

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
DANE COUNTY JOINT COUNCIL :
OF UNIONS, AFSCME, AFL-CIO : Case 13
Involving Certain Employees of : No. 14800 ME-673
DANE COUNTY : Decision No. 10492-D
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Appearances:

Ms. Judith H. Toole, Dane County Assistant Corporation Counsel, appearing
on behalf of Dane County.
Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME,
AFL-CIO, appearing on behalf of the Union.

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

Dane County having, on June 5, 1984, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit consisting of certain regular full-time and regular part-time permanent employees of the County, supervisory employees, law enforcement employees of the Sheriff and Traffic Departments represented by Dane County Joint Council of Unions, AFSCME, AFL-CIO to exclude the position of Specification Coordinator on the basis of professional status; and a hearing in the matter having been conducted in Madison, Wisconsin, on October 16, 1984, by Examiner Deborah A. Ford, a member of the Commission's staff; and the parties having filed briefs by January 16, 1985; and the Commission, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Dane County, hereinafter referred to as the County, is a municipal employer having its offices at Room 311, City-County Building, 210 Monona Avenue, Madison, Wisconsin.

2. That Dane County Joint Council of Unions, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at 5 Odana Court, Madison, Wisconsin.

3. That the Union is the exclusive collective bargaining representative of the following employees of the County:

All regular full-time and regular part-time permanent employees of the County appointed according to the Civil Service procedure excluding supervisory employees; law enforcement employees of the Sheriff and Traffic Departments; non-clerical employees of the Highway Exposition Center and Airport Departments; confidential employees; professional employees as defined by Wisconsin Statutes 111.70 and craft employees so certified by the Wisconsin Employment Relations Commission.

4. That James Engeseth, occupying the position of Specification Coordinator, is among the approximately 730 employees represented by the Union in the above-described unit.

5. That the position of Specification Coordinator is contained within the Purchasing Division of the Department of Administration for the County; that Engeseth has been employed in the Purchasing Division for over sixteen years and has been the Specification Coordinator for a little over a year; that in his job as Specification Coordinator, Engeseth assists the County's Purchasing Agent in

the administration of the County's purchasing program and acts on his behalf when the agent is absent; that he develops specifications for the purchase of capital equipment and services by the County; evaluates bids for conformity to specifications and compliance with applicable policies, ordinances and regulations; coordinates joint purchasing efforts among other governmental agencies; provides technical advice of staff and various elected officials; prepares budget estimates for purchases; evaluates and recommends bid proposals; reviews purchases for compliance with bid specifications; authorizes and assigns purchase orders covering emergency services and supplies; and corresponds and meets with vendor representatives.

6. That the prerequisites for the job are as follows: "Any combination equivalent to graduation from college with a degree in business or public administration or a related field, and two years experience in the purchasing of services and supplies for a governmental agency."

7. That Engeseth does not have a college degree, but he has had two years of study at the University of Wisconsin in the areas of sociology and economics; that he has also taken courses in data processing, economics and supervision at Madison Area Technical College and has attended special seminars on purchasing.

8. That although the duties of Specification Coordinator are predominantly intellectual and varied in character, involve a measure of discretion and cannot be standardized over a given period of time, the position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

CONCLUSION OF LAW

That the occupant of the position of Specification Coordinator is not a professional employe within the meaning of Sec. 111.70(1)(L), Stats.

On the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER 1/

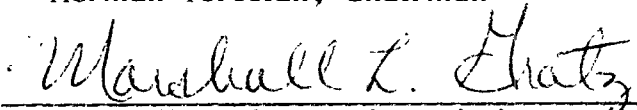
That the position of Specification Coordinator properly remains included in the bargaining unit set forth in Finding of Fact 3.


Given under our hands and seal at the City of
Madison, Wisconsin this 8th day of April, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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,

(Footnote continued on Page 3)

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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

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

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

DANE COUNTY

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

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

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

All the criteria found either in subsection 1 or subsection 2 must be present in order to find that a particular employe is professional. 2/ However, the above definition of "professional" employe is not limited to employes personally possessing college degrees. 3/

POSITIONS OF THE PARTIES

The County contends that the position of Specification Coordinator should be excluded from the bargaining unit because it is a professional one within the meaning of the Municipal Employment Relations Act. In support of its contention, the County argues that the position meets the criteria set out in the statute in that it is predominantly intellectual, incapable of standardization, involves the exercise of discretion in decision-making and requires a bachelor's degree in business or public administration or equivalent experience.

2/ Milwaukee County, Dec. No. 14786-B (WERC, 4/80). See generally, City of Wauwatosa, Dec. Nos. 12032-C, 17241-17244 (WERC, 8/79); City of Cudahy, Dec. No. 19507 (WERC, 3/82); Blackhawk VTAE, Dec. No. 13460-A (WERC, 9/75) and Dane County, Dec. No. 21397 (WERC, 2/84), aff'd, Dane County v. WERC, Dec. No. 84 CV 1409 (CirCt Dane, 1/85).

3/ Milwaukee County, Dec. Nos. 8765-E, 14786 (WERC, 7/76).

The Union, contrary to the County, argues that the position of Specification Coordinator, is appropriately in the unit because it lacks sufficient exercise of discretion and does not require the advanced study or equivalent experience necessary for a finding of professional status.

DISCUSSION

In our opinion, the record does not warrant the conclusion--necessary under Sec. 111.70(1)(L), Stats.--that the Specification Coordinator position is one that 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 high 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 . . .

The reference to a college degree requirement contained in the job description 4/ for the Specification Coordinator position refers only to the rather broad and general fields of "business or public administration or a related field," rather than to a "course of specialized intellectual instruction" such as is referred to in the statute. Moreover, the record leaves doubt as to whether such a degree would be required by the County at all. While the language of the job description could be read as imposing such a degree requirement, Engeseth's supervisor, Kevin Gould, in his testimony, acknowledged that the requirement was "a college degree or its equivalent in experience and training." 5/ Gould also testified that the requirement would not have been an impediment to promoting Engeseth to the position, despite the fact that Engeseth does not possess such a degree or any other. 6/

Furthermore, the nature of the Coordinator duties do not appear to require the sort of advanced study in a specialized field referred to in the statute. Engeseth evaluates and reviews bids based on established criteria set out in County guidelines or statutes. His development of specifications is done pursuant to specific requests from various departments and agencies which set out the requirements of the item needed. Although Engeseth can and does recommend and purchase alternative items, his discretion is limited by the criteria set out in the departmental requests. Engeseth's responsibilities differ from those of the Assistant Purchasing Agents, both of whom are admittedly in the bargaining unit, only in the degree of complexity and monetary value of the projects assigned and the addition of some administrative tasks. Indeed, Gould testified that the requirement of a college degree was intended more for those times when the Coordinator functioned in the absence of the Purchasing Agent than for the bulk of the Coordinator duties. 7/

While the record indicates that Engeseth's long experience has made him effective in and qualified for his position, we must nonetheless conclude that the position is not one which meets the requirement of Sec. 111.70(1)(L)1.d., Stats., above.

4/ "Education and Experience: Any combination equivalent to graduation from college with a degree in business or public administration or a related field, and two years experience in the purchasing of services and supplies for a governmental agency."

5/ Tr. 44-45.

6/ The courses Engeseth has taken do not appear to be in the nature of the prolonged study contemplated by the statute. Engeseth has taken a number of courses at Madison Area Technical College, and has completed two years of study at the University of Wisconsin in economics and sociology. He has also continued to enroll in courses related to his occupation, such as the seminars conducted by the National Institute of Governmental Purchasing.

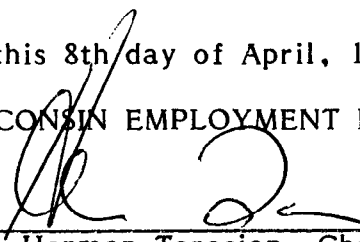
7/ Tr. 46.

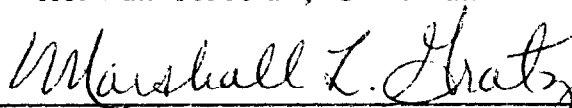
We have therefore concluded that the position of Specification Coordinator is not "professional" within the meaning of the statute and that it therefore belongs in the bargaining unit.

Dated at Madison, Wisconsin this 8th day of April, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner