

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petitions of  
LOCAL 395, WFT, AFT, AFL-CIO

and

WISCONSIN INDIANHEAD  
VTAE DISTRICT

Involving Certain Employees of

WISCONSIN INDIANHEAD  
VTAE DISTRICT  
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Case 1  
No. 36300 ME-62  
Decision No. 11380-B

Appearances:

Mr. William Kalin, Staff Representative, WFT, AFT, AFL-CIO, 1703 Logan Avenue, Superior, Wisconsin, 54880, appearing on behalf of the Union.  
Mulcahy & Wherry, Attorneys at Law, 21 South Barstow Street, Eau Claire, Wisconsin, 54702, by Ms. Kathryn J. Prenn, appearing on behalf of the District.

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

Petitions having been filed on December 19, 1985, by Local 395, WFT, AFT, AFL-CIO, and on March 17, 1986, by Wisconsin Indianhead VTAE District requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employees of Wisconsin Indianhead VTAE District, which unit is represented by Local 395, WFT, AFT, AFL-CIO; and hearing having been held in abeyance pending the parties' attempt to voluntarily resolve the matter; and a hearing in the matter having been conducted on November 12, 1986, in Shell Lake, Wisconsin, before Examiner Douglas V. Knudson, a member of the Commission's staff; and a stenographic transcript having been made of the hearing and received on November 28, 1986; and the parties having filed post-hearing briefs, the last of which was received on April 27, 1987; and the Commission, having reviewed the evidence and being fully advised in the premises, make and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Wisconsin Indianhead VTAE District, hereinafter the District, is a municipal employer and has its offices at 505 Pine Ridge Drive, P. O. Box B, Shell Lake, Wisconsin, 54871.

2. That Local 395, WFT, AFT, AFL-CIO, hereinafter the Union, is a labor organization and has its offices at 1703 Logan Avenue, Superior, Wisconsin, 54880.

3. That in Wisconsin VTAE District, Dec. No. 11380 (WERC, 1/73), after an election conducted by the Commission, the Union was certified as the exclusive collective bargaining representative of the following bargaining unit:

all teachers teaching at least 50 percent of a full teaching schedule in their area (a full teaching schedule shall consist of the normal student-contact hours) in the employ of Wisconsin Indianhead Vocational, Technical Adult Education District, excluding administrative, supervisory, managerial, confidential, custodial and clerical employees;

and that the parties have modified the above unit description to include full-time Student Counselors, Librarians and Career Education Evaluators and to exclude a list of management positions.

4. That the Union also is certified as the bargaining representative for a unit of secretarial and clerical employees of the District.

5. That the Union, on December 19, 1985, filed a unit clarification petition with the Commission wherein it sought the inclusion of a number of positions in the bargaining unit described in Finding of Fact 3.

6. That the District, on March 17, 1986, filed a unit clarification petition with the Commission wherein it sought the exclusion of three part-time Instructor Supervisors from the bargaining unit set forth in Finding of Fact 3.

7. That hearing in the matter was held in abeyance while the parties attempted to voluntarily resolve the matter; that prior to the scheduling of a hearing in the matter the parties reached agreement on the status of certain of the positions listed on the petitions; that at the hearing on November 12, 1986, the District withdrew its petition in the matter; and that at said hearing the parties agreed that the position of Displaced Homemakers Project Supervisor would be included in the bargaining unit described in Finding of Fact 3 above, and that the positions of Fire Training Specialist, Law Enforcement Specialist and Emergency Medical Services Specialist would be excluded from the bargaining unit described in Finding of Fact 3 above.

8. That the Union contends, contrary to the District, that the positions of Cosmetology Teacher Assistant and Student Health Nurse are occupied by professional employees and should be included in the professional unit described in Finding of Fact 3 above, rather than remaining in the existing non-professional unit which unit is also represented by the Union.

