

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MICHELE ARNESON

Involving Certain Employees of

CITY OF GREEN BAY (CITY HALL)

Case 24
No. 54667
ME-862

Decision No. 8390-E

Appearances:

Ms. Michele Arneson, 1516 Kalahari Drive, Green Bay, Wisconsin 54313, appearing on her own behalf.

Mr. David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Lane, Green Bay, Wisconsin 54311, appearing on behalf of the Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO.

Mr. James M. Kalny, Director of Human Resources, Brown County/City of Green Bay, 305 East Walnut Street, Room 620, P.O. Box 23600, Green Bay, Wisconsin 54305-3600, appearing on behalf of the City of Green Bay.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER DISMISSING PETITION FOR ELECTION

Michele Arneson filed a petition on February 16, 2000, with Wisconsin Employment Relations Commission asserting she is entitled to an election because she is a professional employee who was involuntarily included in a non-professional City of Green Bay employee collective bargaining unit represented by Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO.

Dec. No. 8390-E

Local 1889 and the City oppose the petition asserting that Arenson is not a professional employee, that she is properly placed in the non-professional employee City Hall bargaining unit, and that the petition should be dismissed because Arneson is essentially seeking a unit clarification rather than an election.

Hearing was scheduled for July 18, 2000, but postponed at the Arneson's request. Hearing was rescheduled and held on September 19, 2000, in Green Bay, Wisconsin, by Examiner Sharon A. Gallagher. The parties filed their post-hearing briefs by November 14, 2000.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

FINDINGS OF FACT

1. Michele Arneson, herein Petitioner or Arneson, is the incumbent in the Crime Analyst (CA) position in the City of Green Bay Police Department.

2. Bay Area Municipal Employees Union, Local 1889, AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices c/o David Campshure, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1566 Lynwood Lane, Green Bay, Wisconsin 54311.

3. The City of Green Bay, herein the City, is a municipal employer and has its offices located at 305 East Walnut Street, Green Bay, Wisconsin, 54305.

4. The Union is the exclusive collective bargaining representative of certain non-professional City of Green Bay employees in what is known as the City Hall unit, which is described in the 1999-2001 contract as follows:

All regular full and part-time employees of the City of Green Bay employed in the City Hall and associated departments, Parking System Division (formerly Parking Utility) and Transit Department, but excluding registered nurses, sanitarians, engineers, transit drivers, transit mechanics, department heads, elected and appointed officials, supervisors, confidential employees and all other employees of the Municipal Employer.

Arneson was hired as a “non-union” employee but is presently included in this bargaining unit by agreement between the City and the Union.

5. Arneson’s Crime Analyst position is located within the “Office of the Chief” Division of the City Police Department as follows:

POLICE DEPARTMENT

Office of the Chief

Police Chief
Executive Secretary
Senior Secretary

Internal Affairs Subdivision

Captain
Lieutenant

Training Subdivision

Captain
Lieutenant
Crime Analyst
Officer (Range)

. . .

6. The job description for the Crime Analyst reads in relevant part as follows:

I. IDENTIFICATION

Position Title:	CRIME ANALYST
Dept/Division:	Police Department
Reports To:	
Supervises:	
Job Summary:	A responsible, professional and technical position involving research and analysis of complex intelligence or other data regarding criminal activity and suspects.

II. ESSENTIAL FUNCTIONS

<u>Provide Written Reports</u>	45%
Prepares information reports from automated, manual or feedback sources in an attempt to identify known criminal offenders who are active outside	

the geographical boundaries in which they live or work. Prepares articles, bulletins and flyers for distribution to Police Department divisions in various publications issued by the Green Bay Police Department. Prepares reports organized by zone or other designated criteria for use by officers, investigators, managements, etc. Prepare information for the Daily Bulletin as needed, and public [sic] weekly reports regarding criminal activity in this jurisdiction. Assist in publishing the annual crime report and in providing crime statistics to the FBI for inclusion in the UCR. Prepare and disseminate bulletins to appropriate user groups concerning targeted crimes; provide interpretive information or note special concerns as needs are identified or requested.

