

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :
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 WISCONSIN COUNCIL OF COUNTY AND : Case 210
 MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO : No. 47026 ME-3203
 : Decision No. 27361-A
 Involving Certain Employes of :
 :
 THE CITY OF LaCROSSE :
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 In the Matter of the Petition of :
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 LOCAL 180, SERVICE EMPLOYEES : Case 2
 INTERNATIONAL UNION, AFL-CIO : No. 47770 ME-589
 : Decision No. 7833-C
 To Clarify a Bargaining Unit of :
 :
 Certain Employes of :
 :
 THE CITY OF LaCROSSE :
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Appearances:

Davis, Birnbaum, Joanis, Marcou & Colgan, Attorneys at Law,
 by Mr. James G. Birnbaum, Community Credit Union
 Building, 2025 South Avenue, Suite 200, P.O. Box 1297,
 LaCrosse, Wisconsin 54602-1297, appearing on behalf of
 the Service Employees International Union, Local 180.
Mr. James W. Geissner, Director of Personnel, City of
 LaCrosse, LaCrosse City Hall, 400 LaCrosse Street,
 LaCrosse, Wisconsin 54601, appearing on behalf of the
 City of LaCrosse.
Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin
 Council 40, AFSCME, AFL-CIO, Route 1, Sparta,
 Wisconsin 54656-0333, appearing on behalf of the

No. 27361-A
 No. 7833-C

Wisconsin Council of County and Municipal Employees,
AFSCME, AFL-CIO.

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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO filed a petition for election on February 17, 1992 in a unit consisting of all regular full-time and regular part-time professional and craft employees employed by the City of LaCrosse but excluding supervisory, confidential and managerial employees.

A pre-hearing conference was held with respect to said matter on May 21, 1992, at which Local 180, Service Employees International Union, AFL-CIO, moved and was granted leave to intervene.

On June 29, 1992, Local 180 filed a petition to clarify bargaining unit to include certain employees of the City of LaCrosse. The Commission consolidated both cases for hearing before Mary Jo Schiavoni, a member of its staff. Hearing was held on September 9 and 10, November 18 and 19, and December 14, 1992, and February 1, 1993 in LaCrosse, Wisconsin. A transcript of the proceedings was received on March 10, 1993. The parties filed post-hearing briefs, the last of which was received July 6, 1993.

The Commission, having reviewed the record and the briefs of the parties, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.

2. Local 180, Service Employees International Union, hereinafter referred to as SEIU or Local 180, is a labor organization and has its offices c/o Attorney James Birnbaum, 2025 South Avenue, Suite 200, LaCrosse, Wisconsin 54601.

3. City of LaCrosse, hereinafter referred to as the City, is a municipal employer and has its offices at LaCrosse City Hall, 400 LaCrosse Street, LaCrosse, Wisconsin 54601.

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4. Local 180 represents certain employees of the City in a collective bargaining unit described as follows:

All employees of the City of La Crosse exclusive of all department heads, supervisors, craft and confidential employees, members of the La Crosse Professional Police Association, non-supervisory bargaining unit; La Crosse Professional Policeman's supervisory bargaining unit; Local 127, International Association of Fire Fighters; Amalgamated Transit Union Local 519, Airport Crash, Fire, Rescue and Security employees; all crossing guards, and all temporary, seasonal employees who are employed less than 120 calendar days in a calendar year.

The above unit does not contain any professional employees.

5. AFSCME filed an election petition on February 17, 1992, requesting an election in a unit consisting of all regular full-time and regular part-time professional and craft employees employed by the City of LaCrosse, but excluding supervisory, confidential and managerial employees. At a pre-hearing conference, SEIU sought to intervene, and intervention was granted. Thereafter, on June 29, 1992, SEIU filed a petition to clarify its bargaining unit to include certain positions also sought by AFSCME in the election petition.

6. AFSCME desires to represent one bargaining unit consisting of both craft and professional employees. It contends that the affected employees must cast three votes: 1) a representation vote; 2) a vote by professional employees as to whether they wish to join the craft employees in a single bargaining unit; and 3) a vote by craft employees as to whether they wish to join professional employees in a single bargaining unit. While the City takes no position on whether the professionals should be permitted to determine whether they wish to join the craft employees and vice versa, the City does take the

position that there should be only one craft bargaining unit as opposed to separate bargaining units for each craft. Local 180 wishes to be on the ballot in the craft and professional voting groups and also asks that the craft employes be given the ballot choice of inclusion in the existing Local 180 unit.

7. At the pre-hearing conference and during the hearing, the parties agreed that the following positions would be excluded from any bargaining unit as executive, supervisory, managerial, law enforcement or firefighter employes:

Airport Manager - Duane R. Haataja
City Assessor - Mark S. Schlafer
Auditorium Director - Glenn R. Walinski
City Attorney - Patrick J. Houlihan
Assistant City Attorney II - Thomas L. Jones III
Deputy City Clerk - Teri Lehrke
Assistant City Attorney I - Peter B. Kiskan
Director of Public Works - Bob D. Schroeder
Assistant Director of Public Works - Ronald P. Caffrey
City Engineer - Bernard A. Mullenbach
Assistant City Engineer - Dennis A. Myers
Fire Chief - Howard J. Johnson
Supervisor Fire Maintenance Department - William D. Knobloch
Deputy Chief of Training - Peter J. Stinson
Deputy Chief of Inspection - William P. Storey
Assistant Fire Chief - William C. Bittner, Glen W. Jones, and Gerald R. Miller
Assistant Shop Foreman - James H. Oestreich
Garage Supervisor - Marvin J. Slater
Superintendent of Street Department - Richard L. Smith
Assistant Superintendent of Streets - Leslie E. Snyder
Director of Inspections - Mark H. McConaughey
Park Superintendent & Floriculturist - Garland Amunson
Director of Personnel - James W. Geissner
Director of Planning - Ronald G. Bracegirdle
Police Chief - Bruce M. Marco
Director of Parks, Recreation, Forestry - Robert Berg
Park Supervisor - Daniel Fiorenza
City Forester - Patrick Bonadurer
Director of Finance & Purchase/Treasurer - Eugene T. Pfaff

Deputy Director Finance & Purchase/Treasurer - Wayne A. Delagrave
Assistant Superintendent Wastewater Treatment Plant - Stanley C. Brueggen
Assistant Superintendent Sewer - Richard E. Doering
General Superintendent Wastewater Treatment Plant - Mark E. Johnson
Office Supervisor Water Department - Anthony J. Averbeck
Superintendent Water Utility - Thomas E. Berendes
Water and Sewer Utility Manager - Bruce Knudson
Water District Supervisor - Thomas M. Talle
Transit Manager - Keith B. Carlson
Assistant Transit Manager - Keith B. Lee
Auditorium Building Foreman - Clement Bott
Transit Foreman - Roger R. Lockington
All police officers with the rank of Sergeant or higher.

The parties also agreed to exclude the following as confidential employees:

Legal Secretary - Roxanne Eggert
Part-time Legal Secretary - Jan Ostreng
Personnel Assistant - Pamela Ghouse
Executive Secretary (Mayor) - O'Nieta J. Thorsen

8. The parties further agreed that the following positions are professional and should be included in a bargaining unit or voting group of professional employees:

Civil Engineer II - Randy J. Turtenwald and Steven A. Zahrte
Civil Engineer III - Anthony R. Hutchens
Civil Engineer IV - Gregory L. Pederson
Traffic Engineer - Ronald L. Oleson
Community Development Analyst - John W. Florine
Urban Designer - David G. Truckenbrod
Housing Rehabilitation Specialist - Edward D. Young
Recycling Coordinator - Pennie Raether
Construction/Survey Engineer - Bruce Logeman

9. The parties are also in agreement that part-time Accounting Clerk Sandra Schulz should be included in the SEIU

Local #180 bargaining unit, described in Finding of Fact 4 above.

10. Within the Inspection Department, the parties agree that the Electrical Inspector and the Plumbing Inspector are craft employes. The remaining Inspection Department positions are the Housing/Building Inspector, the Building Inspector, the Mechanical Inspector and the City Sealer of Weights & Measures. AFSCME argues that all of the other positions in the Inspection Department are either craft or professional in nature. The City believes that the remaining positions are technical positions properly included in the SEIU non-professional/technical bargaining unit if the affected employes vote to be accreted. SEIU at the hearing took no position on the Inspection Department positions pursuant to the agreement set forth in Finding of Fact 16 below, but in its brief argued that all remaining Inspection Department positions should be appropriately included in the SEIU bargaining unit by accretion because they are non-professional, non-craft positions.

11. AFSCME and the City claim that the Maintenance Painter is a craft employe. SEIU contends that the Maintenance Painter is not a craft employe but rather a non-professional/technical employe properly included in the SEIU bargaining unit.