9. That the Cosmetology Program is designed to prepare students to acquire State of Wisconsin certification as a Cosmetologist; that there are two Cosmetology Teaching Assistant positions, herein Assistant, whose occupants work under the direction of two Cosmetology Instructors, herein Instructors; that generally there are two groups of students, consisting of 15-17 students each, in the cosmetology program; that one group is in the second year of the two-year program while the other group is in the first year of the program; that one Instructor normally works from 7:30 a.m. to 2:30 p.m. and teaches a daily one-hour theory class to each group of students during the time periods of 7:30 to 8:30 a.m. and 8:30 to 9:30 a.m.; that during the theory classes the Instructor discusses written materials and demonstrates techniques and procedures; that the other Instructor normally works from 10:00 a.m. to 5:00 p.m.; that the two Assistants normally work from 8:30 a.m. to 5:00 p.m.; that, in addition to the one hour theory class, the students normally spend seven hours daily in the Clinic practicing procedures; that in supervising the Clinic activities both the Instructors and the Assistants advise and instruct the students and demonstrate procedures; that the Assistants have sole supervision of the students in the Clinic for approximately two hours per day and that during the rest of the day both the Instructors and the Assistants are in the Clinic supervising students; that both Instructors and Assistants grade students on their performance of Clinic procedures, including the mock board examination which the students must pass before they can take the examination for certification by the State, while the grades for the theory class are determined by the Instructor teaching the class, who also drafts and grades the examinations for the class work; that the Instructors are responsible for establishing the course curriculum and outlines, ensuring the program content complies with State requirements, working with the library to select reference materials, ensuring the Clinic complies with Wisconsin Division of Health standards, and maintaining achievement standards; that the Assistants possess State of Wisconsin instructor licenses which permit them to teach in Cosmetology schools, but they do not possess Vocational School Instructor certificates, as do the Instructors, although at least one of the Assistants has completed some of the course work necessary for such certification; that the Assistants have taught the theory classes on a temporary and/or substitute basis; and that although the duties of the position of Cosmetology Teaching Assistant are varied in character and involve a measure of discretion, the position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning and, therefore, the occupants of the position are not professional employees.

10. That the District's job description for the position of Student Health Nurse lists the minimum qualification as a Registered Nurse with a valid State of Wisconsin nursing license; that there are four employees in the classification of

Student Health Nurse; that the primary duties of the Student Health Nurse, herein Nurse, are to provide emergency care and to maintain health records for students and staff, to maintain records of services provided, to act as a liason with community health services by suggesting use of appropriate agencies to staff and students, to conduct and/or arrange presentations to students and/or staff on health topics (such as alcoholism, chemical dependency awareness, and sexually transmitted diseases), to work with the District's wellness program (in such areas as blood pressure screening and diet and weight reduction advice), and to chair the campus safety committee; that the Nurse at the Superior campus testified to being involved in the counseling of students, although said individual's training in counseling was limited to training received during her education as a Registered Nurse and counseling is not part of the position's job description; that the District does not publicize the Nurses to be available for counseling; that the Nurse at the Superior campus testified she had made one class presentation on a health topic during the first semester of the 1986-87 school year; that other staff employes at all levels, i.e., professional, technical and non-professional, are also utilized as resource persons for classroom presentations; that the Nurses have developed a chemical awareness program for staff and students involving presentations by both the Nurses and outside speakers; that although the Nurses do not participate in formal meetings either with other staff members or outside agencies dealing with student's health problems, the Nurses do confer with teachers concerning students in their classes with certain health conditions, such as epilepsy or diabetes, to make sure the teachers are aware of what could happen and how to deal with an event involving such a health condition; that the position of Student Health Nurse meets the statutory requirements for knowledge of an advanced type within the meaning of Sec. 111.70(1)(L)(1)(d) through the minimum necessary requirement for an R.N. degree; and that the duties of said position involve sufficient exercise of discretion and judgement and are predominantly intellectual and varied in character so as to justify a finding that the occupants of the position are professional employes.

#### CONCLUSIONS OF LAW

1. That the occupants of the position of Cosmetology Teacher Assistant are not professional employes within the meaning of Sec. 111.70(1)(L), Stats., and therefore appropriately are excluded from the professional unit.

2. That the occupants of the position of Student Health Nurse are professional employes within the meaning of Sec. 111.70(1)(L), Stats., and therefore appropriately are included in the professional unit.

