opinions, we are persuaded that it is Wayerski, and not the Night Coordinators, who has primary responsibility for and authority to determine treatment directives.

As the County argues, the Night Coordinators have a responsibility to implement treatment directives, which implementation primarily involves encouraging appropriate behaviors and discouraging inappropriate behaviors. Examples of the implementation of treatment directives are encouraging a resident to complete homework or to read a book, or confronting a resident who is seeking negative attention and suggesting that there are more positive methods of receiving attention. We not consider this work to require knowledge of an advanced type within the meaning of subd.1.d of Sec. 111.70(1)(L), Stats.

Given the fact that the Night Coordinators normally work alone, they are required to use independent judgment when confronted with residents who have committed infractions of house rules. There is, however, a finite set of responses, i.e., immediate discussion with the resident, referral to Director Houlihan or Program Director Wayerski, referral to a house meeting, or removal to an outside authority. An immediate discussion is the norm, unless the resident appears to be hostile to a confrontation. Removal to an outside authority would not occur unless the resident were perceived to be a danger to himself, or others. Serious infractions, not involving an immediate danger, normally would be referred to Director Houlihan or Program Counselor Wayerski. We are persuaded that the discretion and judgment utilized in determining an appropriate response to a resident infraction is more a matter of common sense, than any professional expertise.

In summary, we do not consider the Night Coordinators to be involved in work which is predominantly intellectual, nor do we consider their work to require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher education. Accordingly, the Night Coordinator work does not meet all of the criteria listed in subd. 1 of Sec. 111.70(1)(L), Stats. Having failed to meet all of the criteria in either subd. 1 or subd. 2 of Sec. 111.70(1)(L), Stats., the two Night Coordinators are not professional employees.

Program Assistant (Portage House) (Nancy Vandeloop)

Union Position

The incumbent, Nancy Vandeloop, testified that there is no educational requirement for her position, though she thought a degree in a field related to counseling would be advisable. Vandeloop, however, possesses an Associate Degree in Data Processing. The counseling functions performed by Vandeloop were described as informal. Indeed, Director Houlihan testified that if he had a cook, the cook would do counseling. Accordingly, the counseling duties performed are clearly not the type performed by such traditional professionals as social workers. At \$7.93 per hour, Vandeloop is certainly not being paid for performing professional services.

Over half of Vandeloop's job description duties are labeled "administrative." These "administrative" job duties involve assisting Director Houlihan in the preparation of the annual, quarterly and monthly reports. In addition, Vandeloop performs various clerical duties such as maintaining files, completing payroll, handling petty cash, assisting with bills, compiling program statistics, answering the phone, transcribing clinical notes, scheduling relief work, contacting County maintenance personnel to make repairs, ordering supplies and monitoring the grocery shopping. Clearly, Vandeloop's duties do not involve the consistent exercise of discretion, nor do they require knowledge of an advanced type customarily acquired by a prolonged course of specialized instruction and study in an institution of higher education, or hospital. Contrary to the argument of the County, Vandeloop is not a professional employe, but rather is a nonprofessional municipal employe.

County Position

The incumbent, Vandeloop, is appropriately excluded from the Union's collective bargaining unit on the basis that the position is professional. Vandeloop interviews prospective residents and participates in resident treatment plans. She estimates that she spends up to 65% of her work time in client contact-supervision activities. These duties are comparable to those of the Night Coordinator. Vandeloop's background, two years of college plus seven and one-half years of part-time counseling experience, permits her to utilize discretion and judgment in the performance of her duties. Such knowledge, skill and ability is customarily acquired through the type of specialized educational instruction described in Sec. 111.70(1)(L), Stats.

Discussion

At the time of hearing, the position of Program Assistant was occupied by Nancy Vandeloop. The position of Program Assistant does not have a degree requirement, nor does it have any specialized training requirement. Vandeloop has an Associate Degree in Data Processing and approximately six years experience working in residential treatment facilities, including a psychiatric half-way house. Vandeloop has not completed a course of specialized intellectual instruction and study described in subd. 1.d and, thus does not meet all of the criteria of professional status listed in subd. 2 of Sec. 111.70(1)(L), Stats. The question then becomes whether Vandeloop performs work which meets all of the criteria set forth in subd. 1 of Sec. 111.70(1)(L), Stats.

Approximately 32 percent of Vandeloop's work time is devoted to general administrative duties such as preparing reports, compiling statistics, storing and retrieving computer data, maintaining files, and preparing payroll. Approximately three percent of her worktime is devoted to house management duties such as ordering supplies, posting notices of meetings and activities, and contracting for household repairs and maintenance. The County does not argue, and the record does not demonstrate, that these general administrative and household duties are professional. Rather in arguing professional status, the County relies upon duties which fall under the job description category of Client Contact and Supervision.

As the County argues, Vandeloop interviews applicants for admission into the Portage House Program and participates in the selection of applicants for admission to the program, as do the other staff members and residents. According to Vandeloop, the primary criteria for selection to admission to the program is the characteristic of honesty, which is determined by comparing the applicant's interview responses to the information contained in the applicant's records. We consider Vandeloop's interview responsibilities to involve routine mental work, as opposed to work which is predominantly intellectual. We do not consider this work to require knowledge of an advanced type within the meaning of subd. 1.d of Sec. 111.70(1)(L), Stats.

As the County recognizes, Vandeloop's participation in the development and implementation of the resident's treatment plans is substantially the same as that of the Night Coordinators. For the reasons discussed earlier, we do not consider such duties to require knowledge of an advanced type within the meaning of subd. 1 of Sec. 111.70(1)(L), Stats.

Vandeloop, unlike the Night Coordinators, does not work alone. Rather, Vandeloop works at time when the Director and/or Program Counselor Wayerski are present. Accordingly, Vandeloop is not called upon to exercise the same level of independent judgment in dealing with resident infractions as the Night Coordinators. Vandeloop, however, does sit on the house disciplinary committee, which Committee determines sanctions for resident infractions, and has authority to award special privileges. While these duties do involve the exercise of discretion and judgment, we are not persuaded that these duties require knowledge of an advanced type within the meaning of subd. 1.d of Sec. 111.70(1)(L), Stats.

On an informal basis, Vandeloop does meet with residents, individually or in groups, to discuss problems which the residents wish to discuss with Vandeloop, or to inquire about the resident's general welfare and activities. While we do not doubt that Vandeloop's prior work experience has sensitized Vandeloop to the particular problems of the residents and has provided Vandeloop with resources to respond intelligently to these problems, we are not persuaded that Vandeloop's informal "counseling" requires knowledge of an advanced type within the meaning of subd. 1 of Sec. 111.70(1)(L), Stats.

In summary, the employe occupying the position of Program Assistant does not meet all of the criteria listed in subd. 2 of Sec. 111.70(1)(L), Stats. Nor does the employe perform work which meets all of the criteria listed in subd. 1 of Sec. 111.70(1)(L), Stats. Accordingly, the Program Counselor is not a professional employe.

Child Support Specialist (Linda Check and Evett Hartvig)

Union Position

The position identified in the petition as Child Support Investigator is now known as the Child Support Specialist. At all times relevant to this petition, there have been two employes with this position title, Check and Hartvig. The Child Support Specialist does not require "knowledge of an advanced type . . . customarily required by a prolong course of specialized intellectual instruction and study in

an institution of higher education." This is evidenced by the fact that the job does not require a college degree, nor do either of the incumbents possess such a degree. According to both incumbents, they were hired on the basis of their previous work experience. Check worked in the Clerk of Court's office for 11 years, followed by four years at the District Attorney's office. Hartvig worked in the Treasurer's office as an Account Clerk and as a Deputy Treasurer, and in the Clerk of Court's office. As described by the Child Support Specialists, their investigations follow a routine pattern of interviewing individuals to find the names and addresses of absent parents, etc. Various forms are prepared and stipulation and orders are drafted. While these documents are not tailored to meet the specific situation, the witnesses' testimony suggests that this involves little more than a variation on a general form. The work is not predominantly intellectual and varied in character, nor does it involve the consistent exercise of discretion and judgment in its performance. Check, who is paid at the rate of \$10.03 per hour, and Hartvig, who is paid at the rate of \$8.95 per hour, are paid far less than the vast majority of professional employees of the County. Contrary to the argument of the County, the Child Support Specialists are not professional employees.

