

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

KENOSHA UNIFIED SCHOOL DISTRICT
EMPLOYEES LOCAL 2383, AFSCME, AFL-CIO

Involving Certain Employees of

KENOSHA UNIFIED SCHOOL DISTRICT
NO. 1

Case 18
No. 50137 ME-679
Decision No. 10558-C

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 553 D'Onofrio Drive, Madison, Wisconsin 53719, for the Union.

Davis & Kuelthau, S.C., Attorneys at Law, by Mr. Clifford B. Buelow, with Ms. Nancy L. Pirkey on the brief, 111 East Kilbourn Avenue, Suite 1400, Milwaukee, Wisconsin 53202-6613, for the District.

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

On November 17, 1993, Wisconsin Council 40, AFSCME, AFL-CIO, Kenosha Unified School District Employees Local 2383, filed a petition requesting the Wisconsin Employment Relations Commission to clarify the bargaining unit it represents of clerical and secretarial employees of Kenosha Unified School District so as to unconditionally include two newly-created positions of Information Analyst and Head Start Information Analyst/Trainer.

Pursuant to notice, a hearing in the matter was held on February 24, 1994, at Kenosha, Wisconsin, before Marshall L. Gratz of the Commission's staff. A stenographic transcript was prepared by March 10, 1994. Reply briefing was completed on June 6, 1994.

The Commission, being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The Kenosha Unified School District No. 1, referred to herein as the District, is a municipal employer with offices at 3600 - 52nd Street, Kenosha, Wisconsin.

2. Kenosha Unified School District Employees, Local 2383, AFSCME, AFL-CIO, referred to herein as the Union, is a labor organization affiliated with Wisconsin Council 40, AFSCME, AFL-CIO, whose offices are located at 553 D'Onofrio Drive Madison, Wisconsin.

3. The Union is the exclusive bargaining representative for a 115 employe clerical and secretarial bargaining unit described in the parties' calendar 1992-1994 Agreement as follows:

all regular full-time and regular part-time clerical and secretarial employees of the Kenosha Unified School District No. 1, excluding teaching assistants, educational assistants, para-professionals, supervisors and all other employees of the Board for the purpose of establishing wages, hours and other conditions of employment, as certified by the Wisconsin Employment Relations Commission, Decision 10555.

4. In the petition giving rise to this case, the Union requests a Commission order clarifying the unit set forth in Finding of Fact 3, above, so as to include the newly-created positions of Information Analyst and Head Start Information Analyst/Trainer. The District, contrary to the Union, contends that both positions should not be included in the unit because both are professional within the meaning of Sec. 111.70(1)(L), Stats., and because, whether professional or not, the positions do not share a community of interest with the employes in that unit. If the positions are determined to be professional, the Union does not seek to represent them at this time.

5. In August and September of 1993, the District developed a "Position Specification" and published a "Professional Staff Vacancy" announcement for each of the disputed positions. The District initially hired Teri Flowers as the Information Analyst. Flowers was employed in that capacity for two weeks and then left the District's employ to accept a better-paying position with another employer. The District then hired the current incumbent in that position, Linda Langenstroer, who has worked in that position since December 1, 1993. As of the time of the instant hearing, the District had not filled the Head Start Information Analyst/Trainer position, at least in part because of lack of space at the Head Start work location. The District has treated both of the disputed positions as a part of its "miscellaneous employees" group of about 29 positions that are presently unrepresented and, for the most part, externally funded or funding-dependent in nature. The District also has a group of some 82 other unrepresented employes categorized as "administrative, supervisory and technical personnel."

6. The District documents announcing and describing the Information Analyst position read as follows:

**PROFESSIONAL STAFF VACANCY
INFORMATION ANALYST**

Specifications: The person selected for this assignment will be

directly responsible to the Director of Planning and Evaluation in the performance of duties. Candidates should have knowledge of and skills in educational and administrative/business computer software programs and ability to program and/or modify as needed; skill in problem solution, computer language and ability to perform detailed work and interpretation of data accurately; ability to work independently, define problems with current information gathering system and effectively communicate and determine needed goals for improvement and accountability. Ability to work with and communicate with professional and para-professional staff in an effective and positive manner.

Responsibilities will include but are not limited to collecting data as required from various sources; summarizing and assembling data; assembling data for various reports; clarifying and coordinating data information with the Department of computer Services; supplying needed information upon request; scanning survey forms for data collection; completing required evaluation forms, preparing information in graphic form; assisting in the interpretation of data for reports; assisting in the writing of grants for the District; performing other duties relating to the evaluation process as assigned.

Qualifications: Candidates for this assignment should have a two-year-degree minimum from an accredited college or university with courses in educational computer science or business and courses in education or similar equivalent training and work experience. Experience in educational/business informational analysis, programming and software preferred.

Applications: Letters of application are solicited from qualified candidates. Such correspondence should be addressed to the Division of Personnel Services, Kenosha Unified School District No. 1, 3600 - 52nd Street, Kenosha, Wisconsin, 53144, and must be received in this office no later than October 15, 1993. Candidates submitting letters of application are instructed to furnish confidential credentials and a transcript of credits.

Effective Date: Appointment to this position is subject to confirmation by the School Board and effective as soon as possible.

Salary: \$10.15 per hour.

Fringe Benefits: Health insurance premiums are paid for in full by

the School Board. Dental insurance and group life insurance are available at partial cost to the employee. The Board pays a share of the employee's retirement contribution and social security benefits are also provided. Illness leave and vacation may also be earned.

September 23, 1993

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POSITION SPECIFICATION

Position Title

Information Analyst

Organizational Relationships

Report and account to the director of Instructional Planning and Program Evaluation.

Primary Function

To collect data as required from various sources and to complete required evaluations for various programs and grants.

Examples of Responsibilities

1. To collect data as required from various sources.
2. To summarize and assemble data.
3. To assemble data for various reports.
4. To clarify and coordinate data information with the Department of Computer Services.
5. To supply needed information upon request.
6. To scan survey forms for data collection.
7. To complete required evaluation forms.

8. To prepare data in graphic form.
9. To assist in the interpretation of data for reports.
10. To assist in the writing of grants for the District.
11. To perform other duties related to the evaluation process as assigned.

Qualifications

1. **EDUCATION:** a two-year degree minimum in educational computer science or business and courses in education from an accredited college or university or similar equivalent training and work experience.

2. **SKILLS, KNOWLEDGE, ABILITIES:** Knowledge of and skills in educational and administrative/business computer software programs and ability to program and/or modify as needed. Skill in problem solution, computer language and ability to perform detailed work and interpretation of data with accuracy. Ability to work independently, define problems with current information gathering system and effectively communicate and determine needed goals for improvement and accountability. Ability to work with and communicate with professional and para-professional staff in an effective and positive manner.

3. **EXPERIENCE:** Experience in educational/business computer information analysis, programming and software.

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7. The District documents announcing and describing the Head Start Information Analyst/Trainer position read as follows:

PROFESSIONAL STAFF VACANCY

HEAD START INFORMATION ANALYST/TRAINER

Specifications: The person selected for this assignment will report to the Head Start Principal and the Director of Planning and Evaluation as assigned. Candidates should have knowledge of and skills in educational administrative/business computer software programs and ability to program and/or modify as needed; skill in problem solution, computer language and ability to perform detailed work and interpretation of data accurately; ability to work independently, define problems with current information gathering system and effectively communicate and determine needed goals for improvement and accountability. Ability to work with and communicate with professional and para-professional staff in an effective and positive manner.

Responsibilities will include but are not limited to providing inservices to staff on data collection and information gathering for Head Start components; providing training and orientation to staff on the use of and interpretation of a comprehensive information database and management report system; tracking critical information on health, social services, medical services, disabilities, volunteer, and related Head Start component areas; analyzing and interpreting daily attendance records in relation to federal guidelines and maintaining increased program accountability needs through user-defined fields and user-defined lookup tables of frequently used codes; providing computer training for teachers and parents in the utilization of a variety [of] software for instructional use in the classroom with children; providing training for staff in the use of the computer for literacy purposes and other social services that impact services to parents; collecting, organizing and interpreting current and future pre/post test data on children and families; participating in developing and implementing research and program evaluation systems related to Head Start Performance Standards and educational objectives; performing other related duties as directed by supervisor or designee.

