

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WALWORTH COUNTY

Involving Certain Employees of

WALWORTH COUNTY

Case 7
No. 55135
ME-885

Decision No. 9394-G

Appearances:

Mr. Michael J. Wilson, Representative at Large, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite "B", Madison, Wisconsin 53717-1903, appearing on behalf of Walworth County Courthouse Employees, Local 1925B, AFSCME, AFL-CIO.

Attorney Dennis D. Costello, Corporation Counsel, Walworth County, 100 West Walworth Street, P.O. Box 1001, Elkhorn, Wisconsin 53121-1001, appearing on behalf of Walworth County.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On May 4, 2001, Walworth County filed a Petition To Clarify Bargaining Unit with the Wisconsin Employment Relations Commission asserting the Assistant Sanitarians, Zoning Officers and 4-H Program Assistant are professional employees who should be excluded from the non-professional employee collective bargaining unit represented by Walworth County Courthouse Employees, Local 1925B, AFSCME, AFL-CIO.

Hearing was held by Commission Examiner Coleen Burns on October 4, 2001 in Elkhorn, Wisconsin, at which time the parties mutually agreed that two Assistant Sanitarians

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would be excluded from the bargaining unit as professional employees and the 4-H Program Assistant would remain in the unit represented by Local 1925B. The parties were unable to resolve the status of the three Zoning Officers.

The parties filed written argument, the last of which was received January 30, 2002.

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

FINDINGS OF FACT

1. Walworth County Courthouse Employees, Local 1925B, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at 8033 Excelsior Drive, Madison Wisconsin. The Union is the exclusive collective bargaining representative of a bargaining unit of non-professional employees of Walworth County.

2. Walworth County, herein the County, is a municipal employer with offices at 100 West Walworth Street, Elkhorn Wisconsin.

3. The County exercises its statutory land management responsibilities through a Land Management Department under the oversight of the Land Management Committee. The Department is divided into four units – planning (three technical employees), zoning (three clerical employees and the three Zoning Officers), sanitation (one clerical employee and the two Assistant Sanitarians) and geographic information system (four technical/support employees plus non-employee contractors). Gene Kovacs is the Department Director and Debora Grube the Zoning Manager.

4. The primary function of the Zoning Officer is to administer the County zoning and shoreland zoning ordinances under the general direction of the Zoning Manager. Over the past several years, there have been additional program responsibilities placed on the Zoning Officers, as well as increased general workload. In late 2000, the State legislature imposed a mandate of regulating mineral extractions, which required additional knowledge and training on the part of the Zoning Officers. The State Department of Natural Resources has also increased its activity regulating shoreland zoning and wetlands delineation, which again caused the County to provide additional training and allocate additional resources to the zoning function.

The Zoning Officer is at the Union bargaining unit's highest contractual pay grade, 14, with ending 2001 wages ranging from \$14.77 to \$18.81 per hour. This was also the pay range of the Assistant Sanitarians prior to the parties' agreement to exclude them from the bargaining unit as professional employees.

5. Nicholas Sigmund has been a Zoning Officer for the County for about two years, having previously worked four years as a private soil tester. He was hired in early 2000 after the County posted a job notice with the following elements:

2000 WAGE:	<u>MIN</u> <u>MAX</u>
	14.05 - 17.90 PAYMENT IS BI-WEEKLY
EDUCATION REQ:	HIGH SCHOOL DIPLOMA OR GED EQUIVALENT SUPPLEMENTED BY COURSEWORK IN NATURAL RESOURCES, PLANNING OR RELATED FIELD OR EQUIVALENT COMBINATION OF EDUCATION AND EXPERIENCE PROVIDING THE KNOWLEDGE, SKILLS AND ABILITIES LISTED HEREIN.
EXPERIENCE REQ:	4-5 YEARS OF ZONING, PLANNING, BUILDING, OR RELATED EXPERIENCE.
SKILLS REQ:	ABILITY TO INTERPRET MAPS, AERIAL PHOTOS, LAND DESCRIPTIONS, SOILS DATA AND CODE REQUIREMENTS. KNOWLEDGE OF STATE, FEDERAL AND LOCAL LAWS AND REGULATIONS AFFECTING PLANNING, DEVELOPMENT, LAND USE REGULATIONS AND THE ZONING PROCESS. ABILITY TO RELATE TO AND COMMUNICATE EFFECTIVELY AND POSITIVELY WITH STAFF, SUPERVISORS, THE PUBLIC, PUBLIC OFFICIALS AND OTHER AGENCIES. ABILITY TO COMMUNICATE EFFECTIVELY BOTH VERBALLY AND IN WRITING ABILITY TO WRITE CLEAR, CONCISE REPORTS AND LETTERS WITH PRESCRIBED DEADLINES. STRONG ORGANIZATIOINAL SKILLS.