County Position

There are currently two employees in the position of Child Support Specialist i.e., Check and Hartvig. The two employees are appropriately excluded from the Union's collective bargaining unit on the basis that these employees are professional employees.

These two employees are engaged in work characterized as professional in nature. For example, both draft stipulations and court orders, conduct investigations, interview clients, monitor payment delinquencies, draft wage assignments, determine appropriate support levels, and photograph and fingerprint individuals at hospitals. Further, each employe handles a case load of several hundred files none of which are alike. In either incumbents absence, these professional duties are unattended, or may be handled by their supervisor, Carlson, but would never be delegated to a Union clerical position.

Although these positions do not require a college degree, the definition of a professional employe is not limited to employes who possess college degrees. One incumbent has 14 years experience in the Clerk of Court's and District Attorney's office, the other has eight years experience in the County Treasurer's office. According to the testimony of their supervisor, District Attorney Murat, such extensive background is necessary in order to make quality judgments and independent decisions. The incumbents' experience permits them to consistently exercise discretion and judgment in the performance of duties. Such knowledge, skill and ability is customarily required through the type of specialized educational instruction described in Sec. 111.70(1)(l), Stats. Check's total compensation is only 6% less than the average compensation for a Local 95 (professional unit) employe.

Discussion

At the time of hearing, the two positions of Child Support Specialist in the Office of the District Attorney were occupied by Linda Check and Evett Hartvig. The position description has the following Education, Training and Experience requirements:

Any combination of training and experience equivalent to four years of college or four years of professional work experience as a civil or criminal investigator.

Professional training in various techniques and problems of criminal investigation, child support, paternity suits, and welfare fraud is desirable.

A valid Wisconsin driver's license.

Check is a high school graduate. Prior to her assuming her current position, Check worked as a Legal Secretary in the DA's office and prior to that, clerked in the court rooms as an employe of the County Clerk of Court. Hartvig is a high school graduate and has attended one year of technical college. Prior to assuming her duties, Hartvig was an administrative secretary in the County Clerk of Court's office and prior to that, functioned as the Deputy County Treasurer. Neither Check nor Hartvig has completed a course of specialized intellectual instruction and study described in subd. 1.d of Sec. 111.70(1)(L), Stats. Accordingly, neither meets the criteria of professional status set forth in subd. 2 of Sec. 111.70(1)(L), Stats. The question then becomes whether the work of the Child Support Specialist meets all of the criteria listed in subd. 1 of Sec. 111.70(1)(L), Stats.

As the County argues, each incumbent handles several hundred support case files. While the County argues that no two cases are alike, we are persuaded that the Child Supports Specialist's responsibilities are substantially the same for each case, i.e., obtain a support order and monitor payments to ensure compliance with the order.

The vast majority of the Child Support cases are referrals involving women on AFDC. In obtaining a support order, the Child Support Specialist performs a rather routine set of duties. Specifically, the Child Support Specialist interviews the custodial parent and/or non-custodial parent to determine the location and financial status of the non-custodial parent. If the non-custodial parent's

location is unknown, attempts are made to locate the parent through locator services. Upon receipt of the financial information, appropriate levels of support are determined in accordance with state and/or federal standards. If the non-custodial parent agrees to pay the support, the Child Support Specialist drafts a stipulation to that effect. If the non-custodial parent does not agree to the payments, the Child Support Specialist refers the matter to one of the attorneys in the office who drafts a Motion to Compel Support. In divorce cases, the amount of support is not determined by any State or Federal standard, but rather, is determined either by agreement between the parents or by order of the Court. We consider these duties to involve routine mental and manual work as opposed to work which is predominantly intellectual in character.