Qualifications: Candidates for this assignment should have a two year degree minimum from an accredited college or university with courses in educational computer science or business and courses in education or similar equivalent training and work experience. Experience in educational/business informational analysis, programming and software preferred.

Applications: Letters of application are solicited from qualified candidates. Such correspondence should be addressed to the Division of Personnel Services, Kenosha Unified School District No. 1, 3600 - 52nd Street, Kenosha, Wisconsin, 53144, and must be received in this office no later than October 15, 1993. Candidates submitting letters of application are instructed to furnish confidential credentials and a transcript of credits.

Salary: \$10.15 per hour.

Fringe Benefits: Health insurance premiums are paid for in full by the School Board. Dental insurance and group life insurance are available at partial cost to the employee. The Board pays a share of the employee's retirement contribution and social security benefits are also provided. Illness leave and vacation may also be earned.

September 23, 1993

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POSITION SPECIFICATION

Position Title

Head Start Information Analyst/Trainer

Organizational Relationships

- 1. Report and account to the Head Start Principal and the Director of Instructional Planning and Program Evaluation as assigned.

Primary Function

Develop, collect, process, and maintain comprehensive Head Start program information and assume responsibility for analysis and interpretation of data collected for reporting purposes. Provide training and leadership to head Start staff and parents in the area of data collection, analysis and interpretation of data and various educational and administrative software package usage.

Responsibilities

1. Provide inservices to staff on data collection and information gathering for Head Start components.
2. Provide training and orientation to staff on the use of and interpretation of a comprehensive information database and management report system.
3. Track critical information on health, social services, medical services, disabilities, volunteer, and related Head Start component areas.
4. Analyze and interpret daily attendance records in relation to federal guidelines and maintain increased program accountability in reporting requirements.
5. Design and customize program's needs through user-defined fields and user-defined lookup tables of frequently used codes.
6. Generate, design and maintain a variety of reports about the Head Start program such as those needed on: children, family, staff training and qualifications, health, education information; medical and volunteer services.
7. Provide computer training for teachers and parents in the utilization of a variety [of] software for instructional use in the classroom with children.
8. Provide training for staff in the use of the computer for literacy purposes and other social services that impact services to parents.
9. Work in collaboration with other agencies in the collection and interpretation of data on Head Start families.
10. Design and gather program data information from other agencies and incorporate into current Program Information Report (PIR) or other Head Start Reports.
11. Assist in organizing and directing assigned

computer program tasks for component coordinators.

12. Assist in meeting program report deadlines established by projects and mandates.

13. Collect, organize and interpret current and future pre/post test data on children and families.

14. Review existing program gathering information systems and propose improvements as assigned by supervisor.

15. Review and monitor all computer systems in the program and report and communicate effectively with district computer technicians and staff for needed improvements or repair.

16. Order, maintain and be knowledgeable with all computer software packages on site and those routinely ordered.

17. Participate in developing and implementing research and program evaluation systems related to head Start Performance Standards and educational objectives.

18. Perform other related duties as directed by supervisor or designee.

Qualifications

1. **EDUCATION:** a two-year degree minimum; however, a four-year degree preferred, in educational computer science or business and courses in education from an accredited college or university or similar equivalent training and work experience.

2. **SKILLS, KNOWLEDGE, ABILITIES:** Knowledge of and skills in educational and administrative/business computer software programs and ability to program and/or modify as needed. Skill in problem solution, computer language and ability to perform detailed work and interpretation of data with a high degree of accuracy. Ability to work independently, define problems with current information gathering system and effectively communicate and determine needed goals for improvement and accountability. Ability to work with and communicate with professional and para-

professional staff and parents in an effective and positive manner.

3. **EXPERIENCE:** Experience in educational/business computer information analysis, programming and software. Experience in human services data collection and interpretation preferred.

8. The Information Analyst position reports to Audrey Hains, Ph.D, the District's Director of Instructional Planning and Program Evaluation. Hains' doctorate is in education administration, and she holds a master's degree in curriculum instruction. Hains possesses some skills in the use of word and data processing applications on microcomputers, but she does not possess a specialized degree relating to those areas. Hains' responsibilities include administering federal and state grant programs for the District, evaluating programs, and preparing a variety of reports for both internal and external distribution regarding the District activities and results. Accordingly, Hains' responsibilities include systematically collecting data concerning several government-funded supplemental educational programs in the District such as the At-Risk program, the T-1 program (involving migrant and bilingual families), the Chapter 1 program (a federal program providing assistance in basic skills for students from lower socio-economic backgrounds) and the P-5 program (a state funded program targeting specific schools in a concentrated effort to raise students' test scores.) During her five years of employment in her current position, Hains found that although a good deal of the information she needed to collect and analyze had been entered on the District's mainframe computer system, that information could not be retrieved in a form that was useful to Hains' purposes without the investment of much more programmer time than the District's backlogged Computer Services department could provide her in a time to meet her needs. Although Hains had available to her secretaries who were very capable in word processing and microcomputers, they were not able to obtain the needed information in a useful form from the variety of sources involved. As a result, Hains collected much of the information she needed manually or retrieved raw data print-outs from the mainframe with the assistance of the District's mainframe programmers and then transferred, tabulated and manipulated the data by hand before creating word processed reports with tables and graphs reflecting the results of her data collections and analyses. Hains twice attempted to purchase outside information collection and analysis services, but those efforts proved unsatisfactory. A report produced by a professor at UW-Milwaukee with a Ph.D. in Early Childhood Education proved useful but far too costly to permit widespread use of such services. Another effort involved resort to less expensive outside computer experts who lacked familiarity with educational terminology and activities. That effort failed to produce any useful results in part because it took too long to orient the computer consultants to the nature of educational data generally and of the District's activities in particular.

9. The Information Analyst position was developed by Hains with input from Watts and others to provide Hains with a District employe familiar enough with educational terminology and activities and capable enough with the use of microcomputer and mainframe applications and programming languages to gather the information Hains needed from various sources and to assist

Hains in analyzing and reporting on that data. Accordingly, Langenstroer's work as Information Analyst primarily involves locating and obtaining in a useful form information from various computer databases or other forms of records, creating a database from information downloaded from the mainframe to her personal computer, and summarizing and organizing information drawn from those various sources into charts and tables useful to Hains in producing internal or external reports on the results of various District programs. Generally, Hains meets with Langenstroer, discusses her information needs and how they might be met, and Langenstroer devises methods to retrieve and organize the needed information into a form that is useful to Hains in her preparation of reports and analyses. As of the time of the hearing, Langenstroer had worked in the position only 2.5 months, the first of which was without her own computer. During that time, she worked closely with the District's mainframe programmers in the Computer Services department who performed all of the programming necessary to download a wide range of data to Langenstroer's microcomputer from the District's mainframe computer system. Hains and Watts hope and expect that with her familiarity with mainframe programming Langenstroer will eventually do the mainframe programming needed to meet Hains' future needs herself, without significant reliance on the backlogged mainframe programming staff. Langenstroer did write the programs in D-Base database management software language necessary to variously sort, process, and report in tabular and graphical form data she gathered from various sources. As of the time of the hearing, Langenstroer had not yet performed some of the other duties listed in her position description including grant writing, scanning survey forms for data using a scanner, and working on preparation of T-1, P-5, and Chapter 1 reports. Langenstroer's responsibilities also include membership on the District Evaluation Committee as a resource person regarding information gathering and availability. The minute-taking responsibilities for that Committee are handled by a secretary and not by Langenstroer.

10. The \$10.15 rate (or approximately \$21,000 on an annualized basis) is less than the annualized \$35,000-37,000 the District pays its current complement of unrepresented mainframe programmers, whose job specifications nominally require a specialized four-year degree "or equivalent training and work experience" and who each possessed a four-year degree in computer programming when hired. One former mainframe programmer had been hired with a two year degree in data processing and substantial outside experience. The \$10.15 Information Analyst rate is also less than the District pays several positions in the clerical and secretarial bargaining unit which do not require any degree beyond the high school level. In setting that rate, the District took into consideration labor market conditions favorable to it (as shown by ample numbers of individuals with bachelor's degrees in computer-related fields who applied for previously-advertised data entry and programming positions) and the limitations on Hains' ability to fund the position due to reliance on a combination of Chapter 1 and At-Risk program monies.

11. The individuals hired by the District for the Information Analyst position both possessed degrees in computer-related fields when hired. Flowers, the initial hiree, possessed bachelor's and masters' degrees in business, the latter with an emphasis in Computer Information Systems. Langenstroer possessed a two-year associate degree from Gateway Technical College in

data processing which she received in 1971. After attaining that degree, Langenstroer was employed for several years at American Brass, first as a computer operator, then as a programmer. Following the birth of two children interspersed with employments at Manville Corporation (including as a production scheduler with inventory and raw material purchasing responsibilities), she returned to Gateway to update education with two more semesters of computer science courses. Hains found during the interview process that Langenstroer exhibited a sufficient familiarity with educational terms to meet the District's needs in that regard.

12. The District requires applicants for the Information Analyst position to have a two-year degree in a computer-related field. Equivalent training and work experience can substitute for education-related course work requirements, but not for the two-year degree.

13. The computer-related knowledge imparted to Langenstroer in her course work at Gateway is equivalent to that imparted in four-year degree programs in computer-related specialties, and Langenstroer's duties and skills are equivalent to those of the District's mainframe programmers with four-year computer-related degrees.

14. The District had not filled the Head Start Information Analyst/Trainer position as of the time of the hearing in this case. The parties have stipulated that fifty percent of the work of the Head Start Information Analyst Trainer will be materially the same as the work performed by the Information Analyst. However, that work will focus on the Head Start program and will involve reporting to and working primarily with Luz Rodriguez-Alvino, the District's Principal of Head Start, who reports in turn to Hains. Hains, Watts and Rodriguez-Alvino developed the idea of and the specifications for that half of the position in response to Hains' information gathering experiences described in Finding of Fact 8, above. The same rate of pay was established for the position with the same considerations as described in Finding of Fact 10, above. The hiring criteria will include those described in Finding of Fact 12, above. The knowledge component will be the same as described in Finding of Fact 13, above.

15. The remaining fifty percent of the Head Start Information Analyst/Trainer's duties will involve training and support for Head Start program personnel and to parents involved in the Head Start program. The Head Start staff members to be trained include a head start nurse, a social worker and two certified teachers in charge of coordinating education and nutrition and parent involvement. The Trainer/Analyst will also instruct classroom teachers, home-based instructors and Head Start program parents in the use of the computer so that the teachers and parents can, in turn, meaningfully help the students become familiar and comfortable with the computer and a variety of educational software. The Analyst/Trainer will also serve as a resource and support person to committees of Head Start parents involved in decision-making about the District's Head Start program.

16. Rodriguez-Alvino, who will directly supervise the Analyst/Trainer, holds a bachelor's degree in education, a master's degree in special education and administration with specialization in multi-cultural education, and has completed all but her dissertation in a doctoral program in

curriculum instruction. Rodriguez-Alvino does not possess a computer-related degree and does not have the computer-related knowledge or skills necessary to perform the computer-related aspects of the Head Start Information Analyst/Trainer position.

17. The Information Analyst and Head Start Information Analyst/Trainer positions both involve work: predominantly intellectual and varied in character; involving the consistent exercise of discretion and judgment in its performance; of such character that the output produced and the result accomplished cannot be standardized in relation to a given period of time; and requiring knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

CONCLUSIONS OF LAW

1. That the occupant of the position of Information Analyst is a professional employe within the meaning of Sec. 111.70(1)(L), Stats.

2. That the occupant of the Head Start Information Analyst/Trainer position, when that position is filled, will be a professional employe within the meaning of Sec. 111.70(1)(L), Stats.

ORDER 1/

The Union's petition seeking an order clarifying the clerical and secretarial bargaining unit described in Finding of Fact 3, above, so as to include the positions of Information Analyst and Information Analyst Trainer is dismissed.

Given under our hands and seal at the City of
of Madison, Wisconsin this 5th day of December,

1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/

A. Hempe

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ See footnote on pages 13 and 14.

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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

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

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

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(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.