12. The City and AFSCME allege that the following positions are professional. The SEIU, which takes no position on the Special Projects Supervisor Wastewater Treatment Plant, maintains that the remaining positions are non-professional or technical and should be accreted to the SEIU bargaining unit:

Account Analyst - Sue L. Wieman
Account Analyst - Leanna M. Krause
Insurance Loss Control Superintendent - Kelly L. Branson
Accountant I - Brenda J. Hanson
Accountant II - Gary R. Miller
Special Projects Supervisor Wastewater Treatment Plant -
Gregory J. Paul

13. The City maintains that the following employes are supervisory or managerial while AFSCME claims that they are non-

supervisory, non-managerial professional employes. SEIU maintains that they are non-supervisory, non-managerial non-professional technical employes:

Auditorium Operations Manager - Arthur Fahey
Auditorium Concessions Manager - James R.
Flottmeyer
Recreation Program Director - Michael J. Ulrich

14. AFSCME disclaims any interest in the following positions, believing them to be neither craft nor professional in nature:

Assistant Building Foreman Auditorium - Tom Zielke
Auditorium Box Office Manager - Judith A. Delaney

Head Cashier - Nancy O'Neal
Administrative Assistant - Sandra Schuster-Lee

SEIU takes no position on the Assistant Building Foreman - Auditorium but maintains that the remaining three are non-supervisory, non-managerial, non-professional positions properly included in the SEIU bargaining unit. The City claims that all four are supervisory positions. It also claims that the Auditorium Box Office Manager and the Administrative Assistant positions are managerial.

15. The City contends that all of the employes whose positions are in dispute should be provided with the right to vote upon their inclusion in a collective bargaining unit. It does not believe that the inclusion of any of the employes into an existing unit without a vote is appropriate under the circumstances. The City also believes that a proper showing of interest is a prerequisite for the establishment of any bargaining unit and the issuance of any election order. The SEIU takes the position that the number of disputed employes is small and that accretion of employes properly included in the existing technical/non-professional unit is appropriate.

16. AFSCME and the SEIU, on July 20, 1992, executed the following agreement:

I. Local 180 does not dispute AFSCME's claim to the following names and positions:

- 1) Hutchins, Anthony R. - Civil Engineer III
- 2) Olson, Ronald L. - Traffic Engineer
- 3) Peterson, Gregory L. - Civil Engineer IV
- 4) Turtenwald, Randy J. - Civil Engineer II
- 5) Zahrte, Steven A. - Civil Engineer II
- 6) Florine, John W. - Community Development Analyst
- 7) Truckenbrod, David G. - Urban Designer
- 8) Young, Edward D. - Housing Rehabilitation Specialist

II. Regarding the following nine positions:

- 1) Bilyeu, Douglas E. - Housing/Building Inspector
- 2) Branson, William J. - Plumbing Inspector
- 3) Hanson, Alban E. - City Sealer of Weights & Measures
- 4) Kachel, Robert W. - Electrical Inspector
- 5) Linhart, Kim M. - Mechanical Inspector
- 6) Nederloe, Steven W. - Housing/Building Inspector
- 7) Schroeder, Richard A. - Mechanical Inspector
- 8) Solberg, Robert W. - Building Inspector
- 9) Sullivan, Robert A. - Building Inspector

Local 180 and AFSCME agree as follows:

- A) Local 180 takes no position in the Election Hearing regarding the professional craft/non-professional issue.
- B) However, Local 180 reserves its right to take a position concerning a supervisory confidential or any other exclusions.
- C) In the event that the WERC determines any of the above nine positions to be non-professional and/or non-craft, then the parties to this agreement take the position that those positions ought to be acceded to this agreement to Local 180.

III. Both AFSCME and Local 180 will participate in the Hearing concerning all other positions and issues.

17. The position of City Sealer of Weights and Measures is occupied by Al Hanson. AFSCME argues that it is a professional or craft position, while SEIU and the City maintain that it is a non-professional, non-craft, technical position. Hanson is located in the Inspection Department under the supervision of the Director of Inspections. He spends approximately half of his time performing weights and measurement inspection on such devices as scales, gasoline pumps, fuel oil trucks, taxi meters, etc. He visits city merchants and vendors to monitor and instruct them in weights and measurement regulations, checks commodities for method of sale, labeling and correct quantities, determines if there has been a violation of the law, and may on occasion testify in court actions if necessary. He does employ various workbooks and test programs which allow him to test the measurement devices. The other half of his time is spent in performing zoning inspections relating to improper uses of land which do not comply with the home and commercial zoning regulations, and other inspection-related duties. No special degree or higher education is necessary to perform the Sealer job although Hanson has received on-the-job training and specialized instruction from the State of Wisconsin. Hanson has not completed any apprenticeship programs leading to journeyman status in any craft. He does receive continuous education as provided by the State to keep up with the requirements of his job. Hanson is not engaged in work requiring 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.

18. The position of Housing/Building Inspector is occupied by Steve Nederloe and Douglas Bilyeu. AFSCME argues that they are craft or professional employees while the City and SEIU claim that they are non-professional, non-craft, technical employees. These employees report to the Director of Inspections in the Inspections Department. Both employees periodically inspect local housing conditions, identify code violations, send orders to correct said violations, direct correction of said violations and make court appearances as necessary to support legal actions initiated by the Department. They may also issue licenses for rooming houses and respond to complaints and referrals from the public or other agencies regarding housing conditions. Applicants for the

position must have some basic knowledge of plumbing, heating, and electrical equipment, but no advanced education for the position is required. While there is no requirement that an applicant have completed an apprenticeship leading to skilled journeyman status in any craft, prior experience in the construction industry is highly desirable. Nederloe and Bilyeu are not engaged in work requiring 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. Nederloe and Bilyeu are not skilled journeymen craftsmen, apprentices or helpers.

19. The position of Mechanical/Building Inspector is currently occupied by Richard Schroeder and Kim Linhart. The positions of the parties are the same for this position as for the City Sealer and Housing/Building Inspector. The Mechanical Inspectors are currently performing duties of Building Inspectors. They are not limited to issuing various mechanical permits and licenses, and to inspecting for the mechanical aspects of construction. They work along with two other Building Inspectors, Robert Solberg and Robert Sullivan. All four of the Mechanical or Building Inspectors inspect commercial or residential property. They are all located in the Inspection Department under the supervision of the Director of Inspections. Currently Schroeder is performing work similar, if not identical, to work performed by the Building Inspectors. Schroeder concentrates primarily in commercial construction while Sullivan is responsible for primarily residential construction. Solberg deals primarily with the sidewalk program. The record does not reflect the specific responsibilities for which Linhart is responsible. All of the Building and Mechanical Inspectors review plans for construction, deal with the architects, engineers, and contractors, inspect the construction projects or existing buildings, issue permits for construction, and keep written records of inspections, and assist with the prosecution of violators. They are not required to have an advanced degree or to have completed an apprenticeship leading to skilled journeyman status in any craft, but they do have prior experience and extensive knowledge of the construction industry. Linhart, Schroeder, Solberg and Sullivan are not engaged in work 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.

20. The position of Maintenance Painter is currently unoccupied. AFSCME and the City claim that the position is a craft position, while SEIU argues that it is non-professional, non-craft, technical position. The City is in the process of hiring a replacement for Lloyd Weigand, the former occupant, who retired on February 1, 1993. The Maintenance Painter applies paint, stains, varnish and other finishes to a variety of buildings, structures and machinery. He paints exteriors and interiors. At the time of Weigand's hire some 18 years ago, he was a journeyman painter. Weigand worked under very limited supervision from the Assistant to the Director of Public Works. No one came to discuss or assign him work in the last three or four years of his employment. He determined the methods, means and schedule for maintaining the painted and other finished surfaces on and in City buildings and on its equipment. At the time of Weigand's hiring, the City required applicants to pass a very extensive examination. Weigand maintained his journeyman's card for some time after his initial employment with the City but in 1983, he let it lapse. A 1986 job description contains a job requirement that the Maintenance Painter must have a thorough knowledge of all techniques and processes used in applying finishes, paints, stains and varnishes and must be skilled in color matching and tinting. It does not contain a requirement that the individual be a licensed journeyman painter. The 1993 job description contains a minimum qualification that the individual possess a current painter journeyman card. In an ad seeking to fill Weigand's vacancy, the City lists the following under Maintenance Painter: "This is a full-time craft position in the City's Department of Public Works. Must have a current painter journeyman card and a valid Wisconsin Driver's license. This position requires the performance of painting and related services in a variety of buildings and structure and on various machinery. Work is performed independently." The Maintenance Painter is a skilled journeyman craftsman.

21. The position of Special Projects Supervisor in the Wastewater Treatment Plant is currently occupied by Gregory Paul. AFSCME and the City contend that Paul is a professional employe

and properly included in the professional bargaining unit. SEIU takes no position on the Special Projects Supervisor in its brief but requests the Commission to make its determination based upon evidence adduced at hearing. Paul assists the general superintendent in the evaluation of operations in the Wastewater and Sewer Departments. He evaluates the regulatory requirements for and options of the City with respect to compliance. He coordinates compliance and safety training, monitors and adjusts treatment plant operation parameters, and provides computer programming and data collection. He supervises the activities of Wastewater Department employes in the absence of the Superintendent and the Assistant Superintendents. He schedules and adjusts wastewater operator routines as required by the computer and operational data. He schedules non-routine lab work as required. He participates with the rest of the supervisory staff in yearly budget planning and makes recommendations regarding new equipment for the laboratory and overall facility. He acts as the "hands-on" person for making daily reviews of operational data and decisions regarding changes to the wastewater treatment plants biological system. He publishes a plant newsletter. He compiles information for the Safety Program and serves as the chief source of information for computer-related problems and questions. On the most recent job description, the City listed under desirable skills, knowledge, and abilities: knowledge of wastewater collection systems; knowledge of wastewater treatment processes and equipment; knowledge of gravity and pressure flow hydraulics; familiarity with microcomputers, including word processing, spread sheet, and database management software; knowledge of environmental regulations; basic knowledge of chemistry; ability to make complex mathematical computations; ability to give clear written and verbal instructions; ability to maintain good working relations with wastewater employes and the public; and certification as a Wisconsin wastewater operator, grade 4. On occasion, he is also called upon to do some lobbying on behalf of the City in the wastewater treatment regulatory area. He may make recommendations on the purchase of chemicals and equipment to be utilized by the waste water treatment plant. Paul possesses approximately two years of post-secondary education. His job requires him to act independently and involves a great deal of technical research which he then brings to the City's Board of Public Works. Paul is not engaged in work that is

predominantly intellectual and varied in character or which requires 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.

22. The position of Program Director in the Recreation Department is currently occupied by Michael Ulrich. The City believes that Ulrich is a managerial or supervisory employe, while AFSCME believes that he is a professional employe who does not have supervisory or managerial responsibilities. SEIU takes no position. Ulrich is responsible for the planning, organizing, development and supervision of the City recreation program including all youth and adult recreational opportunities provided by the City. Graduation from an accredited college or university with a major in Recreation and Park Administration as well as some experience in organized recreation programs is a prerequisite in his job description. Ulrich holds a Bachelor of Science Degree in Physical Education with a minor in Recreation Administration. As a part of his job, Ulrich directs and supervises the recreation division and the ice arena. He hires approximately 300 part-time seasonal employes to assist and direct the various City recreational programs. He evaluates these part-time seasonal employes in writing for the purpose of determining whether he wishes to rehire them in subsequent years. He has also fired certain of these employes. He has also granted pay raises to or reduced the wage rate of various part-time seasonal employes. He negotiates facility leases for the City's comprehensive recreations programs and purchases and monitors equipment and supplies related to the recreation division. He is responsible for administering and supervising the recreation division budget of approximately \$360,000 annually. He has made purchasing decisions with respect to \$50,000 of the \$360,000 budget last year on equipment for the recreation divisions. He generates the initial recreation division budget which is submitted to the finance committee for approval. Ulrich possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

23. The Auditorium Concessions Manager position is currently occupied by James Flottmeyer. Flottmeyer reports to

Auditorium Director Glenn Walinski. The City maintains that Flottmeyer is a professional employe who is also either supervisory and/or managerial. AFSCME claims that he is professional but not supervisory or managerial. SEIU argues that he is non-professional and not managerial or supervisory. Flottmeyer is responsible for the concession operation in the City Auditorium. He hires, fires, trains, and supervises approximately 100 part-time employes who operate the concessions during auditorium events. Flottmeyer has fired two employes. He recruits, selects, trains and supervises all personnel engaged in the preparation and dispensing of foods and beverages. He is responsible for purchasing all concession and bar supplies, for maintaining adequate inventory for all concessions, for all money and balancing of all the books in connection with the concession operation. He coordinates the sale of concession and bar products with concerts, promoters, and other clients. Flottmeyer is also responsible for the management of the building operation in the absence of the director. As Concessions Manager, he is responsible for pricing the food and liquor to insure a profit for the auditorium. He schedules the concessions work force around the scheduled events. Flottmeyer possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

24. The Auditorium Operations/Sales Manager Position is currently occupied by Arthur Fahey. He also reports to Director Walinski. The City maintains that Fahey is a managerial employe. AFSCME contends that he is a professional, while SEIU claims that he is non-professional. He is responsible for all activities relating to the sales and marketing of the LaCrosse Center including sales, marketing, account solicitation and follow up, advertising, public relations, promotional activities, and marketing strategies. He meets with potential and current clients to identify their particular event needs and communicates the needs to the auditorium staff. He establishes the content and design of advertising, promotional brochures, newsletters, media releases and event promotions. He works within established budget guidelines to purchase local and national magazine, newspaper, radio and television advertising. He is charged with developing new in-house events. He works closely with the promoters, convention representatives, and the Convention Bureau regarding

all general auditorium information. Fahey possesses a Bachelor of Science degree from the University of Wisconsin-LaCrosse in Mass Communication with a concentration in broadcasting and advertising. At the time he interviewed for the position, the City's job advertisement reflected a preference for a college degree. Fahey engages in work that is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work. It involves the consistent exercise of discretion and judgment in its performances and is of such a character that its results cannot be standardized in relation to a given period of time. The Sales Manager/Operations work does 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. Although Fahey does expend a substantial amount of the Auditorium's revenues for advertising, he works within an established advertising budget and does not have the authority to adjust large amounts of money from one budget line item to another. Fahey does not participate sufficiently in policy formulation or implementation to be deemed a managerial employe.

25. The position of Box Office Manager is occupied by Judith Delaney. The City maintains that she is a supervisory or managerial employe, while SEIU maintains that she is neither supervisory nor managerial but is a non-professional employe. AFSCME takes no position on the Box Office Manager. The Box Office Manager is responsible for the functioning of the Auditorium's box office. She supervises ticket sales and cash management operations on a day to day basis. She is responsible for opening the box office, operating the computer system, negotiating service contracts on appropriate computer hardware and software, and overseeing all systems and procedures for tickets. She interviews, hires, trains, schedules, supervises and on occasion terminates a part-time staff of 10 to 15 employes. She recommends their compensation and makes changes in the responsibilities of the part-time staff. She has recommended pay increases for the assistant box office managers and the ticket sellers and has evaluated these part-time employes in writing periodically. She has terminated at least two employes. Delaney possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

26. The position of Assistant Auditorium Building Foreman is occupied by Thomas Zielke. The City, contrary to SEIU, maintains that he is a supervisory employe. AFSCME takes no position. A May, 1990 job description lists the nature of the job as "under limited supervision, assisting the building foreman in the supervision of many persons." The Assistant Foreman supervises all maintenance work, including cleanup, set-up of shows and all necessary repairs for the building. He reports directly to the Auditorium Building Foreman Clement Bott. There are five full-time bargaining unit maintenance employes currently represented by SEIU and approximately 300 part-time custodial, maintenance and stage crew employes at the facility. Zielke generally works evenings, while Bott works during the day. He prepares time records and payroll sheets for all maintenance employes and stagehands. On a typical shift, he directs two full-time maintenance employes and up to 15 part-time employes who are performing clean-up or tear-down and/or set-up work for the next event. Zielke creates and administers the work schedules for all employes. He has issued written warnings to part-time employes. He spends approximately 60 to 70 per cent of his work day in the direct supervision of the full-time and part-time employes assigned to his shift. The rest of the time is spent in administrative duties. He has participated in the hiring process, hiring the part-time employes on his own and serving along with Bott and the Auditorium Director, Glen Walinski, on a hiring committee to evaluate applicants for full-time work. Bott and Zielke made the final hiring decisions with respect to applicants for full-time employment. Zielke has the authority to approve days off. He also has the authority to resolve first-step grievances along with Bott. Zielke has terminated part-time employes but has not terminated any full-time employes. Zielke possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

27. The position of Administrative Assistant - Auditorium is occupied by Sandra Schuster-Lee. The City contends that she is a managerial or supervisory employe while SEIU argues that she is a non-professional municipal employe. AFSCME takes no position. Schuster-Lee reports to Director Walinski, serving as his administrative assistant. In 1991, the City abolished the

position of Office Manager and created this position. Schuster-Lee has occupied both positions. The job description of the Administrative Assistant indicates that she is responsible for assisting with the overall management and operation of the facility on a day-to-day basis. She coordinates use of the auditorium with the Convention Bureau, assists the Director in the preparation and administration of the annual budget, and substitutes for the Director in his absence. She schedules and directly supervises the activities of four part-time receptionists. Schuster-Lee has the independent authority to hire and discipline the receptionist and has discharged one receptionist. Schuster-Lee oversees operation of all personnel and events in the absence of the Director. She coordinates with the personnel office the part-time employes receiving benefits. She assists in scheduling the use of the facility and in negotiating and administering the facility leases and rental agreements. She acts as a liaison between the facility and other City departments. She plans and coordinates a variety of facility set-ups and acts as event manager in dealing with patrons, promoters and working personnel; she prepares invoices for services rendered to be used in "event" settlement negotiations and maintains logs, records and provides reports as required. She receives and responds to complaints from tenants and the public, she prepares monthly income and expense reports for the Auditorium Board of Directors, attends LaCrosse Center Board meetings, takes minutes of the meetings and presents Director's Report in the absence of the Director. She prepares year-end reports to be submitted to the Board of Directors. She prepares correspondence to the Common Council and Finance Committee from Walinski. She reviews concert riders and arranges for the scheduling of a nurse, security, and receptionist for concerts. She supervises the settlement expenses and the transfer of settlement expenses to the appropriate accounts. She administers various savings and checking accounts. She produces the Holiday Fair. Schuster-Lee possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