In monitoring the payments, the Child Support Specialist reviews the monthly report on the status of support payments prepared by the Clerk of Court's office. If there is a delinquency, the matter is investigated to determine the reason for the arrearage. In determining whether further court action is warranted, such as an application for a wage assignment, the Child Support Specialist will determine whether there are mitigating factors for the delinquency such as illness or unemployment. If the Child Support Specialist determines that the delinquency requires further court action, the matter is referred to one of the attorneys, who may, but seldom does, disagree with the Child Support Specialist's determination. The determination of the delinquency involves routine mental and manual work, rather than work which is predominantly intellectual. It is true that the Child Support Specialist utilizes discretion and judgment in determining whether to seek further court action on the delinquency. We are persuaded however, that the exercise of such discretion and judgement primarily involves the use of common sense, *i.e.*, judging the likelihood of obtaining any monies, rather than any professional expertise.

Paternity cases, which are generally handled by Hartvig, involve routine duties similar in nature to duties of the other support cases. Hartvig interviews the mother and reviews the AFDC file to obtain information concerning paternity. When blood samples are taken, Hartvig finger prints and photographs the individual being sampled, takes custody of the sample and mails the sample to the lab. These duties primarily involve routine mental and manual work, rather than work which is predominantly intellectual in character. To be sure, Hartvig utilizes discretion and judgment in determining whether the mother is cooperating with the paternity investigation and in determining whether there is sufficient information to allege paternity. We are not persuaded, however, that the exercise of this discretion requires knowledge of an advanced type within the meaning of subd. 1 of Sec. 111.70(1)(L), Stats.

All legal documents drafted by the Child Support Specialists are signed by an attorney and, thus, are subject to the attorney's direction and control. While it is evident that the attorneys rely upon the Child Support Specialists' work product, we are not persuaded that Child Support Specialist's responsibilities in preparing these legal documents differ substantially from that of a paralegal.

Although the duties of the Child Support Specialist do involve a measure of discretion and judgment, the duties are not predominantly intellectual, and do not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction in an institution of higher education or a hospital. Having failed to meet all of the criteria listed in either subd. 1 or subd 2 of Sec. 111.70(1)(L), Stats., the Child Support Specialists are not professional employees.

CONFIDENTIAL STATUS

The Commission has held that for an employe to be confidential, the employe must have significant access to, knowledge of, or participation in confidential matters relating to labor relations. Information is confidential when it

1. Deal(s) with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and
2. Is not information which is available to the bargaining representative or its agents.

8/

Administrative Assistant (Department of Community Human Services) (Susan Rutta)

Union Position

The incumbent, Susan Rutta, maintains personnel files for 125 employes of the Community Human Services Department. However, access to personnel files does not confer confidential status. Rutta has sat with the County's negotiating team for one bargaining session involving the Union's unit. Such involvement is a de minimus exposure to confidential matters.

Appleton Area School District, Dec. No. 22338-B(WERC, 7/87); Menomonee Falls School District, Dec. No. 13492-A (WERC, 10/85); Wisconsin Heights School District, Dec. No. 17182 (WERC, 8/79).

Rutta does sit in on meetings of Central Management. While this body does occasionally receive an update on the progress of negotiations, the infrequency and superficiality of this body's involvement with negotiations indicates that Rutta's participation on Central Management involves a de minimus exposure to confidential matters. Contrary to the argument of the County, Rutta is not a confidential employee, but rather, is a municipal employee.

At hearing, the County Representative stated that it wished to argue that Rutta is a supervisor. The County, however, failed to introduce any evidence in support of the County's position. Contrary to the County, Rutta is not a supervisory employee, but rather, is a municipal employee.

Rutta's role in establishing the Administration and the Community Relations budgets is strictly ministerial. Rutta looks at actual expenditures from the previous six-month period, and based upon these expenditures, estimates expenditures for the next six-month period. Expenditures for purposes other than the budgeted purpose must be approved by Director Bablitch. Rutta may expend money to promote education on a particular topic. The topic, however, is picked by Bablitch, and the money is expended only after getting approval from Bablitch.

The record is devoid of any evidence which would suggest that Rutta participates in the formulation, determination and implementation of public policy. While it is true that Rutta often attends meetings of Central Management, this body is not involved in setting public policy. As Rutta testified, Central Management provides Bablitch with information on various issues, but it is Bablitch who makes the decisions. Rutta's role as Safety Officer/Coordinator has involved the implementation of policies established by others. Further, only one action regarding safety was described at hearing. This action, which involved the installation of a rail, is hardly an important public policy question. In any event, it was Director Bablitch and the County's Space And Property Committee, and not Rutta, who made the decision on the installation of the rail. As Affirmative Action Officer, Rutta devises plans to meet deficiencies which have been found in the Department's affirmative action plan. These plans are then reviewed and finalized by Director Bablitch. The preparation of the Agency Compliance Review form is strictly a routine exercise. Rutta devotes less than 2% of her time to her duties as Affirmative Action Officer and less than 5% of her time to Safety Officer duties.