Gather/Manage Data

35%

Review of daily calls and reports to identify patterns and trends. Review daily police reports concerning targeted crimes; identify ad hoc and specific data elements, extract report data, code data for entry into automated files for manual review; enter data, ensure entry into automated files using standardized formats and assure sufficient detail to permit collation and extrapolation of information pertinent to the user's needs. Responsibility for the maintenance of databases for targeted crimes, probation/parole locations and nuisance addresses. Tracking of the same activity through pin/spot/overlay maps and charting, or through the GIS system to accurately portray current geographical locations and time frames. Follow up on information previously processed.

Assist With Use of Information

15%

Prepares various standard or innovative analytical services and products including: case analysis, link analysis, flow charting, visual investigative analysis and/or courtroom graphics. Identification of criminal activity by offense, suspect, geographical location and other factors. Case analysis through research, development of time lines, and correlation of information, statements, data and other pertinent data. Assistance in organizing cases for court presentation and by locating victims, witnesses, suspects and other individuals needed by the investigators. Assists Community Police Officers, MJG, Crime Prevention, Metro Unit and Patrol Operations as time permits, in research, analysis and development of information, criminal activity and action plans. Respond to specific requests for assistance from investigative elements by searching for subject and/or vehicle descriptions, prepare association matrices, or charts, and appropriate investigative lead reports. Works with other agencies to develop informational systems useful in monitoring and identifying criminal activity. May testify in court as to results of analysis.

Provide Oral Reports

5%

May conduct briefings concerning results of analysis of assigned cases. May make presentations on behalf of GBPD at related meetings. Preparation of oral or written reports and dissemination of this information to the appropriate investigators, departments, or agencies. Meet regularly with uniformed, investigative and other analytical personnel for the purpose of exchanging information or developing ad hoc reports; attend scheduled meetings with other agency investigative units for dissemination and exchange of information. Serves as GBPD liaison and/or representative to various organizations, task forces, and professional associations.

III. KNOWLEDGE, SKILLS AND ABILITIES

A demonstrated ability to communicate effectively, both orally and in writing with staff, member agencies and others on a professional level. Proficiency in intelligence analysis, including logic, various data collation, description, and integration techniques, charting and other skills necessary in the construction of analytical services and products. Familiarity with and ability to use computers including spreadsheets, data bases, word processors, Green Bay Police Department Records System (or comparable), and other software used in analysis.

May be required to demonstrate minimum competency by successfully passing approved tests.

IV. MINIMUM EDUCATION AND EXPERIENCE REQUIRED

1. Working knowledge of the Criminal Justice system, investigative techniques.
2. Two (2) years prior field experience as a patrol officer and/or investigator, highly desirable.
3. Associate Degree in Criminology, Police Science or Computer Science.
4. Prior experience in statistical analysis (database operations, etc.). Demonstrated ability to use databases, spreadsheets, word processors, mainframe applications, etc.
5. Three to five years of related work experience required.

A combination of equivalent experience and/or education may be considered.

V. PHYSICAL REQUIREMENTS

Ability to perform the following activities:

- Lifting up to 20 pounds.
- Carrying up to 20 pounds.
- Frequent standing, walking, sitting, bending.
- Ability to focus for long periods of time on projects.
- Ability to reach, climb.
- Ability to work in varied environmental conditions.

The above is not to be construed as an exhaustive statement of duties, responsibilities or requirements. The above percentages are estimates of actual time spent on identified functions.

. . .

In an April 18, 1997 memo, the City Police Chief summarized the Crime Analyst position as follows:

The Civilian Crime Analyst position represents another attempt to make the department more efficient. The analyst will aid numerous units within the Police Department. The position will automate the searching and retrieval of data and will assist much of the department by generating clearly understandable, meaningful reports. With the implementation of the New World Records and Dispatch Software, the ability of the department to sort and retrieve the wealth of information from our computer will be enhanced.

7. Arneson's normal day begins at 6:45 a.m. when she checks for mail and phone messages. At 7:15 a.m. Arneson attends role call with police officers, photo and ID technicians and other non-clerical departmental employees. Thereafter, Arneson runs her daily reports for the community police officers (CPOs), runs her weekly reports for the zone lieutenants and then works on other regular weekly or monthly projects as well as special requests for statistics that may come from private individuals in the community.

The daily reports that Arneson prepares for the CPOs detail the criminal/law enforcement activities in those officers' geographic areas over the last one or two days. This information comes from the Department's record management system, which Arneson accesses through the use of computer programs such as Excel and Access.

Arneson creates timelines for missing persons in homicide cases; gathers intelligence on persons possibly involved in crimes; does telephone analysis; is responsible for completion of a portion of the Department's annual report; facilitates the Landlord Notification Program which

notifies landlords when crimes or incidents occur on their rental properties; facilitates inspections and law department abatements in the Landlord Program; facilitates the Geographic Information System (GIS) team's efforts to assist the Department in efficiently using GIS information; and meets with outside agencies regarding GIS.

In regard to the Landlord Notification program, Arneson takes information from a CPO and sends out a computer-generated form letter tailored to the case. The letter indicates whether the CPO wishes to have the City do an inspection or have the law department of the City become involved due to incidents and/or crimes at the property owner's building.

In regard to the GIS team, Arneson works with that group to determine how the City can use GIS to further analyze and reduce crime in the City and to exchange data between the Green Bay department and other departments in regard to criminal activities. In doing so, Arneson attempts to analyze crime location data, looking for hot spots in the City where patrol units should be deployed and times of day when the greatest number of officers are needed.

Contacts by the public are normally requests for information (such as crime statistics in a certain neighborhood) which Arneson accesses through the computer system and sends to the requesting party.

Arneson has presented an oral report to the Department explaining her duties and how she can assist the Investigative Division. In addition, Arneson has participated in one in-service at the neighborhood resource center explaining her duties.

Arneson does simple statistical analysis for the Department. She keeps uniform crime reports from the Records Division and determines whether there is a statistically significant sample and to what degree and to what standard deviation the sample is significant. She does not do any regression analysis or advanced linear analysis.

8. Arneson has a BA degree in Psychology/Sociology from St. Norbert's College with eight courses in the area of psychology and sociology including one concerning deviance and criminology and another introductory course on social research methods.

Arneson is a member of the International Association of Crime Analysts, which she voluntarily joined in November, 1997. Since her hire, the City has paid for Arneson to attend three classes — Crime Analysis, Investigative Analysis and Criminal Intelligence.

9. Prior to hiring Arneson, the City did a study of the Crime Analyst position and determined that it should be placed in the pay grade 33 Administrative Salary Schedule.

The City's Administrative Salary Schedule indicates that other employees at pay grade 33 are as follows: municipal court clerk, insurance coordinator, assistant forester, assistant WLS manager, recreation supervisor, equipment and shop supervisor, transit superintendent, transit maintenance superintendent, planning specialist-GIS, park utility supervisor and public works supervisor.

10. In a memo dated April 17, 1997, City Senior Personnel Analyst Katey Bouressa analyzed and described the Crime Analyst position as follows:

The Crime Analyst is a responsible, professional and technical position involving research and analysis of complex intelligence or other data regarding criminal activity and suspects.

Bouressa analyzed the position based upon the following factors and rated each factor on a scale of one to six: Education, Experience, Human Relations Skills, Responsibility, Guidance Received, Organizational Control and Complexity. On the first five factors, Bouressa ranked the position at 3; on Organizational Control, Bouressa ranked the position at 2 and on Complexity, Bouressa ranked the position at 5.

Under the factor of Education, Bouressa rated the position at a level 3, which she stated “indicates thorough knowledge of a specialized or technical field, equivalent to high school plus additional, broad specialized and formal training equivalent to two years of college.” Bouressa also stated that “the minimum education and experience required for the Crime Analyst includes an Associate Degree in Criminology, Police Science or Computer Science” and that the level of education associated with the position would be comparable to a maintenance supervisor, municipal court clerk or an administrative assistant.

In terms of Experience, Bouressa found that the position required one year to three years of experience and that the minimum education and experience required on the job description was two years of prior field experience as a patrol officer and/or investigator. Bouressa rated the position at the level 3 — comparable to recreation supervisor, senior engineer and park utility supervisor.

Under the factor of Human Relations Skills, Bouressa stated that this factor “measures the job requirements of personal interaction with others outside of the chain of command.” Bouressa rated the position at a level of 3 and found that “the job requires frequent contact with the public or other agencies” such that it compared with accountant and civil engineer positions.

In regard to Responsibility of the position, Bouressa stated that the Responsibility factor “measures the accountability of results as well as the impact the job has on organizational, departmental or unit objectives, the output of City services or employee or citizen satisfaction.” Bouressa found that the position to be a level 3 was “Accountable for work of immediate unit [sic] significant outlay of equipment, or results of process or project resulting in a significant impact” such that the position was on the level with an accountant or municipal court clerk.

In regard to the factor of Guidance Received, this factor “measures the degree of guidance, review and direction the position receives.” Bouressa evaluated this factor at a level 3 and found that Crime Analyst receives instructions as to work results to be obtained; that

latitude exists for determining the methods to be used to accomplish directed results; that the work was guided by administrative routine and established soundness of judgment and overall adequacy of the incumbent. Bouressa found, therefore, that the position would be on the same level as a senior engineer, senior personnel analyst or civil engineer in regard to Guidance Received.

In regard to the factor of Organizational Control, this factor “measures the managerial requirements for achieving results through people.” Bouressa found that the Crime Analyst position, “while not directly supervising anyone, will work with a Records employee at the Police Department in inputting data.” Bouressa evaluated this factor at a level 2 — similar to a senior engineer, a personnel analyst or an administrative assistant.

In regard to Complexity of work, Bouressa noted that this factor “measures the job difficulty in terms of the application of the knowledge required by the job” and measures job requirements of “resourcefulness, creativity, ingenuity, judgment, initiative, analysis, reasoning and evaluating.” Bouressa found that the Crime Analyst’s work would require analysis and judgment in accomplishing diversified duties and require the exercise of independent thinking within the limits of general practices, standards and precedent. As such, Bouressa rated the position at a level 5 — comparable to the assistant to the mayor, assistant city attorneys I and II and a principal engineer.

11. The work of the Crime Analyst does not require knowledge of an advanced type in a field of science or learning customarily acquired through a prolonged course of specialized intellectual instruction and study in an institution of higher education.

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

CONCLUSIONS OF LAW

1. The Crime Analyst is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

2. No question concerning representation within the meaning of Sec. 111.70(4)(d)3, Stats., exists as to the Crime Analyst.

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

ORDER DISMISSING PETITION FOR ELECTION

The election petition is dismissed.

Given under our hands and seal at the City of Madison, Wisconsin, this 1st day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF GREEN BAY

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER DISMISSING PETITION FOR ELECTION**

Michele Arneson filed the instant election petition asserting that she is a professional employee who was involuntarily included the non-professional City Hall bargaining unit without a vote. The Union and the City assert she is not a professional employee and argue that, in any event, the petition should be dismissed because it essentially seeks a unit clarification.

POSITIONS OF THE PARTIES

The Petitioner

The Petitioner argues that she accepted the City's offer of employment as Crime Analyst as a non-union position and that she has lived up to her bargain and expects the City to do the same. Petitioner states that she has both personal and professional reasons for not wanting to be represented by the Union and noted that she had offered the Union and the City the opportunity to allow her position to remain non-union only until she vacated it, but that her offer was refused.

Petitioner argues that she is a professional employee. In this regard, Petitioner notes that she is the only civilian Crime Analyst in the State of Wisconsin and that other Crime Analyst positions in the State of Wisconsin (Milwaukee and Appleton) are filled by sworn police officers. Petitioner observes that she is solely responsible for her time management and that she performs a variety of functions on a daily basis. Petitioner states that she works with police officers, detectives, assistant city attorneys, the GIS specialist, crime prevention staff and City property owners as well as news media in her position.

Petitioner urges that she would not be successful as a Crime Analyst if she did not have a four-year degree in psychology and sociology. She notes that she reports to the Chief and the Commander of Investigations on many issues that the Chief has written a letter of support in this case. Petitioner argues that if her position continues to be placed in the bargaining unit, the contract will require that the position be posted and it will then be filled with the most senior minimally qualified candidate, not the best candidate for the job.

In summary, the Petitioner contends that the Crime Analyst field is moving toward degreed professionals, both sworn and non-sworn, and urges that her petition be granted and that she be removed from the collective bargaining unit.

The Union

The Union notes that the City and the Union agreed to place the Crime Analyst in the Union's City Hall bargaining unit. The Petitioner disagreed and filed a petition for election but it was apparent at the hearing that the Petitioner did not in fact wish an election.

If the issue is whether the position is appropriately included in the City Hall unit, then Commission should find that that position is appropriately placed in the Union's City Hall unit based upon the usual seven factor test used by the Commission. In this regard, the Union argues as follows:

. . .

1. The Crime Analyst shares a community of interest with the other employees included in the Local 1889 City Hall unit, as evidenced by the following factors.
2. The duties and skills required to perform the Crime Analyst position have not been shown to be different than those required to perform the duties of other City Hall unit positions. The Crime Analyst utilizes the Department's records management system and deals with sworn law enforcement officers and members of the public, as do other unit employees located in the Police Department.
3. The wages, hours and working conditions of the Crime Analyst position are comparable to those of other positions in the unit. The Crime Analyst position is scheduled to work eight hours per day, forty hours per week, Monday through Friday and, at the discretion of the Chief, may work a flexible schedule (Petitioner Exhibit 5). The unit positions of Latino Liaison and Southeast Asian Liaison work under the same arrangement. Other bargaining unit positions also work the same eight hours per day, Monday through Friday schedule. The 1999 hourly wage rate of \$19.49 is within the range of rates paid to other unit positions (Petitioner Exhibit 5, Joint Exhibit 1). The Crime Analyst receives the same benefits as all other unit positions.
4. There is no evidence the Crime Analyst had different supervision than other unit positions. The position is supervised by sworn personnel, as are other unit positions within the Police Department.
5. The Crime Analyst works at the City Police Department, as do many other classifications included in the bargaining unit. They share the same lounge/break areas. The Crime Analyst position has its own office, as do unit secretarial positions in the Department (Transcript p. 60).

6. Creating a bargaining unit of one “professional” employee would result in undue fragmentation. There is no bargaining unit of professional employees within the City (Transcript p. 63). Besides, the Petitioner is on record as stating she does not want to join a different bargaining unit, but merely wants out of the City Hall unit (Transcript p. 63). If an election were ordered, she would no doubt elect the “No Union” option.

The Union argues that if the petition is in reality a unit clarification request, this case is an attempt to circumvent the law. The Union notes in this regard that the WERC has long held that a unit clarification petition can only be brought by an employer or a labor organization, citing CITY OF GREEN BAY, DEC. NO. 12682 (WERC, 8/74), GREEN BAY SCHOOL DISTRICT, DEC. NO. 23263-A (WERC, 8/86), MILWAUKEE COUNTY (HOUSE OF CORRECTIONS), DEC. NO. 24212 (WERC, 1/87) and SHEBOYGAN COUNTY (COURTHOUSE), DEC. NOS. 8256-K and 29847 (WERC, 3/00). Thus, the Union urges that the Petitioner has no standing to file a unit clarification request and that her petition for “election,” should be dismissed.

In any event, the Union argues that the Crime Analyst is not a professional employee. The Union notes that no four-year degree is required for the position and contends that the fact that the Petitioner possesses a four-year college degree is irrelevant. The Union alleges that the Chief’s letter of support for the Petitioner is irrelevant as he also signed the Memorandum of Understanding which accreted the position into the Union’s City Hall unit. Furthermore, the Union asserts that the work is not predominantly intellectual and varied, pointing out that the Analyst prepares routine weekly and monthly reports using Excel and Access programs, which are also used by bargaining unit employees to manage data. The Union argues that Petitioner essentially received on the job training for most her duties and that she possessed no prior training or experience for the computer work that she does.

The Union contends that if the petition is an attempt to essentially remove one position from the bargaining unit or request that the Commission accept a decertification petition on behalf of a lone employee seeking to be released from a bargaining unit of approximately 180, this would indeed be an abuse of the WERC’s election procedures. Whether or not the Petitioner wishes to be a member of the bargaining unit, the Union has a responsibility to represent all employees holding positions within its bargaining unit no matter what their wishes are on the subject. In conclusion, the Union argues as follows:

. . .

The WERC has long-standing policy that individuals do not have standing to file for unit clarification. In this case, the City and Union are in agreement, the Crime Analyst position is not Professional in nature. Yet by requiring the parties to go to hearing over that very issue, the Petitioner is being allowed to circumvent the rule that prohibits individuals from requesting unit clarification.

It establishes a dangerous precedent that could result in individual represented employees across the state following the same path because they do not desire to be represented. The Commission, employers and labor organizations cannot afford the time and expense of holding hearings for a multitude of positions, when the employers and unions are in agreement as to the status of those positions. Consequently, the Commission must not only reject the Petition For Election, to avoid the proliferation of such petitions, it must do so unequivocally with force and prejudice.

. . .

The City

The City notes that the Crime Analyst position was created in 1997; that the City studied the position and found it to be a professional/technical position and placed it on the Administrative Salary Schedule as a non-union position. On October 27, 1997, the Petitioner was hired to fill the position. Early in 1998, the Union filed a unit clarification petition to include the position in the Union's City Hall bargaining unit. Thereafter, the City and the Union met and discussed the issues surrounding the Union's petition for unit clarification. Ultimately, the City and the Union agreed that the position should be accreted into the Union's City Hall unit. The Union then withdrew its petition for unit clarification. On February 9, 2000, the Petitioner filed her petition for election. The City points out that the petition states that there are 180 employees in the petitioned-for unit and states the Crime Analyst ". . . was involuntarily placed into the Union . . . this is a professional position forced into a non-professional unit"

The City argues that the Crime Analyst is not a professional employee under Sec. 111.70(1)(L)1, Stats. In this regard, the City contends that the position fails to meet all four statutory prerequisites for professional status as discussed by the WERC in KENOSHA SCHOOL DISTRICT, DEC. NO. 10558-C (WERC, 12/94).

Specifically, the City notes that the Analyst spends approximately 45% of her time providing written reports. These reports, in the City's view, are simple, routine reports or reports done under the supervision of other staff members of the Police Department, involving the standard use of a computer. Therefore, the Crime Analyst does not consistently exercise discretion and judgement while she is providing these written reports.

As to the 35% of the Analyst's work time spent managing and collecting data, the City contends that this work also does not require the consistent exercise of discretion and judgement. In this regard, the City notes that the Analyst collects crime statistics, handles the Landlord Notification Program, the GIS program and writes the newsletter and updates the Department's web page.

The position description also reflects that for 15% of her time, the Analyst assists with the use of collected data. The City argues that she does not apply advanced statistical methodologies when performing work. In the City's view, a first year technical college course in statistics is all that is needed for this type of work.

Thus, in the City's view, the position is essentially a high-level clerical position assigned to manage data in a uniform manner, to generate and disseminate canned reports and, where requested, to pull specific data together and explain its significance based on basic statistical analysis principles. No advanced detailed independent analysis is necessary — only simple standard deviation and sample significance on statistical questions are addressed by the position.

In the City's opinion, the Crime Analyst position does 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 this regard, the City notes that Excel and Access, two components of Microsoft Office, are literally on millions of non-professional employee computers across the country. For her use of Excel and Access, the Petitioner was trained in computer classes on the job, not in college. The City points out that the job description only requires an associate degree — not a four-year college degree. On this point, the City argues that the Commission generally considers the nature of the work and the means by which the knowledge necessary to perform the work is customarily acquired; the incumbent's credentials or the employer's hiring requirements are not determinative. GREEN LAKE COUNTY, DEC. NO. 24955-D (WERC, 8/98).

In the City's view, allowing the Petitioner to litigate this case promotes extremely poor public policy. The Union and the City agreed to accrete the position into the Union's City Hall unit based on strong arguments from the Union and in-depth study by the City. In the City's view, this voluntary agreement between the parties should stand.

In conclusion, if the Crime Analyst is professional, many positions in the City of Green Bay would also become professional based upon similar duties and responsibilities. In the City's view, the Analyst position requires only general knowledge and on the job training; the position does not require discretionary decisions and judgements. The City asks the Commission to dismiss the petition because it essentially seeks a unit clarification.

DISCUSSION

The Union and the City argue that we should dismiss Arneson's petition for election because in reality she is seeking a unit clarification. The Union and the City correctly note that historically we have not allowed individual employees to file unit clarification petitions. CITY OF GREEN BAY, DEC. NO. 12682 (WERC, 8/74). However, the unit in which Arneson is presently included is a non-professional employee unit. Section 111.70(4)(d)2.a., Stats.,

prohibits inclusion of professional employees in a non-professional employee bargaining unit unless the professional employees have affirmatively voted to be so included. Arneson asserts she is a professional employee who was involuntarily included in the non-professional unit without a vote. If she is a professional employee, her inclusion violates the mandate of Sec. 111.70(4)(d)2.a., Stats., and she is entitled to an election to determine whether she (and any other professional employees in the unit) wishes to continue to be so included. On that basis, we conclude that her election petition is properly before us. We proceed to consider whether she is a professional employee.

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

. . .

1. Any employee 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 specialize 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 employee 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 to become a professional employee as defined in subd. 1.

In CHIPPEWA COUNTY, DEC. NO. 10497-B (WERC, 4/98), the Commission discussed the significance of an advanced degree in determining professional status under the statute as follows:

In KENOSHA UNIFIED SCHOOL DISTRICT, DEC. NO. 10558-C (WERC, 12/94), the Commission recited a number of factors that have been given weight in its case-by-case determinations in prior cases applying the Sec. 111.70(1)(L)1.d. requirement to computer related positions:

As we noted in BROWN COUNTY, DEC. NO. 7954-F (WERC, 3/91),

. . . the statute does not require that the incumbent of a position hold a college degree for the position to be found professional. This is true because the statute defines a professional position as one that cannot be performed without knowledge of certain kind, i.e., that which is usually acquired through "a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital." In other words, the course of study is a definition of the required knowledge which is the criterion, but is not the criterion itself. It necessarily follows that some professional positions require this kind of knowledge even though the incumbent acquired it through means other than a formal program of instruction or a college degree.

Thus, in OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86) and SUN PRAIRIE, DEC. NO. 20841-B (WERC, 10/86), cited by the County, the Commission found that although the incumbents did not possess a degree, the required knowledge was of the type customarily acquired through social work and engineering degrees, respectively and therefore satisfied the Sec. 111.70(1)(L)1.d. test.

By the same token, it follows that an employer might insist an applicant for a position hold certain specialized educational credentials, but if the performance of the job duties does not require that body of knowledge, the position would not be found to be professional. In other words, an employer cannot cause a position to be professional within the meaning of the Statute by establishing educational standards which do not provide the knowledge necessary to fulfill the tasks associated with the position.

Therefore, the professional status of a position does not turn upon the incumbent's possession of an advanced degree or a stated requirement that an advanced degree is necessary for that position. Instead, the relevant inquiry is whether the performance of the tasks

associated with the position requires a body of knowledge which meets the requirements of Sec. 111.70(1)(L)1.d., Stats. WALWORTH COUNTY METROPOLITAN SCHOOL DISTRICT, DEC. NO. 29527 (WERC, 1/99). As we stated in MARINETTE COUNTY, DEC. NO. 26675 (WERC, 11/90),

The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is customarily acquired, but it is the nature of the work that the Employer requires of the employee on which the Statute focuses its attention. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work involved. See, e.g., OUTAGAMIE COUNTY (DISTRICT ATTORNEY'S OFFICE), DEC. NO. 21143-A (WERC, 10/86). To meet the requirement of Sec. 111.70(1)(L)1.d., Stats., it is not essential that the incumbent have in fact acquired that knowledge through the means specified in 1.d., but only that the knowledge required to perform the incumbent's job duties be of a type customarily acquired through the means specified in 1.d. CHIPPEWA VALLEY TECHNICAL COLLEGE, supra.

When presented with a dispute concerning the professional or non-professional status of a position, the Commission is not bound to decide the case consistent with the judgements of the parties as reflected in their prior actions. CITY OF SHEBOYGAN, DEC. NO. 7378-A (WERC, 5/89). Rather, it is the record evidence presented to us in each specific case which we are required to assess in determining the professional or non-professional status of a position. The parties' prior agreements concerning the nature of the work can be but are not always reliable indications about the nature of the work itself or its statutory sufficiency to render the position professional. MARINETTE COUNTY, SUPRA.

The job description for the Crime Analyst indicates that two years of prior field experience as a Patrol Officer and/or Investigator is "highly desirable" and that an associate degree in Criminology, Police Science or Computer Science is a minimum educational requirement. In addition, the job description states that prior experience in statistical analysis (database operations, etc.) and a demonstrated ability to use databases, spread sheets, word processors, mainframe applications and other computer experience is required for the position.

Arneson's duties related to statistical analysis present a somewhat mixed picture. It appears that those duties are limited to determining whether there is a statistically significant sample and to what standard deviation the sample is significant. While Arneson performs some regressive analyses, she doesn't typically perform regression calculations, i.e., plotting points and creating a regression line. Neither does the testimony establish that Arneson makes independent judgments or determinations of what variables to enter as data. Her data-entering duties appear to us to follow a known computer-established formula or recipe. Based on the foregoing, on balance, we conclude that the knowledge of statistics needed to perform the

statistical analysis required by this position can be gained in an introductory statistics course offered at a technical college or other undergraduate college level and does not require a prolonged course of specialized intellectual instruction.

We recognize that Arneson has a Bachelor's Degree in Psychology/Sociology. However, as noted above, when determining professional employee status, we must focus not on the educational attainment of the employee but rather on how the knowledge needed to perform the work in question is typically acquired.

We acknowledge that the City itself initially described the duties of the Crime Analyst as "responsible, professional and technical." (Finding of Fact 10) The City, of course, subsequently concluded that due to a variety of consideration including the job requirement of only an associate degree, the position was not a professional one.

We agree. Based on the current required duties of the position, we find it to be both "responsible" and "technical." We do not believe it is professional, however, because it does not appear that the knowledge needed to perform this position is customarily acquired through a prolonged course of specialized intellectual instruction and study in an institution of higher education. Thus, the source of knowledge needed to perform work of her position does not satisfy the provisions of Sec. 111.70(1)(L)1.d., Stats. 1/ Accordingly, we have dismissed her election petition.

1/ Given this conclusion, we need not and do not decide whether her work satisfies the requirements of Sec. 111.70(1)(L)1.a., b., or c., Stats.

Dated at Madison, Wisconsin this 1st day of February, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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