ABILITY TO PROBLEM SOLVE BOTH INDEPENDENTLY AND AS PART OF A TEAM.

ABILITY TO CONDUCT ON-SITE ZONING INVESTIGATIONS AND TO GATHER AND DOCUMENT EVIDENCE OF ZONING VIOLATIONS.

ABILITY TO CONFIDENTLY REPRESENT THE DEPARTMENT IN COURT-RELATED MATTERS.

ABILITY TO MANAGE MULTIPLE PROJECTS AT THE SAME TIME.

STRONG WORD PROCESSING SKILLS AND GENERAL COMPUTER SKILLS.

PHYSICAL REQ:

ESSENTIAL FUNCTIONS OF THIS POSITION ARE COMPLETED WHILE SITTING, STANDING OR WALKING. ABILITY TO REACH WITH HANDS AND ARMS, USE HANDS TO FINGER, HANDLE OR FEEL, CLIMB OR BALANCE AND STOOP, KNEEL, CROUCH OR CRAWL, AND LIFT UP TO 25 POUNDS OCCASIONALLY. ABILITY TO MAINTAIN VISUAL CONCENTRATION AND AUDITORY ACUITY REQUIRED. THIS POSITION IS EXPOSED TO OUTDOOR WEATHER CONDITIONS AND ENVIRONMENTAL FUMES/AIRBORNE PARTICLES, AND MAY OCCASIONALLY WORK IN HIGH, PRECARIOUS PLACES. POST-OFFER PHYSICAL REQUIRED.

SPECIAL REQ:

THIS POSITION REQUIRES A VALID DRIVER'S LICENSE IN GOOD STANDING. ACCESS TO A RELIABLE VEHICLE, AND MAINTENANCE OF AUTOMOBILE LIABILITY INSURANCE. USE OF PERSONAL VEHICLE MAY BE REQUIRED AT TIMES (MILEAGE WILL BE REIMBURSED).

DESIRED:	ZONING CODE ENFORCEMENT EXPERIENCE. GENERAL KNOWLEDGE OF SHORELAND/WETLAND REGULATIONS, SANITARY CODES, PUBLIC AND ENVIRONMENTAL HEALTH PRACTICES AND LAND SURVEY TECHNIQUES. B.S. IN NATURAL RESOURCES, PLANNING OR RELATED FIELD.
JOB SUMMARY:	THIS POSITION IS RESPONSIBLE FOR THE ADMINISTRATION, INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT OF THE WALWORTH COUNTY ZONING AND WALWORTH COUNTY SHORELAND ZONING ORDINANCES UNDER THE GENERAL DIRECTION OF THE ZONING MANAGER. THIS POSITION CONDUCTS RESEARCH, INVESTIGATES COMPLAINTS AND VIOLATIONS, REVIEW PLANS, ISSUES PERMITS AND ASSURES COMPLIANCE WITH APPLICABLE REGULATIONS, CONDUCTS ON-SITE INSPECTIONS AND COMMUNICATES WITH THE GENERAL PUBLIC ON A DAILY BASIS. DETAILED JOB DESCRIPTION AVAILABLE FROM HUMAN RESOURCES DEPARTMENT.

At the time of hearing, this was the County's operative job notice for the position of Zoning Officer. The County had pending, at time of hearing, consideration of an amended position description which would increase the "Education Required" component to a four-year degree.

Sigmund is a certified soil tester and has a license to inspect private septic systems, and is presumed to satisfy the continuing education credits for these credentials. He graduated from UW-Stevens Point in December 1995 with a major in natural resource management and minor in soil science. Although there is no such formal certification or licensure, Sigmund has attended a training course for wetland delineations. The highest level of mathematics that Sigmund studied at high school or college was trigonometry calculus.

Dale Smith has been a Zoning Officer for approximately seven years, after working for the County as an Assistant Sanitarian and as a private building inspector. Holder of an associate degree in police science, Smith also previously worked in law enforcement. He holds current certification in the uniform dwelling code, the commercial building code, electrical code, plumbing code and soil erosion, and attends to his annual recertification training. He also satisfies his annual three-credit requirement for waste treatment certification.

Nancy Welch has been a Zoning Officer for the County for about four years, following about six years on the zoning unit's clerical staff. She has a high school diploma. Based on her daily exposure to the zoning ordinances and contact with other staff and the public, she developed sufficient understanding of the duties and demands of the position of Zoning Officer that she was able to take and pass the test for the position.

As part of their application process, all County Zoning Officers have taken and successfully passed the Zoning Officer Exam, consisting of about 15 pages of true/false, multiple choice, define and fill-in-the-blank questions on legal concepts, procedures and terminology; a dozen questions testing skills in algebra and geometry; an essay question; a scaling exercise; a surveying exercise and a series posing questions of practical application.

6. On August 31, 1999, Zoning Officer Welch and then-Zoning Officer Jim Sell completed a Job Description Questionnaire (JDQ), which was identical but for their answers as to personal education, experience and skills. According to the JDQ, the Zoning Officers spend 30% of their time in technical review of and action on zoning permits; 20% investigating zoning complaints; 20% performing on-site compliance inspections; 15% in public contact and information, and the rest in miscellaneous activities. They therein stated they believed the position had the third highest of six levels of mathematics requirements, the need to apply "mathematical concepts such as probability and statistical inference, and fundamentals of plane and solid geometry and trigonometry." They therein further stated the position demanded the highest levels of reading, writing and speaking skills, and the need to use legal terminology. The JDQ reflected that they believed there was an "unusual or unique mental requirement," namely "(t)he ability to analyze and interpret Ordinances, policies, state regulations and some building code requirements and consistently apply them to a variety of different scenarios. Insight into these requirements is necessary in order to perform basic functions as a Zoning Officer." In their individual responses, Sell noted that he held a bachelor's degree in natural resources, and had four to five years prior experience with the State Department of Natural Resources and the County conservation department. Welch noted that she had a high school diploma plus two years formal preparation, plus four to five years prior work experience described as follows:

Assisted the public with the permit process, general zoning regulations and various processes such as rezone and variance procedures and requirements. Worked closely with the professional Zoning staff for a couple years learning the technical processes involved with zoning determinations/interpretations.

According to a handwritten Job Specifications analysis for Snell and Welch that Zoning Manager Grube approved on September 7, 1999, the position's "**minimum** acceptable formal preparation (or equivalent) required to qualify for the position" (emphasis in original) was a bachelor's degree or its formal preparation in such fields as "geography, land use, soils, planning, code enforcement." The job specifications also list "2 years in a zoning or planning field working with the public + appearing in court" as prior work experience "required to qualify for this position," and "none" as the "list (of) licenses, certificates, or registrations that are required to perform the essential duties of this job." Grube also added to the Snell and Welch JDQ's the need to use "surveying, land use and legal description terminology."

7. In the spring of 2001 the zoning unit began working to reclassify the Zoning Officer position and to hire another Zoning Officer. On June 8, 2001, the incumbent Zoning Officers prepared an updated JDQ which included the following elements:

Position Summary:

The Zoning Administrator/Officer position administers and enforces the Walworth County Zoning Ordinances and Shoreland Zoning Ordinances. The Zoning Administrator/Officer performs a high level of professional activities pertaining to planning and zoning, including land use, zoning, development review, variance requests and enforcement activities to assure the comfort, health, safety, prosperity, aesthetics and general welfare of Walworth County.

As to the position's "Essential Duties and Responsibilities," the JDQ indicated that the incumbents spent 46% of their time providing technical assistance to the public through phone calls, meetings and appointments concerning permits, variances, land divisions, violations, land use issues, and development criteria pertaining to the various relevant ordinances and regulations; 20% of their time implementing the zoning and shoreland zoning ordinances, including coordinating the permitting process with other permit-requiring agencies, reviewing applications, parcel splits, certified survey maps, reviewing approved land disturbance permits issued by the Land Conservation Department and approving or denying all applications as determined during the review process; 17% of their time investigation alleged violations of the zoning and shoreland zoning ordinances, including assessing punitive permit fees when warranted, managing time frames for compliance, presenting evidence in circuit court, serving warrants, preparing documentation for Corporation Counsel's office to proceed with

complaints; 7% of their time meeting with department heads and other staff to discuss items and projects of concern; 5% of their time conducting field inspections of permitted projects for compliance and taking action to correct any discrepancies; and nominal amounts of time reviewing Board of Adjustment applications for accuracy and reviewing zoning and conditional use applications.

As to the educational requirement for the position, the JDQ listed a bachelor's degree or its equivalent in formal preparation, in the fields of "public administration, planning, natural resources, etc." In response to the question regarding "the licenses, certificates, or registrations that are a minimum requirement to perform the essential duties or your position," the Officers answered as follows:

Membership with the Wisconsin County Code Administrators is required. Not required, but extremely helpful is wetland delineation certification/training through the Department of Natural Resources and Army Corp. (sic) of Engineers, Certified Soil Tester license, Private On-Site Waste Treatment System Inspectors License, and State Building Inspector certification.

The JDQ also stated that the position's math requirement was the third lowest out of six categories, namely that incumbents were "required to calculate figures and amounts such as area, circumference, and volume. Required to apply basic algebra and geometry to perform work." Specifically, the job duties were said to require incumbents to convert units of measure, convert fractions and decimals, determine percentage of slope, calculate area, determine measurements using angles of lines and calculate percentage of assessed value. The JDQ also set the job's reading, writing and speaking skills at the highest level, namely the ability to read, analyze and interpret the most complex documents; the ability to respond effectively in writing to the most sensitive inquiries or complaints and write speeches and articles using original or innovative techniques or style; the ability to make effective and persuasive speeches and presentations on controversial or complex topics. The position was also said to require the use of specialized terminology, namely legal, surveying, land use and legal descriptions.

8. On June 12, 2001, Zoning Manager Grube wrote to Department Director Kovacs as follows:

I have reviewed the attached formal request from Dale Smith, Zoning Officer, for the reclassification of the Zoning Officer's position because of various job duties, responsibilities and educational requirements that have changed over the years.

Zoning Officers play a crucial role in Walworth County's zoning code enforcement process. These officers may provide the first and last impression a citizen has of county government. Zoning officers carry on their shoulders responsibilities such as increasing public safety, preventing fire hazards, protecting property values, and maintaining a high quality of life throughout our County. It is imperative, therefore, that those that review this position recognize the pressures and expectations put on our code enforcement personnel and allocate the proper resources and compensation.

I agree with the job description as written and believe a reclassification is warranted. I am forwarding this request to you with the hopes of having this position reviewed for reclassification and/or possible upgrade. If you have any questions, please feel free to give me a call.

The Job Specifications analysis prepared by Grube that accompanied the June 12, 2001 memo identified a bachelor's degree (or its equivalent formal preparation) in "natural sciences, land use, planning, public administration, etc." as the minimum formal education required to qualify for the position and answered the question regarding licensure as follows:

Membership with the Wisconsin County Code Administrators is required. A recently mandated requirement is the Training required to enter Mines/gravel pits from the Department of Commerce, Operations Bureau-Mine Safety Program. Not required, but extremely important is wetland delineation certification/training through the Department of natural Resources and Army Corps of Engineers, Certified Soil Tester License, Private On-site waste treatment system inspectors license, Floodplain Management Training and State Building Inspector certification. Also required are Continuing Education updates annually through ETN's and University of Wisconsin zoning related conferences.

9. The Zoning Officer's work is predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in its performance. The character of the work and result accomplished cannot be standardized in relation to a given period of time, but the Officer's work 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 an institution of higher education.

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

CONCLUSION OF LAW

The occupants of the position of Zoning Officer are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The position of Zoning Officer remains included in the bargaining unit of the County's non-professional employees represented by Walworth County Courthouse Employees, Local 1925B, AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 9th day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

WALWORTH COUNTY

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

POSITIONS OF THE PARTIES

In support of its position that the Zoning Officers are professional employees who therefore should be excluded from the Union's non-professional employee bargaining unit, the County asserts that, in the instant case, one incumbent possess a four-year bachelor's degree, one has an associate degree and one has a high school diploma plus over five years or prior experience in the zoning department. All three have taken and passed the same test; all perform the same duties, hold the same powers and exercise the same discretion. All future hires for these positions will be required to have a college degree.

Zoning Officers are very similar to Assistant Sanitarians the parties have agreed are professional employees. They use their discretion in a variety of ways. They set their own schedules and require very little supervision. Although the education level of the incumbents is varied, the position has become a college degree position.

The Zoning Officers are required to attend continuing education classes, have knowledge in advanced mathematics, and understand a variety of laws and technical journals.

The work of these positions is so varied that standardization would be impossible. Each property and situation is unique and the application of the zoning law is subject to judgment and interpretation that could only be performed by trained professionals.

In support of its position that Zoning Officers are not professional employees, the Union asserts that the Zoning Officers are not professional employees because the Sec. 111.70(1)(L)1.b., Stats. criterion is not met. Zoning enforcement is a highly regulated field. The sum of the statutes, rules, etc., introduced by the County is the antithesis of an occupation that enjoys independent judgment and discretion. The work of the Zoning Officer is supervised on a daily basis by the Zoning Manager. The Zoning Officers do not enjoy the same discretion and independent judgment in the exercise of their duties as does the Zoning Manager.

The Zoning Officers are also not professional employees because the Sec. 111.70(1)(L)1.d., Stats. criterion is not met, in that the position does not require knowledge beyond a general academic education and experience. Both the test administered to all applicants and the backgrounds of Welch and Smith support the conclusion that work of the

position does not require knowledge of an advanced type customarily acquired through a prolonged course of specialized instruction.

All that is required is a high school diploma or GED supplemented by coursework or an equivalent combination of education and experience. To pass a test an applicant does not have to possess knowledge of an advanced type in a field of science customarily acquired by prolonged study in an institution of higher learning.

Zoning Officers have a very difficult job which the Union does not seek to diminish. Indeed, the Union believes that the responsibilities, increasing workload and duties justify a wage adjustment obtained through collective bargaining. But deserving an increase does not satisfy the statutory definition of a professional employee. The petition should be dismissed.

DISCUSSION

Section 111.70(1)(L), Stats., defines a “professional employee” as:

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 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 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 himself to become a professional employee as defined in subd. 1.

The County contends that the work of the Zoning Officers meets all of the criteria in the definition of a “professional employee” set forth in Sec. 111.70(1)(L)1, Stats. The Union argues that their work does not meet the criteria established by Secs. 111.70(1)(L)1.b. and d., Stats.

As to the question of whether their work meets the Sec. 111.70(1)(L)1.b., Stats. criterion (does the work involve “the consistent exercise of discretion and judgment in its performance”), we conclude that the Zoning Officers’ work does meet this criterion. The Union asserts that because the work of the Zoning Officers involves constant reference to various statutes, ordinances and codes, they do not have discretion or judgment to exercise. However, it is when Zoning Officers apply the law to the various fact situations they confront that they consistently exercise the type of discretion and judgment which satisfies Sec. 111.70(1)(L)1.b., Stats. The Union also cites the ongoing consultation between the Zoning Manager and the Zoning Officers as evidence of their limited discretion and judgment. However, we view such consultation as no more than the wise use of an available resource when the Zoning Officers perform their job responsibilities. Thus, we also reject this Union argument and conclude that the work of the Zoning Officers does involve “the consistent exercise of discretion and judgment.”

Turning to the question of whether the work of the Zoning Officers satisfies the Sec. 111.70(1)(L)1.d., Stats. criterion (does the work 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 parties correctly focus their arguments on whether the knowledge needed to perform the work is customarily acquired through a four year degree in a specialized field. When answering this question in the negative, the Union points to the absence of such an educational requirement in the current County job notice and the fact that two of the three incumbent Zoning Officers do not have such a degree. When answering this question in the affirmative, the County cites its ongoing efforts to formally adopt a specialized four year degree requirement, the language in the current job notice that a “B.S. IN NATURAL RESOURCES, PLANNING OR RELATED FIELD” is “DESIRED”, and evidence indicating that since 1999 it has been and will continue to be the County’s practice to only hire Zoning Officers with a specialized four year degree.

Consistent with the statutory language of Sec. 111.70(1)(L)1.d., Stats., we have long held that although the academic credentials possessed by incumbents and required by the employer are relevant to the application of Sec. 111.70(1)(L)1.d., Stats., the fundamental question remains one of determining how the knowledge needed to perform the work is customarily acquired. Thus, as we stated in CITY OF SUN PRAIRIE, DEC. NO. 20841-B (WERC, 10/86),

While an incumbent's actual credentials and the employer's actual hiring criteria are relevant in determining whether a position falls within the meaning of Sec. 111.70(1)(L)1.d., above, they are not necessarily determinative. Rather, that issue ultimately depends upon the nature of the work and the means by which the knowledge required to perform that work is customarily acquired. Thus, we have previously held that the statutory definition does not limit professional status only to those possessing specialized bachelor's degrees, nor is it essential that the incumbent possess (or that the employer seek candidates with) state certification or licensing as a professional. What is essential under 1.d. is that the knowledge required for the incumbent's job duties must be of a type customarily acquired through the means specified in 1.d.

See STATE OF WISCONSIN, DEC. NO. 11667-C (WERC, 2/02)

Just as it can be the case that an individual is a professional employee even where they do not in fact possess a four year specialized degree and/or the employer does not require same, an employee's possession of such a degree and/or the employer's requirement that an employee have such a degree does not automatically qualify the individual as a professional employee. If the work of such an employee does not require knowledge customarily acquired through receipt of a four year specialized degree, then the employee is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats. BROWN COUNTY, DEC. NO. 7954-F (WERC, 3/91).

Having considered the record as a whole, we are persuaded that the knowledge needed to perform the work of a Zoning Officer is not customarily acquired through receipt of a four year specialized degree. In reaching this conclusion, we rely heavily on our consideration of the testimony as to the duties of the Zoning Officers and the exhibits presented as to the knowledge base with which Zoning Officers must work. We are also influenced by the evidence that the two non-degreed incumbents capably perform the full range of Zoning Officer job responsibilities. From our review of the record, we are satisfied that although (as indicated in the current job notice set forth in Finding of Fact 5) a specialized four year degree is a "desirable" qualification, the knowledge thereby acquired is not "required" to do the work. Thus, because the work of the Zoning Officers does not meet the Sec. 111.70(1)(L)1.d., Stats. criterion, the Zoning Officers are not professional employees within the meaning of Sec. 111.70(1)(L)1.,Stats,

Our decision in GREEN LAKE COUNTY, DEC. NO. 24955-A (WERC, 8/98) as to a Code Enforcement Officer strongly supports our conclusion here. In that case, the subject position was responsible for enforcing county ordinances regarding private sewage systems, land use and zoning including subdivision, floodplain and shoreland ordinances, issuing zoning/land use permits and related work including complaint research and follow up. Thus, this position is very comparable to the Zoning Officers before us.

The Code Enforcement Officer position description called for a “college degree in resource management, environmental health or a closely related field.” We found the employee was not a professional employee and stated as follows:

The record indicates that the basic requirements to perform the majority of the functions performed by a Code Enforcement Officer are the Soil Tester certification and the Plumber Inspector II certification. Those certifications are needed for reviewing and approving soil tests and sanitary permit applications and investigating and making determinations on complaints regarding private sewerage systems. Each of these certifications require an eight-week course of study and passing a final examination, as well as continuing education to maintain certification. Although a college degree in resource management or environmental health would undoubtedly be helpful in performing the entire scope of the position’s functions, it is not a necessity.

In reaching our decision, we have considered but rejected the County’s argument that the knowledge needed to perform the work of the Zoning Officers is much the same as that needed by the Environmental Sanitarian found to be a professional employee in CHIPPEWA COUNTY, DEC. NO. 10497-A (WERC, 8/97). While we acknowledge that there are similarities between the work of the two positions, we remain persuaded that the knowledge provided by a four year specialized degree is “desirable” but not “required” to do the Zoning Officer’s work.

We also acknowledge the County’s citation of CITY OF KENOSHA, DEC. NO. 26988 (WERC, 8/91) where, as here, the parties stipulated that sanitarians were professional employees. Because in both instances we were not called upon to resolve a dispute as to the professional status of these employees, we do not find either KENOSHA or the parties stipulation here to be of any analytical value when determining the status of the Zoning Officers.

Given all of the foregoing, the Zoning Officers will continue to be included in the non-professional employee bargaining unit represented by Walworth County Courthouse Employees, Local 1925B.

Dated at Madison, Wisconsin, this 9th day of May, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Steven R. Sorenson /s/

Steven R. Sorenson, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