It is the Director, Judy Bablitch, who has effective authority to commit the County's resources in the Community Human Services Department. Rutta does not establish an original budget, nor can she allocate funds for purposes different from such an original budget. Rutta's powers are ministerial and not managerial. When a policy decision is to be made, it is the Director who makes the decision. When a need arises to allocate resources in a manner which significantly affects the nature and direction of the County's operation, it is the Director who makes the decision. Contrary to the argument of the County, Rutta is not a managerial employee, but rather, is a municipal employee.

Rutta has received a Master Degree in management since her appointment to her present position. However, neither a Masters Degree, nor any other college degree is required for this position. Rutta's responsibilities involve some education work and publicity work. Prior to the restructuring of the Community Human Services Department into its present form, the public relation duties were performed by employes in the professional bargaining unit. The record, however, does not indicate what level of discretion or judgment was exercised by those individuals, or what other duties they may have had. The record indicates that it is the Director, and not Rutta,, who determines the education work to be performed by the Department.

As Assistant to the Director, Rutta drafts and types letters. Rutta is also recording secretary for the Community Human Services Board, which involves taking minutes and writing letters as instructed by the Board. This work is not predominantly intellectual and varied in character, nor does it involve the consistent exercise of discretion and judgment in its performance, and, therefore, is not professional work as defined by the statutes.

Rutta's rate of pay, \$10.08 per hour, is lower than the vast majority of employes in the professional unit. While it is at the top end of the pay rate received by employes in the nonprofessional unit, it is nonetheless comparable to the nonprofessional rates. Contrary to the argument of the County, Rutta is not a professional employe.

County Position

The incumbent, Rutta, is appropriately excluded from the Union's collective bargaining unit on the basis that the position is professional and/or confidential. The County withdraws its claim that the position is either supervisory or managerial.

Rutta performs professional duties in her capacity as Community Relations Program Coordinator and as personnel liaison for the Community Human Services Department. Rutta performs confidential duties involving labor relations on behalf of the Community Human Services Board and the Director. Rutta formulates policy and recommends programs designed to maintain favorable relations towards the agency on the part of the public. Rutta develops and monitors all budget expenditures for Community relations activities and with other managers coordinates the systematic formulation and release of publicity. Rutta creates, reviews, and ensures distribution of all general news releases. Further, she administers and supervises press relations and newspaper releases. Rutta coordinates and supervises all advertising released by the

agency. Rutta develops programs and information for public presentation in coordination with other managers and staff. She receives and coordinates all requests for public speaking, information and departmental tours. Rutta actively participates in major fund raising events and in obtaining grants specifically related to community relations. Previously, the agency's public relations function has been performed by employees who are members of the professional employees' bargaining unit. Rutta's Community Relations duties occupy approximately 30-35% of her work time.

As personnel liaison, Rutta coordinates all personnel matters between the agency and the County Personnel Department, which is located approximately one mile away in the County Courthouse building. The Human Services Department has 125 employees and, thus, is a branch personnel office for the County's largest department. Rutta's personnel liaison duties occupy approximately 30% of her work time. The personnel services provided by Rutta include recruitment references, and affirmative action compliance for the agency, as well as the Department on Aging. Rutta is a custodian of employee personnel, medical and financial records. Her personnel work involves compensation surveys, performance evaluation development, labor contract interpretation, manpower planning (e.g. layoff options), grievance and complaint resolution, accident investigation and prevention training, collective bargaining and compliance with laws and regulations. Rutta's public relations and personnel activities involve the consistent use of discretion and judgment. These duties also involve the knowledge, skill and ability that is customarily acquired through the type of specialized educational instruction described in Sec. 111.70(1)(L), Stats. At the time of hire, Rutta's position did not require a college degree. However, the definition of professional employe is not limited to employes who possess college degrees. Rutta has been able to utilize her formal education background, which includes a Master Degree in Management, in the performance of job duties. Should her position become vacant, Director Bablitch, Rutta's supervisor, indicated that a college prepared replacement would be sought.

Several of the professional personnel liaison functions described above, involve access to, knowledge of, or participation in confidential matters relating to the employer's position in labor matters, which information is not made available to the Union bargaining representative. Rutta's membership in the Central Management Group and her administrative assistance to the governing board and the Department Director has involved the preparation of confidential correspondence pertaining to, among other things, labor relations strategy, discipline and discharge of both Union and non-Union staff, grievance resolution and performance evaluations. Rutta has participated in Union negotiations. It is not practical nor possible, in terms of location, workload, or departmental efficiency, for anyone other than Rutta to be involved in the above confidential and personnel duties. The only Union position to be paid at Rutta's rate is the now defunct Sheriff's Department Mechanic. Rutta's total compensation pay and benefits is only six percent less than the average for employes in the professional unit.

Discussion

At the time of hearing, the position of Administrative Assistant in the Department of Community Human Services was occupied by Susan Rutta. Rutta's immediate supervisor is the Department Head, Director Judy Bablitch. Rutta functions as the Department's Community Relations Program Manager, Safety Officer, Affirmative Action Officer, and Administrative Assistant to the Director. The County's assertion of confidential status rests upon Rutta's duties as Administrative Assistant.

As the County argues, Rutta functions as the personnel liaison between the Community Human Services Department and the County Personnel Department. However, we do not consider Rutta's duties in preparing job descriptions, checking employment references, or maintaining the Department's personnel files to provide Rutta with access to information which is confidential within the meaning of the Municipal Employment Relations Act.

It is true that few grievances have been filed by Department employes. However, when such grievances are filed, the Director relies upon Rutta to investigate the grievance and recommend an appropriate response. The Director relies upon Rutta to interpret the collective bargaining agreement not only in a grievance context, but also in general contract administration.

Rutta is a member of the Department's Central Management team which meets weekly to formulate Department policy. As a member of this team, Rutta assists the Director in evaluating the Union's labor contract and recommends changes to be negotiated in successor contracts. The Central Management team assists the Director in developing policy affecting personnel matters, such as employee layoff.

The Director is a member of the County team which negotiates the Union's labor contract. On one occasion, Rutta attended a bargaining session as the Director's representative. To be sure, Rutta does not regularly serve as the Department's representative in contract negotiations. However, the Director regularly discusses the status of contract negotiations with Rutta and relies upon Rutta to advise the Director of the ramifications of the various bargaining proposals.

Rutta types all of the Director's confidential material, including material relating to employee grievance, employee discipline and other personnel matters, not all of which material is made available to the Union. Rutta is the official recording secretary for the Community Human Services Board, which Board has ultimate control and authority over the Department. Rutta attends all Board meetings, including executive sessions. Among the topics discussed in these executive sessions are employee evaluations, the status of contract negotiations and grievances, and problems involving specific employees.

The Commission is satisfied that in her position as Administrative Assistant, Rutta is privy to significant information not available to the Union concerning the employer's strategy or position in collective bargaining, contract administration, and similar matters relating to labor relations between the Union and the County. Accordingly, Rutta is appropriately excluded from the Union's bargaining unit on the basis that she is a confidential employee. Having found Rutta to be a confidential employee, we do not need to consider whether the position is also entitled to be excluded on the basis of professional status. 9/

Administrative Assistant/Victim Witness Coordinator (Sally Haas)

Union Position

The incumbent, Sally Haas, has held this position since March, 1988. Haas has not been involved in negotiations in any way, nor has she had any involvement in grievances. The only example of a "confidential" task that was advanced by the County was the typing of a memorandum drafted by the District Attorney regarding the retroactivity of the contract settlement. The de minimus nature of this exposure to a confidential matter is best evidenced by the fact that Haas did not even recall that she had typed the memorandum. The County's claim that this involved a confidential activity is controverted by the fact that the County gave the Union representative a copy of this document. Contrary to the argument of the County, Haas is not a confidential employee, but rather is a municipal employee.

As an examination of Haas' actual duties reveals, she is not a supervisor. Haas is currently involved in interviewing two applicants for one position. She has never had such a role before and her role in the current interviewing process is subordinate to that of the District Attorney. Contrary to her written job description, Haas has no role in selecting the applicants to be interviewed. Further, it is the District Attorney who will have the authority to make the hiring decision. Haas has indicated that she has authority to effectively recommend the discipline or discharge of employees, but that she has never exercised this authority.

Haas has limited involvement in the assignment of work to the work force. Two of the three clerical employees with whom she works are long term employees who require very little work direction. Haas has had more extensive involvement with a third clerical employee, who is new and is learning the office procedure. The three clerical employees with whom Haas works are each classified as a Legal Secretary. One of these, Cizewski, divides her work evenly between Child Support and District Attorney duties. These three clerical employees are supervised by the District Attorney. The legal secretary's are paid \$7.84 per hour, while Haas receives \$8.01 per hour. There are nine classifications in the Union's unit that are paid more than Haas. Clearly, Haas is not paid for any supervisory duties, but rather for her skills as an administrative assistant.

Haas claims, in County Exhibit 9, that she devotes approximately 50% of her time to supervisory duties. Given the record presented herein, this could not possibly be an accurate estimate. First, the legal secretaries require little if any work direction. Secondly, Haas has never been involved in any disciplinary or grievance matters. Despite her statements on County Exhibit 9, due to the Union's labor agreement, she has no authority to transfer, reward, promote, lay off, or rehire employees. By her own admission, Haas checks employees' work only when a higher authority is not available. Given the duties listed on the job description, as well as her testimony, it is evident that she could not perform these duties if she were, in fact, spending 50 percent of her time exercising "supervisory" authority. Haas does not have supervisory authority in sufficient combination and degree to justify a finding that she is a supervisor.

Haas neither has nor is required to possess a college degree. Haas has two years of college and holds a paralegal license. This educational background strongly indicates that her position is not one which requires knowledge of an advanced type which is customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher education. Further support of this conclusion is her testimony that she was hired not because of her education, but rather for her experience. It is not evident that she engages in work that is intellectual and varied in character, or which involves the consistent exercise of discretion and judgment in its performance. A significant portion of her job duties involve clerical work such as typing, drafting routine correspondence, and maintaining files. At \$8.71 per hour, her pay is well below the rate paid to the County's other professionals. Indeed, her rate of pay is comparable to that of many of the employees in the Union's unit. Contrary to the argument of the County, Haas is not a professional employee.

County Position

The incumbent, Haas, should be excluded from the Union on the basis that she is a supervisory, professional and/or confidential employee.

Haas has authority to effectively recommend the hiring of employees. However, the District Attorney and Child Support

9/ In post-hearing argument, the County withdrew its claim that the position was also supervisory and/or managerial.

Program Coordinator may also be involved in hiring because clerical staff is shared within the various sections of the Department. Haas has authority to direct and assign work, to authorize overtime, to approve time off, to evaluate employees' performance, to discipline employees, to address employee complaints and concerns, and to adjust grievances. To date, no grievance has been filed. Haas has authority to recommend specific positions for work force reduction layoffs. Haas' supervisor, District Attorney Murat, confirms that he has delegated daily supervisory responsibilities for the four bargaining unit employees within the Department to Haas. Haas' salary is at least 10% greater than the pay of unit employees under her supervision. Haas estimates that she spends 35-40% of her work time on the supervisory duties described above and the remainder on professional and/or confidential duties. Only two specialized unit positions, i.e., Maintenance Technician and Computer Operator, are paid more than Haas. The \$1.52 spread between her pay and that of the legal secretary she supervises is more than a lead differential. During her brief tenure, Haas has performed numerous supervisory functions.