KENOSHA UNIFIED SCHOOL DISTRICT NO. 1

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

BACKGROUND

The Union seeks an order unconditionally including in its unit of District clerical and secretarial employes, two newly-created and currently-unrepresented positions: the Information Analyst and the Head Start Information Analyst/ Trainer. The issues presented are whether the disputed positions are professional, and if not, whether it would be appropriate to include either or both of those positions in the AFSCME clerical and secretarial unit. The factual background is set forth in the Findings of Fact and the basic positions of the parties are summarized in Finding of Fact 4. Because we have concluded that both positions are professional, those Findings of Fact and the discussion of the issues which follows focus on the professional status issue.

UNION POSITION

Neither of the disputed positions meets the statutory definition of a professional employe, and both share a community of interest with other employes in the clerical and secretarial unit.

The primary functions of these positions do not require the sort of advanced and specialized knowledge necessary to be a professional under the statute. This is especially so when the duties actually performed to date by the incumbent Information Analysts are assessed (e.g., no mainframe programming) rather than the District's speculation about what the Information Analyst may be doing in the future.

While the Commission has held that a four-year degree is not always essential to professional status, in Clark County, Dec. No. 19744-E (WERC, 8/93), the Commission found a Forestry Technician non-professional, in part, because testimony "that the knowledge necessary [to do the work] would be possessed by applicants with an associate degree and substantial experience . . . does not definitively establish the need for the type of knowledge defined in Sec. 111.70(1)(L)1.d., Stats." While the Commission in City of Cudahy, Dec. No. 19507 (WERC, 3/82), found a Data Processing Analyst to be a professional employe where a four-year degree was preferred but not required, the facts of that case are unique and distinguishable from those involved here. More applicable to the instant situation are the Commission's decisions in Brown County, Dec. No. 11983-C (WERC, 1/91), Dane County, Dec. No. 21397 (WERC, 2/84), aff'd Dec. No. 84 CV 1 409 (CirCt Dane, 1/29/95), and Waukesha County, Dec. No. 26020-A (WERC, 9/89), in which the Commission found non-professional one or more computer-related positions for which four-year degrees were neither required by the employer nor possessed by the incumbent(s).

The District does not require a bachelor's degree for either of the disputed positions. Unlike all of the District's Programmer Bs, Information Analyst Langenstroer does not have a bachelor's

degree. Members of the AFSCME unit historically and currently perform similar duties in positions that do not have any degree requirements. Unlike the Instructional Micro Computer Specialist held to be a professional in CESA #12, Dec. No. 20944-A (WERC, 5/84), the instant positions do not require a teaching degree in addition to familiarity with computers. The training components of the Head Start position neither require a DPI certificate nor are sufficient to equate that position with a teaching professional. Even though the work involved in the disputed positions may be more intellectually demanding than that required for "routine mental, manual or physical" processes, it is not work which requires knowledge of an advanced type customarily acquired through a prolonged course of specialized intellectual instruction in an institution of higher learning. Citing, West Allis-West Milwaukee Schools, Dec. No. 16405-A (WERC, 9/89).

The District is paying these positions far less than it pays its unrepresented four-year degree computer programmers and less than it pays various members of the clerical and secretarial unit whose jobs require no degree beyond the high school level. The fact that the District is funding the disputed positions out of grant monies or other such sources is not relevant and, in any event, cannot overcome the fact that the District is clearly not paying the position as if it were professional in nature.

For those reasons, neither position is a professional under the statute.

With regard to community of interest, the disputed positions share work locations, supervision, working conditions, and pay levels with various segments of the clerical and secretarial unit. There are also significant similarities in the nature of the work performed. Many of the employees in the clerical and secretarial unit use computers in their work. The Lead Computer Operator, Software Specialist Operator, and particularly the Senior Fiscal Clerk position held by Helen Packman, perform complex work with computers which closely resembles the duties performed by the disputed positions. All of those positions require independent judgment and the ability to work with minimal or no supervision. That is a common requirement for many nonprofessional jobs and does not, alone, suffice to render the positions professional in nature. The duties of the disputed positions are different from the unrepresented Programmer Bs who spend 75-80% of their time designing and writing mainframe programs in COBOL and other mainframe computer languages, whereas Langenstroer had not done any such work as of the time of the hearing in this case.

For those reasons, the disputed positions properly belong in the clerical and secretarial unit.

DISTRICT POSITION

Both disputed positions meet all four of the tests reflected in the MERA definition of a professional employee. This is especially so once the incumbent Information Analyst has been in the position long enough to perform the full range of duties including mainframe programming. The bulk of the duties described in the District's documents and through the testimony clearly require

the kind of advanced and specialized knowledge referred to in the statute. The District requires what it considers an advanced degree in a specialized computer-related field by its requirement of a specialized two-year associate degree from an accredited college or university. Hains testified that the degree requirement is a nonwaivable minimum for the disputed positions, such that no applicant would be hired without such a degree. The incumbent not only has the degree required by the District but has completed two additional semesters of course work in computer science and has extensive computer experience in private industry, as well. The previous incumbent had a master's degree with emphasis in computer information services.

The Commission's Cudahy decision establishes that it is not essential either that the employer require or that the incumbent possess a four-year degree to be deemed a professional. The fact that the disputed positions require a two-year degree at a minimum distinguishes them from the Brown County, Waukesha County and Dane County cases relied upon by the Union. In each of those cases, there were only educational "preferences" stated or waivers of stated degree requirements were permitted based on equivalent training and experience, such that, unlike the instant situation, there were no nonwaivable educational requirements beyond high school.

In any event, the record -- including Watts' testimony regarding the equivalence of Langenstroer's degree to the computer courses in a four-year degree and the equivalency of Langenstroer's skills and knowledge to that of the District's Programmer Bs possessing four-year programming degrees -- establishes that the advanced computer knowledge needed for the disputed positions is equivalent to that customarily attained in a four-year computer programming degree program.

The level at which the disputed positions are paid is not relevant to whether the knowledge required to perform those jobs meets the statutory standard. Especially so when it is recognized that the pay level of the disputed positions resulted from the need to create and fund those positions from existing grant-based resources in a manner that would permit continued fulfillment of other budgeted expenses dependent on those funds.

Even if the positions are not professional, they lack a community of interest with the clerical and secretarial employes in the AFSCME unit. The disputed positions are more comparable to various professional and technical personnel who are currently unrepresented. The disputed positions most closely parallel the mainframe programmers (Program Analyst Bs) who design databases, perform computer programming, and do systems analysis.

The positions should therefore not be included in the AFSCME unit.

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.

Claimed Professional Status of Information Analyst

The Information Analyst position clearly satisfies the first three statutory requirements in Sec. 111.70(1)(L)1.a., b. and c. After consultation with Hains (or in some cases with the District Evaluation Committee) Langenstroer proceeds to devise solutions to the District's report requirements and information problems. In that respect and others, Langenstroer's work clearly involves the "consistent exercise of discretion and judgment." Hains testified that she tries to meet with Langenstroer once a week, confirming other record indications that Langenstroer performs her work in an independent manner. Because the Information Analyst must determine the most efficient way to meet Hains' and the District's 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, her work is predominantly intellectual and varied in character and the output produced or result accomplished cannot be standardized over a period of time.

Although the Commission has previously decided disputes about whether the fourth requirement set forth in Sec. 111.70(1)(L)1.d. has been met in the context of computer-related positions, we find none of the cases referred to in the summaries of the parties' positions above to be sufficiently factually parallel with the instant case to be controlling. However, a general review of prior Commission cases concerning the meaning and application of the 1.d. requirement reveals a number of factors that have been given weight in the case-by-case determinations involved. 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.

In the instant case, the District's published requirements for the Information Analyst position do not refer to a four-year degree, specialized or otherwise, and Langenstroer does not

possess a four-year degree of any kind.

However, the record establishes that the District has hired only individuals with credentials equivalent to a specialized four year degree in a computer-related field. The first applicant hired by the District, Teri Flowers, possessed a Bachelor's of Business Administration degree in Marketing and a Master's of Business Administration degree with an emphasis in Computer Information Systems, and she also had additional employment experience working with computers. The current incumbent, Linda Langenstroer, between her specialized Associate degree, specialized additional course work, and years of specialized work experience, possesses the equivalent of a specialized four year degree, as well. According to the District's Manager of Computer Services, Claudia Watts, the computer-related knowledge imparted to Langenstroer in her course work at Gateway is equivalent to that imparted in four-year degree programs in computer-related specialties, [tr.122] and Langenstroer's duties and skills are equivalent to those of the District's mainframe programmers with four-year computer-related degrees. [tr.110]. Watts' background makes her familiar with the two- and four-year degree programs, with the duties of the Information Analyst and Programmer B positions, and with the skills and knowledge that the District's hires in both positions have needed to do the work and have possessed when hired.

Furthermore, Hains' efforts over the years to gather and analyze information revealed that only individuals with professional educational attainments were able to effectively gather the information Hains needed from the variety of sources involved and in a form that was useful to Hains: Hains herself (though she did a good deal of the work manually), the UW professor, and the District's mainframe programmers. Hains' secretaries, while highly capable in working with microcomputers and word processing, were not able to do the more complex tasks required of the Information Analyst. Even the outside computer experts were not familiar enough with educational terminology and activities to make their efforts useful to Hains. Thus, it appears to have been the demands of the work that led the District to hire only individuals with credentials equivalent to a specialized four-year degree.

It is true that the District does not compensate the disputed positions at a level commensurate with what it pays its computer programmers with four-year programming degrees or commensurate even with what it pays some positions that require no degree beyond high school. 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. In this case, however, the record establishes that there were other considerations than the District's assessment of the nature and demands of the work that led it to set the rate of pay where it did. Specifically, the disputed positions were created out of existing budget resources of limited and uncertain duration and amount. Because the District had been able to attract ample numbers of well-qualified applicants for previously advertised data entry and programming positions, it had a basis for concluding that it would be able to attract well-qualified candidates for the disputed positions at the relatively low rate of pay prompted by its budgetary and funding considerations.

Finally, the evidence satisfies us that it is not merely a minor portion of the Information

Analyst's job that requires advanced and specialized knowledge regarding computers. Rather, a substantial portion of the job requires that knowledge. We also note that Hains, the individual supervising the Information Analyst, does not have the full range of specialized knowledge relating to computers that the Information Analyst position requires.

For the foregoing reasons we conclude that the information Analyst meets all four statutory requirements for professional status.

Claimed Professional Status of Head Start Information/Analyst

For reasons noted above, the fifty percent of the Head Start Information Analyst/Trainer's job that parallels the Information Analyst job clearly meets the first three requirements of the statutory definition.

The District's published degree requirements for the Head Start Information Analyst Trainer parallel those discussed above for the Information Analyst, except that the Head Start specifications add an expressed preference for a four-year degree. Since no incumbents have been hired for the Head Start position, we have only the District's experience in hiring Information Analysts to draw upon in that regard, as discussed above. We are satisfied, for reasons discussed above, that the half of the Head Start position that parallels the work of the Information Analyst requires the kind of advanced and specialized knowledge described in Sec. 111.70(1)(L)1.d., as well.

Advanced and specialized knowledge is necessary to perform a substantial portion of and major elements of the Head Start Information Analyst/Trainer job. The individual supervising the Head Start position does not have the advanced and specialized knowledge regarding computers that is required of the Head Start Information Analyst/Trainer. While the training and committee support components comprising the remainder of the job do not require a degree in education or a DPI certification; they are not routine mental, manual, mechanical or physical work; they involve consistent exercise of discretion and judgment; and they are of such charter that the output cannot be standardized in relation to a given period of time. While those components would not require the full range of advanced and specialized knowledge concerning computers that is required by the other half of the job, they do not materially undercut the conclusion that the position as a whole is professional within the meaning of MERA.

For those reasons, we conclude that the Head Start Information Analyst/Trainer position also meets all four of the Sec. 111.70(1)(L) requirements for professional status.

Because both of the disputed positions have been held to be professional in nature, they are properly excluded from the existing AFSCME clerical and secretarial unit which, by its description, expressly excludes professional employees. Since the Union does not seek to represent the disputed positions at this time if they are held to be professional, we have dismissed the Union's petition.

It is not necessary in the circumstances to address the question of whether the positions

would appropriately belong in the AFSCME unit if they were not professional.

Dated at Madison, Wisconsin this 5th day of December, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner