

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**GENERAL TEAMSTERS UNION LOCAL 662**

Involving Certain Employees of  
**CHIPPEWA COUNTY**

Case 18  
No. 54252  
ME-845

**Decision No. 10497-B**

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Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Attorney Frederick Miner**, 1555 North Rivercenter Drive #202, Milwaukee, Wisconsin 53212, appearing on behalf of General Teamsters Union Local 662.

Weld, Riley, Prenn & Ricci, S.C., by **Attorney Victoria L. Seltun**, 4330 Golf Terrace, Suite 205, P.O. Box 1030, Eau Claire, Wisconsin 54702, appearing on behalf of Chippewa County.

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

General Teamsters Union Local 662 filed with the Commission a petition requesting that the Commission clarify an existing bargaining unit of Chippewa County employees by including therein nine separate positions that were excluded from that unit. Following a hearing by a member of the Commission's staff, and submission of post-hearing arguments, the Commission issued its decision concerning six of those nine positions on August 22, 1997. DEC. NO. 10497-A.

The remaining three positions are the information technology positions held by Richard Merrell, Therese Greenhalgh and Ronald Strasburg. As to each, Teamsters, contrary to the

No. 10497-B

County, had contended that the positions should no longer remain excluded from the existing unit, whereas the County had contended that each should remain excluded on the basis that they were professional and confidential in nature. With regard to those positions, the Commission stated in its August 22 decision that, "[p]rimarily as to the claim of professional status, the existing record does not provide sufficient information for us to reach a decision. Thus, absent voluntary resolution of these claims by the parties, additional hearing will be necessary."

Accordingly, pursuant to notice, a supplemental hearing was conducted in the matter on November 18, 1997, in Chippewa Falls, Wisconsin by Commission Examiner Marshall L. Gratz. At that supplemental hearing, the County withdrew its contentions that the positions at issue were confidential in nature. The parties thereafter submitted supplemental briefs. Upon receiving no reply briefs within the time reserved by the parties for that purpose, the Examiner advised the parties on January 7, 1998 that briefing was completed, marking the close of the supplemental hearing record.

The Commission has reviewed the record as supplemented, and has considered the parties' arguments. On those bases, the Commission issues the following Supplemental Findings of Fact, Conclusions of Law and Order.

### **SUPPLEMENTAL FINDINGS OF FACT**

1. General Teamsters Union Local 662, herein the Union, is a labor organization with offices at 119 West Madison Street, P.O. Box 86, Eau Claire, Wisconsin.

2. Chippewa County, herein the County, is a municipal employer with offices at 711 North Bridge Street, Chippewa Falls, Wisconsin.

3. At all times material, the Union has been the certified exclusive bargaining representative for a unit described in the parties' 1995-1996 contract as:

all regular full-time and regular part-time employees of Chippewa County in classifications listed in Appendix B of this Agreement, including related positions, but excluding professional, administrative, managerial, supervisory, confidential, temporary and part time employees employed less than 976 hours per year....

In 1997, the top wage rate listed in the collective bargaining agreement between the parties was \$12.53, for the positions of Employment Program Coordinator, Work Coordinator, Forest Parks Technician III and Cartographer.

4. Ron Strasburg has been a County Programmer/Analyst for approximately 10 and one-half years, with a 1997 pay rate of \$17.60 per hour, and with the following duties and qualifications as excerpted from the June, 1994 position description for his position:

**Purpose of Position**

The purpose of this position is to develop new and maintain existing computer program applications; diagnose related application problems and implement solutions for Chippewa County.

**Essential Duties and Responsibilities**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Analyzes computer software operating problems and implements solutions.

Tests and documents modifications to existing applications.

Maintains existing computer program applications.

Consults with County computer users to determine program and application needs and modifications. Designs and develops new computer programming and applications. Tests and documents new applications.

Coordinates County systems and software with outside government agencies and other organizations.

Develops applications operating instructions.

Maintains knowledge of existing County computer operating systems and networks.

Operates computer system.

**Additional Tasks and Responsibilities**

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other unit members.

Assists computer users with hardware problems.

Operates main computer printers.