28. The position of Head Cashier is occupied by Nancy O'Neal. The City contends that it is a supervisory position, while SEIU claims that it is non-supervisory. AFSCME takes no interest in the position. O'Neal reports to Eugene Pfaff,

Director of Finance, Purchase and Treasure. The job description for Head Cashier states that under normal supervision she keeps daily, weekly, records of collections and disbursements from segregated accounts. She accepts cash receipts from walk-ins. She enters the receipt directly on the cash register/validating machine for real estate and personal property taxes, water bills, parking tickets, fines, and various other licenses and taxes. She provides a receipt. She accepts cash from other departments. She counts cash received from all sources. She participates in the reconciliation process, totalling and reconciling the cash registers. She puts cash received in bags, preparing deposit tickets. She also prepares the check-out window. O'Neal supervises three other cashiers. She creates and administers work schedules for these employees. She participated along with the Personnel Director and the Director of the Finance Department in job interviews with potential cashier applicants which resulted in the hiring of at least one cashier. She trains the cashiers and supervises work in progress. O'Neal performs work similar to that of the cashiers she supervises for a substantial portion of each day. O'Neal has taken no disciplinary action against any of the cashiers beyond verbal reprimand but has the authority to issue written warnings to them. At least one of O'Neal's predecessors did effectively recommend that an employee not pass her probationary period but be returned to her previous bargaining unit job. O'Neal possesses supervisory authority in sufficient combination and degree to be found a supervisory employee.

29. The position of Insurance Loss Control Supervisor is occupied by Kelly Branson. The City and AFSCME contend that the position is professional while SEIU maintains that it is non-professional in nature. Branson is a salaried employee who earns approximately \$14.68 an hour. She reports directly to Director of Finance Pfaff, and to Wayne Delagrave, the Deputy Director of Finance. Both Pfaff and Delagrave possess bachelors' degrees in accounting and are stipulated to be professional as well as managerial/supervisory employees. She is responsible for all of the City's insurance policies and serves as the liaison between the City and its insurance carriers. She reviews insurance coverage checking to determine if the City's liability exposure has changed. She keeps current with recommendations of rating guide publications and recommends risk elimination when possible.

She handles the bidding process, analyzing the bid specifications and making a recommendation as to the vendor from whom the City should purchase the insurance. She notifies the insurance agencies and prepares written reports on damage and losses to City vehicles, buildings and equipment through the State Insurance Fund and collects for such losses. She handles the accounting for all liability claims, in addition to the accounting for worker's compensation and unemployment funds. She audits all payments from both trust funds. She serves as a member of the City's Liability Claim Review Board. She performs all accounting functions and handles the budget for the Sanitary District. In this regard, she answers billing complaints, prepares and sends out bills, adds new customers to the tax rolls, adds special assessments to the tax rolls, charges the sewer district for work performed by the City, pays the accounts payable, and places special assessment and delinquent bills on the City tax roll. She also performs accounting duties for the Transit Utility including approving all transit bills, checking for the correct allocation to subsidized or unsubsidized accounts, preparing state Department of Transportation and Federal Urban Mass Transportation and public Service Commission reports, in addition to requesting funds from the federal government for operating and capital assistance. Branson also takes care of the issuance of U.S. Savings Bonds to City employes. She handles telephone problems which include billings for new equipment, equipment modifications and repairs. She is also responsible for billing and recording receipt of payments for sidewalks. She checks the state income tax and the location of claims and performs special cost accounting reports and studies as directed. Branson does not possess a college degree but is a junior at the University of Wisconsin-LaCrosse. Her job description under skills, knowledge and abilities states: "Thorough knowledge in municipal accounting methods and procedures. Working knowledge of specific city department and sanitary district operations. Under special requirements, the job description lists: Must have advanced training in general and cost accounting. Must have some training in computer science as it relates to accounting." The accounting duties for which Branson is responsible involve allocation, reviewing of math, and tasks more closely associated with bookkeeping in nature. While she does exercise independent judgment and performs work that is varied in nature, her accounting duties do not involve the

consistent exercise of discretion and judgment in their performances which is of such a character that the results cannot be standardized nor are the accounting duties of such a level so as to 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. The insurance risk/loss duties of her position, while requiring the exercise of discretion and judgment in their performance, 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.

30. The position of Accountant II is occupied by Gary Miller. The City and AFSCME claim that the position is professional while SEIU believes that it is non-professional. Miller is supervised by Pfaff and Delagrave. He earns \$14.29 an hour. Miller is responsible for the preparation and scheduling of the computerized payroll. He audits time sheets and prepares them for the computerized payroll. He effectuates changes in the computer programs for Wisconsin Retirement Fund contributions, social security, federal job programs, health and life insurance premium deductions. He calculates retroactive wages and fringe benefits. He prepares payroll information for unemployment compensation reports and keeps records of payments made; he issues payment to the state unemployment account. He assists in the preparation of annual city budget as it relates to payroll. He may calculate and type payroll checks to correct payroll errors. Miller does not possess a college degree. Miller's job description under "Skill, Knowledge and Abilities" provides that "the applicant must have a thorough knowledge of payroll methods and procedures; of state and federal withholding rules and regulations; and the ability to work with computerized accounting methods and procedures and skill in the operation of calculating and other office machines. As a special requirement, advanced training in accounting methods and computer skills is mandated." The accounting duties for which Miller is responsible are more closely related to bookkeeping duties than to advanced, professional accounting functions. His job tasks are not highly varied and do not require the exercise of independent judgment. These tasks 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.

31. The position of Accountant I is occupied by Brenda Hanson. The City and AFSCME maintain that this position is professional, while SEIU claims it is non-professional in nature. The Accountant I, under limited supervision, reviews invoices and payment requests for accuracy prior to data entry and performs related accounting work as required. She is also supervised by Pfaff and Delagrave. She earns \$12.44 an hour. In the job description, examples of job duties are as follows:

"Reviews requisitions for payment requests from City departments for correct vendor name and number, account number, date, invoice number, amount discounts and authorizing signature. Checks cash income statements received from Treasurer Department against validated invoices for accuracy; reviews invoices for correct number, date, account number and amount received; checks computer printout for errors and makes corrections if appropriate; audits monthly utility bills for each department and orders payment; processes special payment requests; prepares run sheets for the computer and checks for errors and makes corrections; duplicates monthly financial statements; reviews and totals pay categories on a biweekly basis: regular, overtime, sick leave, etc. Assists other accountants in footing and totaling columns; distributes computer printouts and reports; interprets and reviews financial data used by the public and City departments; assigns new computer numbers to vendors and maintains postage fund levels; prepares purchase orders; creates and works with existing Lotus 1-2-3 spreadsheets and maintains chart of accounts."

With respect to skills, knowledge and abilities the job description requires the following:

"Knowledge of Lotus 1-2-3; knowledge of accounting principles and procedures; knowledge of EDP data entry procedures and methods; ability to review detect errors on invoices, reports, and requisitions; ability to operate calculators, office machines, CRT units and personal computers. Must be able to maintain effective interdepartmental and intergovernmental contacts. Must have a degree from a recognized college or technical school in accounting, with courses in data processing or equal experience."

She also prepares and updates the operating budget and the capital budget for the City. She invoices the retirees' health insurances. She reviews income form the treasurer's office for accuracy with respect to the correct totals. She distributes and calculates the lottery credit that has been applied to City property taxes. Hanson was told during the hiring process that a college degree was a prerequisite for the position. She does possess a Bachelor of Science Degree in Accounting from the University of Wisconsin - LaCrosse. Although Hanson possesses an advanced degree from an institution of higher learning and her job description requires such a degree, the accounting duties for which Hanson is responsible are non-professional in nature, more akin to bookkeeping functions requiring arithmetic and math skills rather than advanced accounting skills. Her job tasks are not highly varied in nature and do not require the exercise of independent judgment. Nor do the tasks which she currently performs 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.

32. There are two Account Analysts, Leanna Krause and Sue Wieman. The Account Analysts, although they possess the same job title, perform different job duties. They receive slightly different rates of pay. The City and AFSCME argue that the

Account Analysts are professional employees, while SEIU asserts the disputed positions are not professional. SEIU contends that the duties involved in Sue Wieman's job description are non-professional/technical. It concedes that Leanna Krause's job description does possess some elements that can be construed as professional in nature, but argues that she should not be found to be a professional because of the structure of the Finance Office, the parties' bargaining history, and her coincidental possession of an accounting degree. The job description for the Account Analyst positions provides that under normal supervision, they review invoices and payment requests for accuracy prior to data entry and perform related work as required. As an example of job duties, it mentions the following:

"Reviews requisitions for payment requests from departments for correct vendor name and number, account number, date, invoice number, amount, discounts, authorizing signature. Sends information for entry on computer. Checks cash income statements received from Head Cashier against validated invoices for accuracy. Reviews invoices for correct number, date, account number and amount received. Sends information for entry on computer. Checks computer printout for errors and makes corrections if appropriate. Processes special payment requests. Prepare run sheets for the computer and checks for errors, making corrections. Duplicates monthly financial statements. Assists other accountants in footing and totaling columns. Distributes computer printouts and reports. Assigns new computer numbers for vendors. Maintains postage funds levels. Posts Sanitary District #1 bills."

For skills and knowledge, the job description requires:

"Knowledge of accounting principles and procedures and of data entry procedures and methods. The ability to review and detect

errors on invoices, reports and requisitions and the ability to operate calculators and office machines. The employe must be able to maintain effective interdepartmental contacts."

33. The position which Sue Wieman holds is Account Analyst/Data Processing Coordinator. She earns approximately \$13.98 per hour. She prepares bank reconciliation statements for the City comparing them with the City's accounting to make sure the City balances its funds every month. She prepares the computer development block grant distribution every month. She creates amortization schedules for jobs program funds. She makes a drawdown of available federal monies each month. She pays the bills for the community development program. She sets up spread sheets for the City's phone bills. She analyzes phone costs and provides this information to the various departments. She serves as a liaison between the City, the County and the vendors with respect to data processing, securing the quotes and making recommendations as to the appropriate equipment for purchase by the City. She processes checks for all contracts which issue from the engineering department making sure there are funds available before bills are paid. She handles the tax distributions six times a year, distributing the monies to the various City agencies. She also handles the room tax distribution quarterly. She assists the Treasurer's Office during tax season by helping the head cashier balance her accounts in the accounting system. Wieman does not possess a college degree but is working towards an associate degree in accounting. At most, a two year associate degree is necessary to perform her job tasks. The accounting duties for which Wieman is responsible are more akin to bookkeeping functions requiring arithmetic and math skills rather than to advanced professional accounting skills. While her job tasks are highly varied, said tasks 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.

34. The Account Analyst position occupied by Leanna Krause involves the performance of different tasks than those performed by Wieman. Krause earns approximately \$13.89 an hour. The

Account Analyst job description is not entirely reflective of her actual job duties. In addition to the duties set forth in her job description, she is also responsible for the overseeing monies in the State Investment Pool. She determines the amount of money for daily investments and moves money between the various investments.

She determines how much is, in fact, invested on a daily basis with the State Investment Pool. She receives the interest on a monthly basis, breaks it down with respect to each fund, generates a cash summary report which matches the bank reconciliation which Wieman generates. With respect to incoming monies, she breaks down the cash and distributes it into each particular fund, incorporates the income and expenses for the month and adjusts journal entries to get a balance. The City preferred a college degree for Krause's position during the application process. She possesses a Bachelor of Science Degree in Accounting. The tasks which Krause performs such as the preparation of financial statements, the showing of receipts and expenditures of a fund balance, and her work with the State Investment Pool are tasks which require higher level accounting skills. The knowledge necessary to perform these tasks is 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. Her work is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment in its performance, and is of such a character that the output or result cannot be standardized

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

CONCLUSIONS OF LAW

1. All regular full-time and regular part-time professional employes of the City of LaCrosse excluding executive, managerial, confidential, supervisory, craft, non-professional, and all other employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d), Stats..

2. All regular full-time and regular part-time craft employes of the City of LaCrosse, excluding executive,

professional, non-professional, managerial, confidential, supervisory, and all other employes, constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d), Stats..

3. A professional/craft bargaining unit is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d), Stats., if a majority of the employes in each of the collective bargaining units set forth in Conclusions of Law 1 and 2 vote to constitute a single bargaining unit.

4. A craft/non-professional bargaining unit is an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d), Stats., if a majority of the craft employes in the collective bargaining unit set forth in Conclusion of Law 2 vote to constitute a single bargaining unit with the unit set forth in Finding of Fact 4.

5. The occupants of the positions of Housing/Building Inspector, Building Inspector, Mechanical Inspector, and City Sealer of Weights and Measures, are not craft employes within the meaning of Section 111.70 (1)(d), Stats., and are not professional employes within the meaning of Sec. 111.70(1)(L), Stats., and are appropriately included in the unit set forth in Finding of Fact 4.

6. The occupants of the positions of Accountant II, Accountant I, Insurance Loss Control Supervisor, Special Projects Supervisor-Wastewater are not professional employes within the meaning of Sec. 111.70(1)(L), Stats., and are appropriately included in the unit set forth in Finding of Fact 4.

7. The occupant of the Account Analyst/Data Processing position is not a professional employe within the meaning of Sec. 111.70(1)(L), Stats., and is appropriately included in the unit set forth in Finding of Fact 4.

8. The occupant of the position of Account Analyst is a professional employe within the meaning of Sec. 111.70(1)(L), Stats., and is appropriately included in the voting group described in Conclusion of Law 1.

9. The occupant of the position of Auditorium Operation/Sales Manager is not a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., but is a professional employe within the meaning of Sec. 111.70(1)(L), Stats., and is appropriately included in the voting group described in Conclusion of Law 1.

10. The occupants of the positions of Administrative Assistant - Auditorium, Head Cashier, Concession Manager, Assistant Building Foreman, Program Director - Recreation and Box Office Manager are supervisory employes within the meaning of Sec. 111.70(1)(o), Stats., and therefore are not municipal employes within the meaning of Sec. 111.70(1)(i), Stats.

11. The occupant of the position of Maintenance Painter is a craft employe within the meaning of Sec. 111.70(1)(d), Stats., and is appropriately included in the voting group described in Conclusion of Law 2.

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

ORDER CLARIFYING BARGAINING UNIT 1/
AND DIRECTION OF ELECTIONS

1. The positions of City Sealer of Weights and Measures, Housing/Building Inspector, Mechanical/Building Inspector, Building Inspector, Special Projects Supervisor - Wastewater Treatment Plant, Insurance Loss Control Supervisor, Accountant II, Accountant I, and Account Analyst/Data Processing are hereby included in the bargaining unit described in Finding of Fact 4.

2. That elections by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of the Directive in the following voting groups for the purpose indicated:

(Footnote 1/ begins on page 24.)

Voting Group 1

All regular full-time and regular part-time professional employes of the City of La Crosse excluding executive, managerial, confidential, supervisory, and all other employes, who were employed on January 21, 1994, except such employes as may prior to the election, quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of said employes desire to be included in a single collective bargaining unit with the craft employes in Voting Group 2 and
- (2) Whether a majority of such employes voting desire to be represented for the purposes of collective bargaining with the City of LaCrosse by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or by Local 180, Service Employees International Union, AFL-CIO, or to be unrepresented.

Voting Group 2

All regular full-time and regular part-time craft employes of the City of La Crosse, excluding executive, managerial, confidential, supervisory, and all other employes, who were employed on January 21, 1994, except such employes as may prior to the election, quit their employment or be discharged for cause, for the purpose of determining:

- (1) Whether a majority of said employes desire to be included in a single collective bargaining unit with the professional employes in Voting Group 1 or with the non-professional employe

bargaining unit currently represented by Local 180, SEIU, set forth in Finding of Fact 4 or in neither of said units and

- (2) If a majority of the eligible employees do not vote to be included in the non-professional employee bargaining unit set forth in Finding of Fact 4, then their ballots will be counted to determine whether a majority of such employees voting desire to be represented for the purposes of collective bargaining with the City of LaCrosse by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, or by Local 180, Service Employees International Union, AFL-CIO, or to be unrepresented.

Given under our hands and seal at the City of Madison, Wisconsin this 21st day of January, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/

William K. Strycker, Commissioner

1/ As to the unit clarification portion of this decision, pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be

filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

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

(Footnote 1/ continues from previous page.)

(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.

(Footnote 1/ continues from previous page.)

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.

THE CITY OF LaCROSSE

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

BACKGROUND

AFSCME filed the instant election petition seeking an election in a bargaining unit consisting of all regular full-time and regular part-time professional and craft employees employed by the City. SEIU moved to intervene in said matter claiming that many of the positions were neither craft or professional, but properly included in the existing nonprofessional bargaining unit represented by SEIU. It then filed a petition to clarify its existing unit to include said positions. The Commission consolidated both cases for hearing and disposition.

POSITIONS OF THE PARTIES

City

From the outset, the City requests that a proper showing be received from AFSCME and SEIU before any accretions or elections occur. In any event, the City takes the position that all of the disputed employees should be permitted to vote to determine if in fact they wish to participate in the collective bargaining process prior to their inclusion in any bargaining unit. It objects to the accretion of any positions into the existing unit without an election by the affected employees.

As to the disputed craft employees, the City argues that only the Electrical Inspector, the Plumbing Inspector and the Maintenance Painter are craft employees. The City believes that there should be one craft bargaining unit as opposed to individual bargaining units for each trade or craft. It points out that all of the craft employees share a community of interest. If the Maintenance Painter, Plumbing Inspector and Electrical Inspector are found to be non-craft employees, the result would, in the City's opinion, harm the City's ability to provide quality services. Inclusion of these positions into the non-professional

bargaining unit where they would be subject to the terms and conditions of the labor agreement between the SEIU and the City would result in their being subject to "job bidding by seniority".

According to the City, it would have no choice but to allow the most senior non-craft employees to bid on these disputed positions. Such a result would result in a watered down version of the essential craft functions necessary to provide quality service to the City.

The City believes that all of the other employees in the Inspection Department i.e., the City Sealer of Weights and Measures, the Housing/Building Inspectors, the Mechanical Inspector, and the Building Inspectors are non-craft, non-professional, technical employees. Asserting that the occupants of these positions are not required to possess a journeymen's license in any trade nor do they require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instructions and study in an institution of higher learning, the City maintains that these disputed positions are technical in nature.

With respect to the disputed professional employees, the City maintains that the Insurance Loss Control Supervisor, Account Analysts, the Accountant I and Accountant II, and the Special Projects Supervisor in the Wastewater Treatment Plant are all professional employees. According to the City, all disputed Finance Department employees meet the definition of professional employee. If the Commission were to find certain employees to be professional and other to be technical, it would result in a split department. The City insists that the work of the Finance Department is professional accounting work and that the incumbent employees either possess college degrees or are continuing their education to attain the degree while they are working under the guidance and supervision of a professional. Should the Commission split the Finance Department, it alleges, a work jurisdiction dispute may result which would force the City to hire additional employees as a solution.

With respect to the expert witnesses called by both the City and SEIU regarding the professional nature of the positions in the Finance Department, the City argues that its witness is more

credible than that of SEIU. In this respect, it notes that the SEIU witness never worked in the public sector and is not a job classification specialist. Its witness, it asserts, not only has extensive public sector accounting experience, but also has participated in several position classification studies in his capacity as Director of Finance for the City of Neenah, Wisconsin.

The City believes that the following positions are supervisory or managerial in nature and, as such, should be excluded from any bargaining unit: Head Cashier, Program Director - Recreation Department, Auditorium Concessions Manager, Auditorium Operations/Sales Manager, Auditorium Box Office Manager, Assistant Auditorium Building Foreman, and Administrative Assistant - Auditorium.

With respect to the Head Cashier in the Treasurer's Office, the City maintains that the position is supervisory. It stresses that record evidence establishes that the position is primarily supervisory in nature and the performance of bargaining unit work occurs less than ten per cent of the time. According to the City, O'Neal, the current occupant of the position, has the sole authority to hire, fire, and discipline four cashier employees presently included in the bargaining unit represented by the SEIU.

O'Neal assigns and directs their work. The City further submits that it should be entitled to at least one supervisory employee at each work location, asserting that the Head Cashier is the only nonunion employee assigned to the Treasurer's Office, a location remote and distinct from the rest of the Finance Department.

The City claims that the Program Director - Recreation is a managerial/supervisory employee. It asserts that he has the latitude to commit the economic resources on behalf of the City when he negotiates facility leases and expends over \$500,000 in seasonal recreation funds. It points out that the Program Director determines what equipment is necessary and manages the recreation program without approval or supervisory oversight. He also hires approximately 300 seasonal employees to work in these programs and has the authority to fire said employees as well. Because of these functions, it maintains that the Program Director is managerial/supervisory and should be excluded from all bargaining units.

With respect to the Auditorium, the City argues that over 300 employes are employed in either a full-time, part-time or seasonal capacity. It is asking the Commission to find that, in addition to the Director and one stipulated supervisory maintenance supervisor, five other individuals are managerial and/or supervisory; namely, the Administrative Assistant, the Concessions Manager, the Box Office Manager, the Operations/Sales Manager, and the Assistant Building Foreman. This ratio of one manager or supervisor to forty employes is hardly excessive, it contends. This is especially the case given the seven day a week, 365 day a year nature of the Auditorium operation.

The City requests that the Commission look at the actual duties and responsibilities of the disputed positions and not rely on out-dated job descriptions in analyzing the disputed positions.

AFSCME

AFSCME desires to have one bargaining unit consisting of all regular full-time and regular part-time professional and craft employes. It believes that three votes are necessary: a representation vote, a vote of professionals to determine whether they wish to join craft employes, and a vote of craft employes to determine whether they wish to join professional employes. In the event that the Commission decides to give each craft a separate voting group, AFSCME argues that each craft should be permitted to determine whether it wishes to join the other crafts and/or the professionals in one voting group.

AFSCME's position is identical to that of the City with respect to the disputed employes in the Finance Department. It also concurs with the City's position on the Electrical Inspector, the Plumbing Inspector and the Maintenance Painter. However, AFSCME argues that the remaining inspectors in the Inspection Department are either craft or professional employes. It argues that the City Sealer of Weights and Measures, the Housing/Building Inspector, the Building Inspector, and the Mechanical Inspector should be included in its requested unit of professional and craft employes.

AFSCME also considers four other positions to be professional in nature. It disputes the City's contention that the Special Projects Supervisor - Wastewater Treatment Plant, the Program Director - Recreation Department, the Auditorium Concessions Manager and the Auditorium Operations/Sales Manager are supervisory and/or managerial. AFSCME believes all four positions should be included in the professional bargaining unit. AFSCME takes no position on the following individuals believing that the dispute is between SEIU and the City regarding their status: The Auditorium Assistant Foreman, the Head Cashier, the Auditorium Box Office Manager, and the Auditorium Administrative Assistant.

SEIU

SEIU maintains that it has traditionally represented all employees who are not statutorily excluded from a collective bargaining unit and who are not represented by the law enforcement, fire fighter or transit employing units. According to the SEIU, long before the petition for election by AFSCME, the SEIU has made claim to certain disputed positions as appropriately belonging to the existing bargaining unit, in particular, certain positions in the Finance Department, Treasurer's Office, and Auditorium. It maintains that these positions were historically clerical in nature but through crafty changes of job title, they were unilaterally removed from the bargaining unit. It stresses that the SEIU is simply seeking to reclaim these lost positions. SEIU submits that its position is clear. It seeks only to maintain those positions which were previously included in its bargaining unit and to prevent the fractionalization of its unit through tortured and manipulated definitions of the terms "professional" and "supervisory" employe.

SEIU asserts that the Housing/Building Inspectors, the Building Inspectors, the Housing/Building Inspectors, the Mechanical Inspectors, the City Sealer of Weights and Measures, and the Maintenance Painter should all be included in its existing collective bargaining unit by accretion without a vote. It further alleges that all of the disputed employes in the Finance Department and the Head Cashier should be also included as non-professionals. With respect to the Auditorium, it contends that all of the disputed positions belong in its bargaining unit and should be included by accretion without an election. Pointing out that the number of disputed positions is small within the framework of its overall bargaining unit, SEIU argues that the appropriate course is inclusion by accretion as opposed to an election.

As the SEIU views its request for unit clarification, it maintains that the issue that the Commission must face with respect to many of the disputed positions is whether a primarily clerical employe who does not possess a degree and whose functions are primarily ministerial and routine is appropriately included in

the same unit with a civil engineer. SEIU submits that its longstanding existing unit is a residual bargaining unit including such diverse positions as Property Appraisers and Engineering Aides. The Commission, it claims, should not seriously disrupt the bargaining relationships of the parties by allowing glorified clerical employees in the Finance Department (those positions in dispute in the Finance Office) to be determined professional employees when very comparable employees who receive even greater compensation have traditionally been automatically included in the SEIU bargaining unit.

With respect to the testimony of the two expert witnesses regarding the positions in the Finance Department, SEIU maintains that the testimony offered by the City's expert is irrelevant and unpersuasive because he never defined what was meant by the term "professional". According to the SEIU, he did not evaluate the job positions pursuant to the statutory definition of "professional". It maintains that the testimony of its witness was more persuasive.

While acknowledging that its own expert determined that some aspects of the Account Analyst position held by Leanna Krause were professional in nature, SEIU nevertheless claims that because of the structure of the Finance Department, she should be included in the SEIU unit because of the disposition of the other positions within the Department, the bargaining history, and because Krause's possession of an advanced degree is coincidental.

DISCUSSION

Preliminary Issues

The City has argued that AFSCME and SEIU should be required to present a specific "sharing of interest" before they can seek to represent any of the employees involved herein. However, where employees are not currently represented by a labor organization, the Commission does not require the petitioner in an election case to submit proof that it represents any particular number of the employees involved. The claim that it represents employees in the alleged appropriate bargaining unit raises a question concerning representation and is a sufficient showing of interest. City of

Cudahy, Dec. No. 19507 (WERC, 3/82); City of Medford, Dec. No. 13609 (WERC, 5/75); Dodge County, Dec. No. 8734 (WERC, 10/68). The City has not presented a persuasive basis for departing from our long-standing view on this issue. Thus, we reject this argument.

The City has also argued that it is inappropriate to add any employes to the existing SEIU unit unless those employes vote for such a result. The record establishes that SEIU represents a broadly-defined City-wide unit which on its face would include any of the disputed positions which are not professional, craft, supervisory or managerial. Further, there is no indication that inclusion of such positions in the SEIU unit calls into question the continuing majority status of SEIU. Thus, we are satisfied that it is appropriate to automatically include in the SEIU unit any positions which are not professional, craft, supervisory or managerial. See, generally, Waukesha County, Dec. No. 26020-A (WERC, 9/89).

In determining whether a disputed position is craft, professional, supervisory, or managerial, the Commission will rely upon the following definitions and criteria:

Craft Status

Section 111.70(1)(d), Stats., states:

(d) "Craft employe" means a skilled journeyman craftsman, including his apprentices and helpers, but shall not include employes not in direct line of progression in the craft.

Professional Status

The statutory definition of a professional is set forth in Sec. 111.70(1)(L), Stats. as follows:

(1) "professional employe" means:

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.

In determining professional status, the Commission has not found state certification or licensure determinative. 2/ All the

2/ Kenosha VTAE District, Dec. No. 14381, (WERC, 3/76)

criteria found either in Sec. 111.70(1)(L)(1) or (2), Stats. must be present in order to find that a particular employe is professional. 3/ Section 111.70(1)(L), Stats. does not require that "professional employes" possess a college degrees. 4/

Supervisory Status

To determine whether individuals are supervisors, the Commission considers the following factors:

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

3/ Milwaukee County, Dec. No. 14786-B (WERC, 4/80)

4/ Milwaukee County, Dec. Nos. 8975, 14786 (WERC, 7/76)

7. The amount of independent judgment and discretion exercised in the supervision of employes. 5/

It is not necessary that all the indicia of supervisory status be present to find a position to be supervisory in a nature, however it is necessary that those factors should be present in sufficient combination and degree to establish such supervisory status. 6/ Moreover, minor supervisory duties, such as participating in employment interviews and adjusting vacation schedules, will not in and of themselves elevate a position to supervisory status. 7/ A conclusion that a position is supervisory can be based upon the incumbent's exercise of such authority over non-unit personnel. 8/ Job descriptions may well be helpful in the determination of employment duties, but critical weight in deciding supervisory status is given to the actual duties performed. 9/

Managerial Status

The Legislature has excluded "managerial employes" from the

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- 5/ Wood County, Dec. No. 9140-B, (WERC, 5/92); Muskego-Norway School District, Dec. No. 1085-A, (WERC, 12/91); Kenosha County (Brookside Care Center), Dec. No. 19435-C (WERC 9/91); City of Lancaster, Dec. No. 27180, (WERC, 2/92)
 - 6/ Supra.
 - 7/ City of Milwaukee, Dec. No. 16483 (WERC, 8/78)
 - 8/ City of Two Rivers (Police Dept.), Dec. No. 21959-A (WERC, 2/91); and City of Lake Geneva, Dec. No. 18507 (WERC, 3/81)
 - 9/ City of Cudahy (Library), Dec. No. 26680, (WERC, 11/90)

definition of "municipal employes," but it has not provided a statutory definition of the former term. Instead, it has left to the Commission the case-by-case development of a precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employes. 10/ The Commission has developed a general definition of a "managerial employe" as being one who participates in the formulation, determination and implementation of management policy, or one who has the authority to commit the employer's resources. To yield managerial status, the involvement in management policy must be at a relatively high level of responsibility. Managerial status based on the allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employes to be used in providing services. 11/ Effective authority to commit the employer's resources is evidenced by significant involvement in the establishment of an original budget or by the authority to allocate funds for various program purposes. Preparation of a budget, per se, is not sufficient to establish managerial status.

We proceed to apply these definitions and criteria to the disputed positions.

Inspection Department

All of the parties agree that the Electrical Inspector and the Plumbing Inspector are craft employes. The City and the SEIU maintain that all of the other inspectors are technical employes, while AFSCME argues that they are either craft or professional employes. Applying the statutory definition of a craft employe, we conclude the disputed inspectors are not craft employes. None are skilled journeyman craftspeople or apprentices or helpers as traditionally defined by various crafts. The record does reflect

10/ Vernon County, Dec. No. 13805-B, (WERC, 4/91)

11/ Nicolet Area Technical College, Dec. No. 23366-C (WERC, 3/93)

that the Building Inspectors, Housing/Building Inspectors, and the Mechanical Inspectors have extensive experience in the construction industry, but they do not have journeyman status in a trade nor is journeyman status a prerequisite of their positions. The City Sealer of Weights & Measures has acquired all of his training through on the job experiences and state certification seminars and updates. None of these individuals has had a substantial period of apprenticeship or comparable training in a single craft. Accordingly, it is concluded that they are not craft employes within the meaning of Sec. 111.70(1)(d), Stats.

With respect to AFSCME's arguments that the disputed inspectors are professional employes, the record does not support such a conclusion. It is undisputed that a high school education and substantive experience in the construction industry are the primary prerequisites for all of the inspection positions except for the City Sealer of Weights and Measures position as to which construction industry experiences is not a prerequisite. While the performance of the inspection tasks does require some exercise of independent judgment by the employe, the requisite skills for performing in said positions are not usually acquired through a prolonged course of specialized instruction in an institution of higher learning. The knowledge required to perform these inspection tasks is not predominantly intellectual in nature or of such a character that the output produced or result accomplished cannot be standardized in relation to a given period of time. Accordingly, the disputed inspectors are not professional employes within the meaning of Sec. 111.70(1)(L), Stats.

Because they are neither craft or professional employes, the disputed inspection positions are properly included in the SEIU bargaining unit set forth in Finding of Fact 4.

Maintenance Painter

The Maintenance Painter is not included in the Inspection Department. He operates independently under the supervision of the Assistant to the Director of Public Works. AFSCME and the City contend that the position is a craft position while the SEIU maintains that it is technical in nature. The former Maintenance Painter retired during hearing on this matter. The City, during

the course of the hearing, published job opening notices in the local newspaper. In its new job posting, the City has required journeyman status as a painter as a condition of employment. The former occupant of said position was a journeyman painter when he was hired approximately 18 years ago. Accordingly, it is concluded that the position is a craft position.

Craft Voting Groups

All parties are unanimous in their desire to have a single craft voting group consisting of all three craft employees. Consistent with the parties' positions and the Commission's discretion under Sec. 111.70(4)(d)2.a., Stats., all craft employees will be included in a single voting group.

Finance Department

The City and AFSCME argue that all of the disputed positions in the Finance Department are professional, while SEIU maintains that they are all non-professional. It should be noted from the outset that all of the disputed employees work under the Director and Deputy Director of Finance, Eugene Pfaff and Wayne Delagrave, respectively, who are stipulated to be professional employees as well as managerial/supervisory employees. Pfaff and Delagrave both possess bachelors degrees in accounting. The City and the SEIU both provided expert witnesses to analyze the positions in dispute. These two witnesses testified with respect to the professional aspects of the job duties in dispute. On balance, we found the testimony of the SEIU expert to be more specifically related to the disputed positions.

The City argues that the Commission must not divide the Finance Department into two distinct groups, professional and nonprofessional, because of the potential harm to the operation of the Department. However, the Commission is obligated to review each disputed position and to make its determination on the merits.

With regard to the Accountant II position, the occupant does not possess a college degree and we are satisfied his work does not require that he have knowledge customarily acquired through a

specialized college degree. He is primarily responsible for preparation and upkeep of the City's computerized payroll. He effectuates all changes in the computerized payroll to provide Wisconsin Retirement Fund, Social Security, FICA, health and life insurance contributions and other withholdings from employe paychecks. The duties of the Accountant II are more akin to bookkeeping duties than to advanced, professional accounting functions. Accordingly, we have found the Accountant II to be a non-professional employe properly included in the existing SEIU bargaining unit.

The Accountant I position is currently occupied by an employe with a Bachelor of Science degree in accounting. However, the record satisfies us that a two-year accounting degree from a technical school will suffice to provide the knowledge needed for the position. The primary duties of the Accountant I are mathematical in nature. She spends the majority of her time preparing run sheets for the computer and checking financial statements for errors. She reviews requisitions to insure that they are properly filled out; she checks case income statements against validated invoices for accuracy, she checks computer printouts for errors and makes corrections if appropriate. These functions are more akin to bookkeeping functions than to advanced accounting functions. Given the foregoing, we conclude the tasks for which the position is responsible do not require knowledge of an advanced type customarily obtained in a prolonged course of specialized instruction in an institution of higher education. Accordingly, the position of Accountant I is non-professional in nature and properly included in the SEIU bargaining unit.

The Insurance Loss Control Supervisor position mixes accounting duties with insurance risk/loss management duties. The occupant of the position does not possess an advanced degree, but is in college working towards such a degree. The accounting duties for which Branson is responsible involve allocation of funds, reviewing arithmetic and mathematical computations. They are more closely associated with bookkeeping, than advanced accounting functions. Her insurance and risk/loss duties do, however, involve work that is varied in nature and which requires the exercise of independent judgment. They do not, however, require learning or knowledge of an advanced type which is

customarily acquired by a prolonged course of specialized intellectual instruction and study from an institution of higher education. Accordingly, it is concluded that the Insurance Loss Control Supervisor is a non-professional employe properly included in the existing SEIU bargaining unit.

The two Account Analysts perform differing functions. Both expert witnesses acknowledge that the duties performed by Leanna Krause require advanced accounting skills customarily acquired by a prolonged course of special intellectual instruction in an institution of higher education. The City preferred such a degree for Krause's position and Krause possesses a Bachelor of Science degree in accounting. Given the foregoing, and because it is uncontroverted that Krause's work is predominantly intellectual and varied in character and involves the consistent exercise of discretion and judgment in the performance of her job, we have found her to be a professional employe, appropriately included in the professional voting group.

The SEIU expert did not, however, concur with the City expert that the duties performed by Sue Wieman are professional in nature. While the City asserts that it does require an advanced degree, Wieman does not possess such a college degree but is working towards an associate (two-year) degree in accounting. According to her own testimony, at most, a two-year associate degree is necessary to perform her job tasks. While Wieman performs a wide variety of duties, her accounting duties are more akin to bookkeeping functions requiring math skills than to advanced accounting functions which require knowledge typically acquired through a prolonged course of specialized instruction in an institution of higher education. Thus, we have found her to be a non-professional employe, appropriately included in the collective bargaining unit represented by the SEIU.

No one contends that the Head Cashier position is professional in nature. AFSCME does not claim this position as appropriate for inclusion in either a craft or professional unit.

SEIU and the City disagree as to whether the Head Cashier is a supervisor. Contrary to the assertions by the City that the Head Cashier spends only ten percent (10%) of her time performing bargaining unit work, record evidence establishes that she spends

a substantial amount of time performing bargaining unit work. However, she has exercised the following supervisory authority: (1) she creates and administers work schedules for the other three cashiers; (2) she has participated along with the Finance Department Director and the Personnel Director in the interview process for potential cashier applicants; and (3) she has the authority to verbally reprimand or issue written warnings to the three cashiers. Further, one of her predecessors effectively recommended that a new cashier not pass her probationary period but be returned to her previous bargaining unit job. Despite the fact that the Head Cashier does perform a substantive amount of bargaining unit work, we believe that she possesses the indicia of supervisory authority in sufficient combination and degree to warrant finding her to be a supervisory employe.

Auditorium - Civic Center

Five positions are in dispute in the Auditorium. AFSCME claims that the Auditorium Operations/Sales Manager and Auditorium Concessions Manager are professional positions, while SEIU maintains that they are non-professional and the City claims that both are managerial and that the Concessions Manager is supervisory. AFSCME indicates that it is not interested in the remaining three positions. As to these positions, the City argues that the Auditorium Box Office Manager is a supervisory or managerial employe and the Auditorium Administrative Assistant is managerial. It also maintains that the Assistant Building Foreman-Auditorium is a supervisory employe. The SEIU claims that the Box Office Manager and the Administrative Assistant are non-professional municipal employes and requests that the Commission decide on the evidence adduced at hearing whether the Assistant Foreman is a supervisory or municipal employe.

The City contends that the Operations/Sales Manager, Fahey, is a managerial employe because he has the authority to commit the employer's resources with respect to determining how the Auditorium's advertising budget is spent. This authority in and of itself is insufficient to meet the Commission's standards for managerial status. The record with respect to the Operations/Sales Manager simply does not demonstrate that his involvement in the City's policy-making is at a relatively high level. Moreover, there is no showing that his decisions significantly affect the nature and direction of the Auditorium operation. Rather he is merely utilizing the already-allocated

advertising budget to perform his sales/operations job duties. The record, does, however, support the conclusion that the Operations/Sales Manager is a professional employe. The City preferred a college degree in advertising for this position. The current occupant does possess a Bachelor of Science degree in Mass Communication with a concentration in broadcasting and advertising. It is evident from the job tasks set forth in Finding of Fact 24 that the tasks are predominantly intellectual and varied and that the consistent exercise of discretion and judgment in the performance of these tasks is required. Because the job does require knowledge of an advanced type customarily attained by a prolonged course of specialized intellectual instruction and study in an institution of higher education and the other indicia of professional status exist, it is appropriate to find the Sales/Operation Manager to be a professional employe properly included in the professional voting group.

The Concessions Manager, Flottmeyer, is responsible for the concession operation at the Auditorium. The Concessions Manager hires, fires, trains and supervises approximately 100 part-time employes who operate the concession stands during auditorium events. Although these part-time employes are presently not a part of any collective bargaining unit, it is undisputed that the Concessions Manager's authority over their employment is substantial. Accordingly, we found that the Concessions Manager possesses supervisory authority in sufficient combination and degree to warrant a conclusion that he is a supervisory employe, and appropriately excluded from any collective bargaining unit. Inasmuch, as we have found the Concessions Manager to be a supervisory employe, it is unnecessary to determine whether he is a managerial or professional employe.

The Administrative Assistant to the Director of the Auditorium, Schuster-Lee performs a variety of tasks in relation to the operation of the Auditorium. Finding of Fact 30 details the many duties which she performs. Because the Administrative Assistant possesses and exercises the authority to hire and fire receptionists under her supervision, we are satisfied she is a supervisor. Thus, we need not determine whether she is a managerial employe.

Record evidence establishes that the Auditorium Box Office Manager, Delaney, is responsible for interviewing, hiring, training, scheduling, supervising and, on occasion, terminating the part-time box office staff. She possesses sufficient supervisory authority in sufficient combination and degree to warrant a finding of supervisory status.

The Assistant Building Foreman - Auditorium, Lee, does not normally perform any bargaining unit work, but rather along with the Building Foreman Clement Bott supervises five-full-time bargaining unit maintenance employes currently represented by SEIU and approximately three hundred part-time custodial, maintenance and stage crew employes. The Building Foreman works the day shift while the Assistant Building Foreman works evenings. Record evidence establishes that the Assistant Building Foreman has participated in final hiring decisions, schedules employes, has issued written warning to part-time employes, has the authority to approve days off, has the authority to resolve grievances at the first step of the grievance process, and has fired part-time employes. He possesses sufficient supervisory authority to warrant a finding that he is a supervisory employe.

Special Projects Supervisor - Wastewater Treatment Plant

AFSCME and the City contend that the Special Projects Supervisor is a professional employe, while SEIU takes no specific position but requests the Commission to decide on the basis of record evidence. It should be noted that the City does not require a college degree for this position and that the current occupant of the position possesses approximately two years of post-secondary education. The detailed description of the job duties as set forth in Finding of Fact 21 establish that performance of this job requires the employe to act independently from time to time. These duties also involve a great deal of technical knowledge and expertise so that the Special Projects Supervisor can then bring his technical research to the City's Board of Public Works. The job does not, however, involve work that is predominantly intellectual and varied in character. Nor does it involve learning or knowledge of an advanced type which is typically or customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution

of higher education. We have, therefore, found the Special Projects Supervisor - Wastewater Treatment Plant to be a non-professional/technical employe and included him in the unit currently represented by the SEIU.

Program Director - Recreation Department

The record demonstrates that the Program Director of the Recreation Department, Ulrich, is responsible for the implementation and operation of the City's year-round recreation program. He administers a \$360,000 annual budget determining which leases are to be renewed, what equipment needs to be purchased, and the general direction of the recreation program. The record also discloses that he hires approximately 300 part-time seasonal employes annually, evaluating them for rehire in subsequent years. He has fired some of these seasonal employes. We have concluded that the Program Director possesses supervisory authority in sufficient combination and degree to warrant a finding that he is a supervisor. Having found the Program Director to be a supervisor, it is unnecessary to consider his managerial or professional status.

The Election

AFSCME and SEIU seek to represent the craft and professional employes in separate units or a combined craft/professional unit.

SEIU also seeks to represent the craft employes as part of the existing non-professional SEIU unit.

Section 111.70(4)(d)2.a., Stats. gives both the craft and the professional employes the right to separate units unless a majority of the eligible employes in each of the craft and professional voting groups vote for inclusion with other non-craft or non-professional employes. Given this statutory right and the positions taken by AFSCME and SEIU, the professional employes will be given a unit determination ballot on which they will be asked whether they wish to be included in a single unit with the craft employes. The craft employes will be given a unit determination ballot on which they will be asked whether they wish to be included in a single unit with the professional employes or in the non-professional SEIU unit or in neither of those units.

If a majority of the eligible craft employes vote to be included in the non-professional SEIU unit, they will thereafter be represented by SEIU in a craft/non-professional unit and their representation ballots will not be counted.

If a majority of the eligible craft employes do not vote to be included in the existing non-professional unit and if a majority of the eligible employes in each of the craft and professional voting groups do not vote to be included in a single craft/professional unit, then the representation ballots of each voting group will be counted separately to determine whether a majority of the employes voting in each voting group wish to be represented by AFSCME or SEIU in separate craft and professional units or by neither of said labor organizations.

If a majority of the eligible employes in each of the voting groups vote to be included in a single craft/professional unit, then their representation ballots will be co-mingled and counted to determine whether a majority of the craft/professional employes voting wish to be represented by AFSCME or SEIU in a combined unit or by neither of said labor organizations.

The unit determination ballots for the professional and craft employes will be different colors. Eligible employes who appear to vote will place their unit determination ballots directly in the ballot box.

The representation ballots will be a color different from either of the unit determination ballots. The employes who appear to vote will be instructed to place their representation ballots in a furnished blank envelope, bearing either the word "craft" or the word "professional", to seal said blank envelope, and to place the sealed blank envelope in the ballot box.

After the unit ballots are counted, the appropriate representation ballots will be counted.

Dated at Madison, Wisconsin this 21st day of January, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Henry Hempe, Chairperson

Herman Torosian /s/

Herman Torosian, Commissioner

William K. Strycker /s/

William K. Strycker, Commissioner