Haas is engaged in work characterized as professional in nature. Haas establishes policies and protocols with other County agencies, community organizations and health care institutions. Haas acts as liaison and advocate for crime victims and determines appropriate referrals to health care professionals, such as social workers and psychiatrists. Haas recommends mental or alcohol commitments. In Haas' absence, these professional duties are unattended, or handled by one of the attorneys. A bargaining unit position under her supervision may only handle a small portion of the workload, for example, processing subpoenas. Though her position does not require a college degree, the definition of professional employee is not limited to employees who possess college degrees. Haas possesses a paralegal license, has attended college for two years, and has over nine years experience in federal courts and legal service offices. Haas' education and experience permit her to consistently exercise discretion and judgment in the performance of her duties. Such knowledge, skill and ability, akin to that of a social worker, is customarily acquired through the type of specialized educational instruction described in Sec. 111.70(1)(L), Stats.

Haas' confidential duties include, but are not limited to, representing the District Attorney at meetings where department heads and/or nonbargaining unit designees discuss, among other topics, labor relations strategy, implementation of policy and procedure regarding performance, evaluation, discipline and discharge, and grievance resolution. Haas also prepares correspondence for the District Attorney and his legal opinions pertaining to labor relations strategy and pending discrimination or grievance claims. While such exposure to confidential relations matters is minimal, the incumbent is the only employee readily available to perform such duties.

Discussion

At the time of hearing, the position of Administrative Assistant/Victim Witness Coordinator in the District Attorney's office was occupied by Sally Haas. In asserting confidential status, the County relies upon Haas' duties as Administrative Assistant, rather than as Victim Witness Coordinator.

While there have not been any grievances filed during Haas' tenure as Administrative Assistant, if such a grievance were to be filed by clerical employees in the DA's office, Haas would receive the first step grievance and, in consultation with her immediate supervisor, the District Attorney, would provide a first step response. Haas has been designated to type material for the DA involving grievance matters. Haas' predecessor was involved in a number of employee grievances and was exclusively assigned such work to ensure confidentiality.

Haas has attended the previous four meetings of Department Heads as the representative of the District Attorney. Haas is designated to attend future meetings when the District Attorney is unavailable. Personnel matters are discussed at the Department Head meetings. During one Department Head meeting attended by Haas, the County Personnel Director discussed the status of labor contract negotiations. Meetings attended by Haas have also included discussions on wage compensation and enforcement of departmental policies.

In his capacity as County Corporation Counsel, the District Attorney provides legal opinions to the County Board, which opinions may involve personnel matters. In the past, the DA has rendered opinions on specific allegations of discrimination and is currently preparing material for the County Board to use in future labor contract negotiations. Haas has been designated to type all County Board material prepared by the DA.

Given the above, we are satisfied that Haas' duties as Administrative Assistant to the District Attorney provide her with access to information which is not available to the Union and which deals with the employer's strategy or position in collective bargaining, contract administration and similar matters relating to labor relations and grievance handling between the Union and the County. While it is evident that Haas does not devote a substantial majority of her time to performing these confidential duties, we are persuaded that Haas has more than a de minimus involvement in the District Attorney's labor relations function. It not being evident that there is any other confidential employee available to perform Haas' confidential duties, we are satisfied that Haas is appropriately excluded from the

Union's collective bargaining unit on the basis that she is a confidential employe. Having excluded Haas' position on the basis of confidential status, we do not consider it necessary to determine whether such an exclusion is also warranted on the basis of supervisory or professional status.

Conclusion

For the reasons discussed above, we are persuaded that the positions of Child Support Program Coordinator, Child Support Specialist, Night Coordinator and Program Assistant (Portage House) are occupied by municipal employes within the meaning of the Municipal Employment Relations Act (MERA) and, therefore, are appropriately included in the Union's bargaining unit. 10/ The position of Administrative Assistant (County Clerk's Office), Administrative Assistant (Community Human Services Department), Program Counselor (Portage House), and

10/ The Union and the County are in agreement that if these employes are municipal employes within the meaning of MERA, they are appropriately included in the Union's bargaining unit.

Administrative Assistant/Victim Witness Coordinator (DA's Office) are not occupied by municipal employees within the meaning of MERA and, therefore, are appropriately excluded from the Union's bargaining unit.

Dated at Madison, Wisconsin this 26th day of January, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairman

Herman Torosian /s/
Herman Torosian, Commissioner

I fully concur as to all positions
except that of Child Support
Program Coordinator as to
which I dissent.

William K. Strycker /s/
William K. Strycker, Commissioner