Installs computer cables. Moves terminals and printers.

**Minimum Training and Experience Required to Perform Essential Job Functions**

Bachelor's degree in Information Systems, Computer Science or related field with three to five years experience in information systems, COBOL programming, and computer design and development, or any combination of education and experience that provides equivalent knowledge, skills, and abilities.

**Physical and Mental Abilities Required to Perform Essential Job Functions**

**Language Ability and Interpersonal Communication**

Ability to analyze data and information using established criteria, in order to determine consequences and to identify and select alternatives. Ability to compare, count, differentiate, measure and/or sort, as well as assemble, copy, record and transcribe data and information. Ability to classify, compute, tabulate, and categorize data.

Ability to persuade, convince, and/or train others, including the ability to act in a lead worker capacity. Ability to advise and interpret how to apply policies, procedures and standards to specific situations.

Ability to utilize a variety of advisory and design data and information such as computer hardware and software manuals, computer generated reports, information systems service requests, a variety of computer files and records, County policies and procedures, computer languages and accounting methods.

Ability to communicate effectively with Information Systems personnel, County Department Heads and computer users, State agency personnel, County Board Supervisors, vendor representatives.

**Mathematical Ability**

Ability to apply algebraic and trigonometric formulas, ability to interpret inferential statistical reports, and ability to interpret formulation and equation data.

**Judgment and Situational Reasoning Ability**

Ability to use functional reasoning in performing influence functions such as supervising, managing, leading, teaching, directing and controlling.

Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against sensory and/or judgmental criteria.

**Physical Requirements**

Ability to operate equipment and machinery requiring complex and rapid adjustments, such as computer terminal and keyboard, decollator, burster.

Ability to coordinate hands, eyes, feet and limbs in performing skilled movements such as rapid keyboard use.

Ability to exert very moderate physical effort in sedentary to light work, typically involving some combination of stooping, kneeling, lifting and crouching. Ability to sustain prolonged visual concentration.

**Environmental Adaptability**

Ability to work under generally safe and comfortable conditions where variations of extremes in environmental factors such as temperature variations, odors, toxic agents, violence, noise, vibrations, wetness, disease and/or dust may cause discomfort but where there is little risk of injury.

Chippewa County is an Equal Opportunity Employer. In compliance with the Americans With Disabilities Act, the County will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

When hired, Strasburg possessed a bachelor's degree in data processing and business administration, and he is 10 credits short of a third major in accounting. Before working for the County, Strasburg worked for approximately seven years as a programmer, electronic data processing auditor, and data processing manager for various employers.

The bulk of Strasburg's duties require advanced and specialized knowledge acquired by him through his specialized schooling and prior work experience. He spends about 80% of his time on analysis, design, programming and testing of computer programs. Examples of systems he has developed include an on-line receipting program for the Treasurer's office and implementation of the State's KIDS program for the County. He performs most of his work in the COBOL language, but provides some back up support work on programs written in the RPG language.

Strasburg's supervisor, Richard Patrie does not possess a specialized degree, and he no longer performs programming duties, relying instead on Strasburg and Systems Programmer I Greenhalgh to meet the County's programming needs.

Strasburg is engaged in work that is predominantly intellectual and varied in character; involving the consistent exercise of judgment and discretion in its performance; of such a character that output cannot be standardized in relation to a given period of time; and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

5. Therese Greenhalgh has been a County Systems Programmer I for approximately three and one-half years, with a 1997 pay rate of \$15.22 per hour. The position description for Greenhalgh's position is in the process of being revised. As it existed in June of 1994 that description read as follows:

**Purpose of Position**

The purpose of this position is to provide personal computer hardware and software user consultation and support for Chippewa County.

**Essential Duties and Responsibilities**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Analyzes, installs and configures personal computer software, hardware and peripheral disk drives, memory, printers, etc.

Consults with personal computer users regarding software needs and problems. Implements and tests software modifications and applications. Instructs users on modifications and applications.

Runs and connects cables to computer networks, printers and other peripheral equipment and devices.

Instructs users regarding printer operations, backup procedures, modem operations and PC operating systems.

Implements data backup and restoration procedures for networks and mainframe computer.

Maintains knowledge of current personal computer software and hardware developments.

Maintains mainframe computer. Installs upgrades and new releases of OS/400.

### **Additional Tasks and Responsibilities**

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other unit members.

Prints payroll and voucher checks, tax bills, reports and forms from compiled mainframe computer database.

### **Minimum Training and Experience Required to Perform Essential Job Functions**

Associate degree in Data Processing or Computer Science with one to two years computer experience including COBAL data base and personal computer programming, and one year stand alone PC and network configuration training, or any combination of education and experience that provides equivalent knowledge, skills, and abilities.

## **Physical and Mental Abilities Required to Perform Essential Job Functions**

### **Language Ability and Interpersonal Communication**

Ability to analyze data and information using established criteria, in order to determine consequences and to identify and select alternatives. Ability to compare, count, differentiate, measure and/or sort, as well as assemble, copy, record and transcribe data and information. Ability to classify, compute, tabulate, and categorize data.

Ability to persuade, convince, and/or train others, including the ability to act in a lead worker capacity. Ability to advise and interpret how to apply policies, procedures and standards to specific situations.

Ability to utilize a variety of advisory and design data and information such as computer software and hardware manuals, computer generated reports, technical computer reports and computer languages.

Ability to communicate effectively with Information Systems personnel, County personal computer users, trainees.

### **Mathematical Ability**

Ability to apply algebraic and trigonometric formulas, ability to interpret inferential statistical reports, and ability to interpret formulation and equation data.

### **Judgment and Situational Reasoning Ability**

Ability to use functional reasoning in performing influence functions such as supervising, managing, leading, teaching, directing and controlling.

Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against sensory and/or judgmental criteria.

### **Physical Requirements**

Ability to operate computer terminal/keyboard, calculator/adding machine, telephone, cable tester, common hand tools.



Ability to coordinate eyes, hands, feet and limbs in performing skilled movements such as rapid keyboard use.

Ability to exert very moderate physical effort in sedentary to light work, typically involving some combination of stooping, kneeling, lifting, crouching. Ability to sustain prolonged visual concentration.

Ability to recognize and identify degrees of similarities or differences between characteristics of colors associated with job-related objects.

### **Environmental Adaptability**

Ability to work under generally safe and comfortable conditions where variations of extremes in environmental factors such as temperature variations, odors, toxic agents, violence, noise, vibrations, wetness, disease and/or dust may cause discomfort but where there is little risk of injury.

Chippewa County is an Equal Opportunity Employer. In compliance with the Americans With Disabilities Act, the County will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

Greenhalgh's Essential Duties and Responsibilities, Additional Tasks and Responsibilities, and Physical and Mental Abilities Required to Perform Essential Job Functions, are in fact parallel to those set forth in Strasburg's position description, above. A single revised position description covering Greenhalgh's and Strasburg's positions (and hence upgrading and retitling Greenhalgh's position) has recently been drafted and is pending final approval. The "Minimum Training and Experience Required to Perform Essential Job Functions" in that proposed revised description reads as follows:

Bachelor's degree in information systems, computer science or related field with three to five years experience in information systems, RPG/COBOL programming, and computer design and development, or an associate degree in information systems, computer science or related field with six to nine years of experience in information systems, COBOL programming and computer design and development, or any combination of education and experience that provides equivalent knowledge, skills and abilities.

When hired by the County, Greenhalgh had an associate's degree in data processing from Chippewa Valley Technical College (CVTC). Her prior coursework is such as would enable her to obtain a bachelor's degree in data processing at Lakeland College if she were to take only the various general courses unrelated to computers that she needs to meet the overall bachelor's degree requirements.

Prior to being hired by the County, Greenhalgh performed computer programming tasks for CVTC instructors, completed a four-month programming internship at Abbotsford State Bank, worked two and one-half years as a programmer for Wipfli, Ulrich, Bertelson Certified Public Accounting firm, and two years as a programmer/analyst at Jerome Foods. She also attended a four-day systems analysis and design course at UW-Madison prior to joining the County.

The bulk of Greenhalgh's job responsibilities requires advanced and specialized knowledge. After consultation with her supervisor and the users involved, Greenhalgh devises computerized solutions to the County's information storage, retrieval and reporting needs. Greenhalgh determines the most efficient way to meet those needs, where and how the raw data can most efficiently be located and retrieved, and how to write and/or operate programs to access it and draw it together for analysis. She spends 90% of her time performing analysis, programming and program testing functions. She has written, maintained, and updated at least eight separate systems since being hired by the County. She works primarily in the RPG language but does some back up support for Strasburg on systems written in the COBOL language.

Greenhalgh's supervisor, Richard Patrie does not have a specialized degree, and he no longer performs programming duties, relying instead on Greenhalgh and Strasburg to meet the County's programming needs.

Greenhalgh is engaged in work that is predominantly intellectual and varied in character; involving the consistent exercise of judgment and discretion in its performance; of such a character that output cannot be standardized in relation to a given period of time; and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

6. Richard Merrell has been a County Systems Programmer I for approximately seven years, at a 1997 rate of \$15.22 per hour, with the following duties and qualifications as excerpted from the most recent position description created for his position:

### **Purpose of Position**

The purpose of this position is to provide personal computer hardware and software user consultation and support for Chippewa County.

### **Essential Duties and Responsibilities**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Analyzes, installs and configures personal computer software, hardware and peripheral disk drives, memory, printers, etc.

Prepares personal computer work stations for connections to networks and mainframe computer.

Consults with personal computer users regarding software needs and problems. Implements and tests software modifications and applications. Instructs users on modifications and applications.

Runs and connects cables to computer networks, printers and other peripheral equipment and devices.

Instructs users regarding printer operations, backup procedures, modem operations and PC operating systems.

Implements data backup and restoration procedures for networks and mainframe computer.

Maintains knowledge of current personal computer software and hardware developments.

Operates mainframe computer. Installs upgrades and new releases of OS/400.

### **Additional Tasks and Responsibilities**

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other unit members.

Prints payroll and voucher checks, tax bills, reports and forms from compiled mainframe computer database.

Distributes computer supplies to users.

### **Minimum Training and Experience Required to Perform Essential Job Functions**

Associate degree in Data Processing or Computer Science with one to two years computer experience including COBAL data base and personal computer programming, and one year stand alone PC and network configuration training, or any combination of education and experience that provides equivalent knowledge, skills, and abilities.

### **Physical and Mental Abilities Required to Perform Essential Job Functions**

#### **Language Ability and Interpersonal Communication**

Ability to analyze data and information using established criteria, in order to determine consequences and to identify and select alternatives. Ability to compare, count, differentiate, measure and/or sort, as well as assemble, copy, record and transcribe data and information. Ability to classify, compute, tabulate, and categorize data.

Ability to persuade, convince, and/or train others, including the ability to act in a lead worker capacity. Ability to advise and interpret how to apply policies, procedures and standards to specific situations.

Ability to utilize a variety of advisory and design data and information such as computer software and hardware manuals, computer generated reports, technical computer reports and computer languages.

Ability to communicate effectively with Information Systems personnel, County personal computer users, trainees.

#### **Mathematical Ability**

Ability to apply algebraic and trigonometric formulas, ability to interpret inferential statistical reports, and ability to interpret formulation and equation data.

### **Judgment and Situational Reasoning Ability**

Ability to use functional reasoning in performing influence functions such as supervising, managing, leading, teaching, directing and controlling.

Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against sensory and/or judgmental criteria.

### **Physical Requirements**

Ability to operate computer terminal/keyboard, calculator/adding machine, telephone, cable tester, common hand tools.

Ability to coordinate eyes, hands, feet and limbs in performing skilled movements such as rapid keyboard use.

Ability to exert very moderate physical effort in sedentary to light work, typically involving some combination of stooping, kneeling, lifting, crouching. Ability to sustain prolonged visual concentration.

Ability to recognize and identify degrees of similarities or differences between characteristics of colors associated with job-related objects.

### **Environmental Adaptability**

Ability to work under generally safe and comfortable conditions where variations of extremes in environmental factors such as temperature variations, odors, toxic agents, violence, noise, vibrations, wetness, disease and/or dust may cause discomfort but where there is little risk of injury.

Chippewa County is an Equal Opportunity Employer. In compliance with the Americans With Disabilities Act, the County will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

Merrell has an associate's degree in data processing from CVTC. Prior to working for the County, Merrell worked for eight years as a computer operator for Mason Shoe Company and took one year of computer science classes at UW-Eau Claire (UW-EC).

The bulk of Merrell's job responsibilities requires advanced and specialized knowledge. He serves as the network administrator for the County's five PC networks, to which 94 PCs are attached. He is responsible for installing software; upgrading networks; writing macros, scripts and batch files to configure or execute programs; consulting with PC users regarding applications; and assuring that the PC networks are integrated with the County's AS400 (mini-computer based) network. He troubleshoots software and hardware problems on standalone and networked PCs, relying on his experience and training to identify and solve the problems that arise.

Merrell is the only County employe with PC network capabilities. If he is absent, the County generally contracts with an outside vendor at \$60 - \$85 per hour to provide the services Merrell would otherwise perform.

Merrell is engaged in work that is predominantly intellectual and varied in character; involving the consistent exercise of judgment and discretion in its performance; of such a character that output cannot be standardized in relation to a given period of time; and which requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

#### **SUPPLEMENTAL CONCLUSIONS OF LAW**

1. The occupant of the position of Programmer/Analyst, Ronald Strasburg, is a professional employe within the meaning of Sec. 111.70(1)(L), Stats.
2. The occupants of the position of System Programmer I, Therese Greenhalgh and Richard Merrell, are professional employes within the meaning of Sec. 111.70(1)(L), Stats.

#### **SUPPLEMENTAL ORDER**

The positions/employes identified in Conclusions of Law 1 and 2 shall continue to be excluded from the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 21st day of April, 1998.

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

**CHIPPEWA COUNTY**

**MEMORANDUM ACCOMPANYING SUPPLEMENTAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**POSITIONS OF THE PARTIES**

**Teamsters**

None of the disputed positions are professional. Two of the three incumbents lack bachelor's degrees altogether; none has a bachelor's degree in a field related to his or her job responsibilities. Further, none has achieved outside of academia that level of knowledge and expertise required by the statute to establish professional status. The employees have little meaningful training and seminar experience, and none has acquired significant on-the-job experience simply because their positions do not require a professional level of expertise. Because none of the employees at issue have achieved "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," professional status has not been shown.

An education requirement of only an associate's degree in a highly technical field such as computer science would weigh strongly against a finding of professional status. Citing, WAUKESHA COUNTY, DEC. NO. 26020-A (WERC 9/89) and DANE COUNTY, DEC. NO. 21397 (CirCt, Dane, 1/85). So does the fact that an equivalent level of training or experience could have been substituted for the degree that each position otherwise requires. Citing, BROWN COUNTY, DEC. NO. 11983-C (WERC 1/91). While Merrell and Greenhalgh have associate's degrees in data processing, both could have qualified for their jobs with "education and experience that provides equivalent knowledge, skills and abilities." Merrell testified he did not believe that a bachelor's degree would assist him in performing his job. Strasburg's bachelor's degree is in business administration, rather than the particular bachelor's degree sought by the County in its description of its minimum educational qualifications for his job, and Strasburg testified that the knowledge required to perform his job was no different than that required to perform Greenhalgh's.

The skills required for the disputed positions do not compare to those customarily obtained through a bachelor's degree program. Merrell testified that his college course at UW-Eau Claire was different than his technical college courses because of the college-level emphasis on learning programming structures. Merrell does not write programs, and he testified that he spends only one-half to one hour per day creating or modifying macros, scripts or batch files. Greenhalgh testified that programming structures are important to enable other programmers to

work with the program later, but admitted that she had not taken any college level programming courses other than a four day seminar in systems analysis at UW-Madison before starting her job with the County.

Merrell has never had job experience that required a professional level of expertise. His County job involves personal computers and maintenance of networks. He installs software, sets up PCs and attaches them to the appropriate network. He is conversant with WordPerfect 5.1, Windows 3.1, Client Access, Lotus 6.1, Enforcer 2000 and other software employed by clerical and others in the course of their jobs. When he discovers a hardware or software problem, he uses manufacturers' help lines and he may find it necessary to download software or order prescribed hardware for installation. While he has attended Novell networking seminars and an Internet protocol seminar, unlike the Computerland employees he occasionally consults for assistance, he is not credentialled by Novell because of the perceived rigorousness of their certification program. He keeps up to date on new technologies by reading trade magazines and manufacturers' instruction manuals.

Greenhalgh's duties also do not involve a professional level of competency. She spends the majority of her time planning systems specifications through interviews with potential system users, developing screen formats, testing programs and training new users. Only a portion of her time involves writing code. The programs she has written relate to record keeping rather than implementation of complex structures or unique computational tasks. When she converted existing programs to a different language, that conversion did not require creation or modification of programming structures. As in WAUKESHA COUNTY, above, where Computer Systems Specialists who designed, implemented and maintained data processing systems, interviewed departmental personnel to determine the adequacy of the systems, prepared and analyzed programs and trained employees in their use were found not to be professional employees, Greenhalgh does not satisfy the statutory criteria for professional status.

Strasburg's undergraduate major was in business administration with emphasis in accounting, but his job involves neither. Like the Data Base Coordinator in DANE COUNTY, above, and the Forestry Technician held non-professional in CLARK COUNTY, DEC. NO. 19744-E (WERC, 8/93), the bulk of Strasburg's job functions do not require knowledge of a type customarily acquired in the manner required of a professional in Sec. 111.70(1)(L)1.d., Stats. Rather, like Greenhalgh, Strasburg's job involves designing and implementing programs relating to information retention and retrieval. Strasburg admitted that at least 20% of his job had no relation to technical expertise achievable through a course of higher education or instruction.

Accordingly, the bargaining unit should be clarified to include all three of the positions remaining at issue in this case.



**County**

All three of the disputed positions are professional.

The County has historically hired individuals for each of those positions with credentials equivalent to a specialized four-year degree in computer science. Information Systems Department Head Richard Patrie testified that at a minimum an individual needs an associate's degree in data processing and three to five years of relevant computer experience to be successful in any of these positions. Due to the small size of the Department, and the independent nature of the work involved, Patrie must be able to depend on the specialized expertise of these three individuals to respond to the County's information systems needs. Indeed, the County is in the process of installing PCs in each of their homes to enable them to troubleshoot problems from there rather than having to come to the workplace after hours.

These three information systems employees do not share a community of interest with the clerical, technicians, aides and custodians now in the bargaining unit. Pay levels are largely disparate and their working conditions are fairly unique.

The fact of this case closely parallel those in KENOSHA UNIFIED SCHOOL DISTRICT, DEC. NO. 10558-C (WERC, 12/94). The large majority of the incumbents' job duties require advanced and specialized knowledge regarding computers. Additionally, the individual supervising these positions does not have the full range of specialized knowledge relating to computers that the three positions require.

Accordingly, the bargaining unit should not be clarified to include any of the three positions remaining at issue in this case, and the petition should be dismissed as regards those positions.

**DISCUSSION**

In pertinent part, Sec. 111.70(1)(L)1, Stats., defines a "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 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 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; . . .

All four of those elements must be satisfied for a position to be held professional.

The three positions at issue in this case satisfy the first three statutory requirements in Sec. 111.70(1)(L)1.a., b. and c. The work performed by each clearly involves the consistent exercise of discretion and judgment and is predominantly intellectual and varied in character, and the output produced or result accomplished cannot be standardized over a period of time. Thus, as has often been the case with computer-related positions such as these, the professional status of the position turns on whether the fourth statutory criterion has been met.

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.

Accordingly, the Commission has considered it relevant whether the employer's published job specifications/announcement require educational attainment beyond high school graduation in an advanced and specialized field of study related to the duties of the position. For example, in DANE COUNTY, DEC. NO. 10492-D (WERC, 4/85), a Specifications Coordinator position was not deemed professional, in part, because

The reference to a college degree requirement contained in the job description ["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 government agency"] . . . refers only to the rather broad and general fields . . . rather than to "a course of specialized intellectual instruction" such as is referred to in the statute.

Also considered relevant in that case was whether such degree requirements are firm minimums or are, instead, subject to waiver for applicants deemed to have equivalent training and/or experience. The fact that a degree requirement was subject to waiver on account of equivalent training and experience was also part of the basis for finding that the Analyst/Programmer II in BROWN COUNTY, DEC. NO. 11983-C, supra, was not a professional.

Another factor considered has been whether the individuals whom the employer has hired have possessed degrees when hired. Similarly, in CITY OF CUDAHY, DEC. NO. 19507, supra, the Commission held a disputed position professional, in part, because the incumbent was scheduled to receive a degree

in management shortly after the hearing and had taken courses in data processing as well as receiving training from IBM in the use and operation of the City's computer.

The Commission has also found it relevant whether advanced and specialized knowledge is needed to perform the bulk of the job or only some minor portion of it. In DANE COUNTY, DEC. NO. 21397, supra, the Commission's decision that the Data Base Coordinator position was not professional gave weight to testimony 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." In CLARK COUNTY, DEC. NO. 19744-E (WERC, 8/93), the Forestry Technician was held non-professional, in part, because "we do not find that the primary functions of [the] position customarily require the educational attainments [defined in Sec. 111.70(1)(L)1.d., Stats.]."

The Commission has also considered whether the record establishes that the job in question requires knowledge of the sort customarily attained in a specialized four-year degree program related to the nature of the duties of the position. For example, in CITY OF SUN PRAIRIE, DEC. NO. 20841-B, supra the Commission held professional a Senior Engineering Technician without a bachelor's degree in a job requiring two years towards a specialized associate degree rather than the four years or more ordinarily associated with a college degree in engineering, because the Commission was persuaded that the responsibilities of the position were the type which required knowledge of the sort customarily acquired in an engineering degree program. In DANE COUNTY, DEC. NO. 21397, supra, the conclusion that the Data Base Coordinator was not professional was based, in part, on testimony that the incumbent's "training was not as deeply technical as compared to persons with a Bachelor's Degree in Data Processing."

Finally, the Commission has considered it relevant whether the position in question is supervised by an individual who also possesses the advanced and specialized knowledge required to perform the work of the position in question. Thus, in WAUKESHA COUNTY, DEC. NO. 26020-A, supra, and DANE COUNTY, DEC. NO. 21397, supra, the Commission found positions non-professional, in part, because of the computer expertise of higher level supervision within the same department.

...

While pay level is not referred to in the statutory definition it might in some cases be a significant indicator as to the employer's assessment of the nature and demands of the work involved.

DEC. NO. 10558-C at 18-20, 21.

**Disputed Professional Status of Programmer/Analyst Ron Strasburg**

In the instant case, the County's June 1994 published requirements for the Programmer/Analyst position included a specialized bachelor's degree with three to five years of specialized experience or an equivalent combination of education and experience.

Contrary to the Union's contention, the record establishes that Strasburg holds just the sort of a specialized bachelor's degree referred to in the County's position description. Specifically, Strasburg holds a bachelor of science degree from UW-Superior with completed majors in both business administration and data processing and ten credits short of a major in accounting, as well. (tr. 112)

The record further establishes that the bulk of Strasburg's job duties involve his use of the specialized knowledge that he derived by majoring in data processing. Strasburg testified that he spends about 80% of his time on analysis, design, programming and testing of computer programs, working mostly in the COBOL language.

We conclude that his position clearly meets all of the statutory criteria for a professional position.

**Disputed Professional Status of Systems Programmer I Therese Greenhalgh**

As of June, 1994, Greenhalgh's position description called for a specialized associate degree with three years of specialized experience, or an equivalent combination of education and experience.

Patrie testified that the County considers the associate's degree essential for successful performance of Greenhalgh's position, and when the County hired Greenhalgh, she met both the specialized associate degree and the three years of specialized experience requirements.

The record establishes that the bulk of Greenhalgh's job responsibilities requires advanced and specialized knowledge. Greenhalgh's actual job duties are materially the same as those performed by Strasburg. She spends 90% of her time performing analysis, programming and program testing functions, though she works primarily in the RPG language, rather than in COBOL.

The record also establishes that her prior coursework would enable her to obtain a bachelor's degree in data processing at Lakeland College if she were to take only the various general courses unrelated to computers that are needed to meet the overall bachelor's degree requirements. In other words, Lakeland College considers her educationally to have met the specialized coursework requirements for a specialized bachelor's degree.

This case is unlike the WAUKESHA COUNTY case, supra, cited by the Union in that here the County has expressed a preference for a specialized associate's degree and has hired an incumbent who not only possessed such a degree but also had significant additional programming experience, as well. By contrast, in WAUKESHA COUNTY, the positions did "not require any more formal education than high school graduation or a G.E.D., and it allow[ed] substitution for the experience requirement by college-level education (in business or public administration or computer science) only to a maximum of two years." DEC. NO. 26020-A at 11.

For all of those reasons, we conclude that Greenhalgh's position also meets all of the criteria for a professional employe under the statute.

#### **Disputed Professional Status of Systems Programmer I Richard Merrell**

The status of Merrell's position is a somewhat closer question. The June 1994 requirements for his position include a specialized associate degree and two to three years of specialized experience, or any equivalent combination of education and experience.

Patrie testified that the County considers the specialized associate's degree essential for successful performance of Merrell's position. When he was hired, Merrell possessed a specialized associate degree and had attended one year at UW-Eau Claire where his coursework included two semesters of Pascal programming language. He came with some additional programming experience that he derived working with his home PC. While he also worked with computers for several years at Mason Shoe before being hired by the County, that work was as a computer operator, and hence did not require or involve specialized knowledge of the sort involved in a professional information technology position.

It is clear that Merrell has also learned a great deal of the specialized knowledge that he needs to perform his job since he came to work for the County. That appears have resulted, in part, from growth and change in the County's use of PCs and PC networks, and in part from the rapid pace of technological change over those years as regards PCs and PC networks.

Merrell's work involves installing standalone and networked personal computer hardware and software; troubleshooting hardware and software problems; meeting with others within and outside the Department to determine the County's network needs and to analyze the necessary software and hardware needed to fulfill them; installing, configuring and maintaining PC and

network hardware and software; training end users; and serving as the network administrator for each of the County's five networks.

Merrell's work involves a full range of duties associated with establishing and maintaining the County's various PC networks of computers. Merrell does not just use the applications programs that various other users are familiar with, he installs, configures and troubleshoots them, as well. He is also responsible for upgrading networks; writing macros, scripts and batch files that configure or execute programs; consulting with PC users regarding applications; and assuring that the PC networks are integrated with the County's AS400 (mini-computer based) network.

The record makes it clear that the bulk of Merrell's work requires knowledge of an advanced type in a field of science or learning that is not customarily acquired either from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical. While the baseline knowledge his job requires can be acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education, his job also requires periodic updating of that knowledge to stay current with rapidly changing PC and PC network hardware and software. The fact that Merrell keeps pace with those rapid changes by reading the various specialized periodicals to which the County subscribes and by studying manuals and other materials supplied by software and hardware vendors does not detract from the highly specialized nature of the knowledge Merrell thereby derives and uses in his work.

Merrell's position is also distinguishable from the situation in WAUKESHA COUNTY, above, because Merrell is the only County employe with PC network capabilities. Neither the department head nor any of the other employes in the department have the specialized knowledge that Merrell has to perform a substantial portion of his job. Thus, when Merrell is unavailable, the County generally contracts with an outside vendor at \$60 - \$85 per hour to provide the services Merrell would otherwise perform.

For those reasons, we are satisfied, on balance, that Merrell's position also meets each of the necessary statutory criteria for a professional employe.

Dated at the City of Madison, Wisconsin, this 21st day of April, 1998.

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

gjc

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