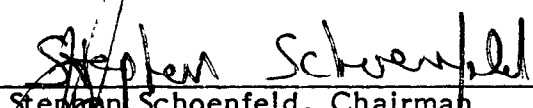
#### ORDER CLARIFYING BARGAINING UNIT 1/

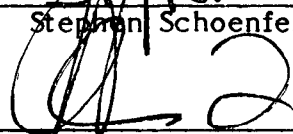
That the position of Cosmetology Teacher Assistant shall continue to be, and hereby is, excluded from the professional bargaining unit described in Finding of Fact 3; and that the position of Student Health Nurse shall be, and hereby is, included in the professional bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Stephen Schoenfeld, Chairman

  
Herman Torosian, Commissioner

  
Danae Davis Gordon, Commissioner

(Footnote 1 found on Page 4.)

- 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 therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, 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.

. . .

(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.

WISCONSIN INDIANHEAD VTAE DISTRICT

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

POSITIONS OF THE PARTIES

The Union contends that the Cosmetology Teaching Assistants are professional employees, since they perform the same work as the Cosmetology Instructors, i.e., instruction of students in the clinic, for a majority of their workday. Further, the Assistants teach the theory classes when an instructor is absent, are involved in determining the grades of the students and have substantial responsibility for the Cosmetology program.

The Union asserts that the Student Health Nurses are professional employees. The Nurses are licensed registered nurses who perform a variety of professional level duties including the provision of first aid and medical advice, referrals to community health agencies, the establishment of wellness programs, serving as the head of the campus safety committee and acting as a resource on health matters for the instructors. As professional employees, the Nurses should be included in the same bargaining unit with the teachers.

The District argues that the position of Cosmetology Teaching Assistant is not a professional position since the duties are primarily routine in nature rather than being predominantly intellectual and varied in character. The Assistants primarily assist and tutor students in the clinic in established procedures. Although the Assistants give grades on standardized clinic procedures, the Instructors determine the grades to be entered on the students' transcripts. While the Assistants do fill in for absent Instructors, the Instructors establish the curriculum, are the regular teachers of the theory classes and have the ultimate responsibility for the program. Further, the position of Assistant does not require the advanced knowledge customarily acquired by a prolonged course of study in an institution of higher learning.

The District contends that the position of Student Health Nurse is not a professional position. The Nurses' work is of a routine mental nature and does not involve the consistent exercise of discretion. Their key duties are providing emergency care and maintaining records. The Nurses are not trained in counseling and have never been assigned responsibility for counseling. Any service by the Nurses as resource persons for classes is also performed by other District employees, both professionals and non-professionals. Further, the Nurses have not been integrated into the District's educational programs, unlike previous cases involving nurses in K-12 school districts, and, therefore, should not be included in a bargaining unit of teachers.

DISCUSSION

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

1. Any employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercises of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an

institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employee who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1.

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

COSMOTOLOGY TEACHER ASSISTANT

Although the Assistants and Instructors perform basically the same activities in the overseeing of student activities in the Clinic, the Instructors have additional responsibilities for teaching classes, establishing curriculum, complying with State requirements and standards, and maintaining academic standards. Further, the Instructors must have certain academic training which is not required of the Assistants. The job duties of the Assistant and the educational training required for those duties as described in Finding of Fact 9 are not sufficient to establish that the occupants of the position of Cosmotology Teacher Assistant are professional employees. Accordingly, said position appropriately is not placed in the professional teacher bargaining unit, but rather remains in the non-professional bargaining unit.

STUDENT HEALTH NURSE

The Commission has consistently found Registered Nurses to be professional employees because of their training and duties. 3/ In the instant case, we find the fact that the occupants of the Student Health Nurse position are Registered Nurses and are required to possess said degree as a condition of employment is sufficient in and of itself to conclude that the occupants are professional employees. However, the District contends that the duties of the Nurse are not professional in nature.

The records-keeping function of the position, a minor task, does seem to be of a routine type. Nevertheless, the provision of first aid and emergency care certainly involves professional judgment in each situation and is seldom viewed as a routine activity. Said activity is a major responsibility of the Nurse. Also, the record shows the Nurse to be very involved in the District's wellness program through the administration of blood pressure screenings and the giving of advice concerning diet and weight reduction. Such activities clearly involve the exercise of discretion and judgement and are varied in character for each individual.

The job description specifically lists as a duty the provision of health in-service programs for staff. Although the testimony of the Nurse at the Superior campus was that she made only one class presentation during the first semester of the 1986-87 school year, such an infrequency does not establish that the presentation was not of a professional level. The fact that other staff employees, including non-professional employees, act as resource persons for the educational programs does not prove that consequently the nurse is a non-professional employee.

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2/ Outagamie County (District Attorney's Office), Dec. No. 21143-A, (10/86).

3/ School District of Maple, Dec. No. 17463 (WERC, 11/79).

The Nurse's job description does not specify student counseling to be an assigned task. The Nurse at the Superior campus testified that she had not received any formal training as a counselor outside of the training normally included in her nursing degree program. However, she also testified that she has talked with and counseled students concerning a variety of problems, including suicidal tendencies and drug abuse. Such counseling would appear to be an essential component of the process of making referrals to appropriate agencies and following up on those referrals. That process involves varied considerations for each individual, rather than being routine in nature. Moreover, the job description specifies the Nurses are to act as a resource for the distribution of health information to students and staff. While providing information on health matters to students and staff or discussing their health status, counseling is a natural and necessary occurrence for the Nurse. Such activities certainly are intellectual in nature and involve the consistent use of judgement. A closely related activity is the advising of teachers on how to handle situations which might arise with students who have certain health problems such as diabetes or epilepsy. While such an activity is less formal than is participation by a nurse on an M-Team in a K-12 setting, the giving of advice to teachers concerning student health conditions is related to the District's educational programs.

While the District may not have intended the position of Nurse to be of a professional nature when it created the position, a review of the education required of, and the duties performed by, the Nurses results in the conclusion that said position is occupied by professional employees. Since those duties are performed in support of the District's educational program, it is appropriate that the position of Student Health Nurse be included in the professional teacher bargaining unit.

Dated at Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Danae Davis Gordon  
Danae Davis Gordon, Commissioner

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3. That in Wisconsin VTAE District, Dec. No. 11380 (WERC, 1/73), after an election conducted by the Commission, the Union was certified as the exclusive collective bargaining representative of the following bargaining unit:

all teachers teaching at least 50 percent of a full teaching schedule in their area (a full teaching schedule shall consist of the normal student-contact hours) in the employ of Wisconsin Indianhead Vocational, Technical Adult Education District, excluding administrative, supervisory, managerial, confidential, custodial and clerical employees;

No. 11380-B



4. That the Union also is certified as the bargaining representative for a unit of secretarial and clerical employees of the District.

5. That the Union, on December 19, 1985, filed a unit clarification petition with the Commission wherein it sought the inclusion of a number of positions in the bargaining unit described in Finding of Fact 3.

6. That the District, on March 17, 1986, filed a unit clarification petition with the Commission wherein it sought the exclusion of three part-time Instructor Supervisors from the bargaining unit set forth in Finding of Fact 3.

7. That hearing in the matter was held in abeyance while the parties attempted to voluntarily resolve the matter; that prior to the scheduling of a hearing in the matter the parties reached agreement on the status of certain of the positions listed on the petitions; that at the hearing on November 12, 1986, the District withdrew its petition in the matter; and that at said hearing the parties agreed that the position of Displaced Homemakers Project Supervisor would be included in the bargaining unit described in Finding of Fact 3 above, and that the positions of Fire Training Specialist, Law Enforcement Specialist and Emergency Medical Services Specialist would be excluded from the bargaining unit described in Finding of Fact 3 above.

8. That the Union contends, contrary to the District, that the positions of Cosmetology Teacher Assistant and Student Health Nurse are occupied by professional employees and should be included in the professional unit described in Finding of Fact 3 above, rather than remaining in the existing non-professional unit which unit is also represented by the Union.

9. That the Cosmetology Program is designed to prepare students to acquire State of Wisconsin certification as a Cosmetologist; that there are two Cosmetology Teaching Assistant positions, herein Assistant, whose occupants work under the direction of two Cosmetology Instructors, herein Instructors; that generally there are two groups of students, consisting of 15-17 students each, in the cosmetology program; that one group is in the second year of the two-year program while the other group is in the first year of the program; that one Instructor normally works from 7:30 a.m. to 2:30 p.m. and teaches a daily one-hour theory class to each group of students during the time periods of 7:30 to 8:30 a.m. and 8:30 to 9:30 a.m.; that during the theory classes the Instructor discusses written materials and demonstrates techniques and procedures; that the other Instructor normally works from 10:00 a.m. to 5:00 p.m.; that the two Assistants normally work from 8:30 a.m. to 5:00 p.m.; that, in addition to the one hour theory class, the students normally spend seven hours daily in the Clinic practicing procedures; that in supervising the Clinic activities both the Instructors and the Assistants advise and instruct the students and demonstrate procedures; that the Assistants have sole supervision of the students in the Clinic for approximately two hours per day and that during the rest of the day both the Instructors and the Assistants are in the Clinic supervising students; that both Instructors and Assistants grade students on their performance of Clinic procedures, including the mock board examination which the students must pass before they can take the examination for certification by the State, while the grades for the theory class are determined by the Instructor teaching the class, who also drafts and grades the examinations for the class work; that the Instructors are responsible for establishing the course curriculum and outlines, ensuring the program content complies with State requirements, working with the library to select reference materials, ensuring the Clinic complies with Wisconsin Division of Health standards, and maintaining achievement standards; that the Assistants possess State of Wisconsin instructor licenses which permit them to teach in Cosmetology schools, but they do not possess Vocational School Instructor certificates, as do the Instructors, although at least one of the Assistants has completed some of the course work necessary for such certification; that the Assistants have taught the theory classes on a temporary and/or substitute basis; and that although the duties of the position of Cosmetology Teaching Assistant are varied in character and involve a measure of discretion, the position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning and, therefore, the occupants of the position are not professional employees.

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#### CONCLUSIONS OF LAW

1. That the occupants of the position of Cosmetology Teacher Assistant are not professional employees within the meaning of Sec. 111.70(1)(L), Stats., and therefore appropriately are excluded from the professional unit.

2. That the occupants of the position of Student Health Nurse are professional employees within the meaning of Sec. 111.70(1)(L), Stats., and therefore appropriately are included in the professional unit.

#### ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Cosmetology Teacher Assistant shall continue to be, and hereby is, excluded from the professional bargaining unit described in Finding of Fact 3; and that the position of Student Health Nurse shall be, and hereby is, included in the professional bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Danae Davis Gordon  
Danae Davis Gordon, Commissioner

(Footnote 1 found on Page 4.)

- 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.

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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 therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, 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.

. . .

(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.

WISCONSIN INDIANHEAD VTAE DISTRICT

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

POSITIONS OF THE PARTIES

The Union contends that the Cosmetology Teaching Assistants are professional employees, since they perform the same work as the Cosmetology Instructors, i.e., instruction of students in the clinic, for a majority of their workday. Further, the Assistants teach the theory classes when an instructor is absent, are involved in determining the grades of the students and have substantial responsibility for the Cosmetology program.

The Union asserts that the Student Health Nurses are professional employees. The Nurses are licensed registered nurses who perform a variety of professional level duties including the provision of first aid and medical advice, referrals to community health agencies, the establishment of wellness programs, serving as the head of the campus safety committee and acting as a resource on health matters for the instructors. As professional employees, the Nurses should be included in the same bargaining unit with the teachers.

The District argues that the position of Cosmetology Teaching Assistant is not a professional position since the duties are primarily routine in nature rather than being predominantly intellectual and varied in character. The Assistants primarily assist and tutor students in the clinic in established procedures. Although the Assistants give grades on standardized clinic procedures, the Instructors determine the grades to be entered on the students' transcripts. While the Assistants do fill in for absent Instructors, the Instructors establish the curriculum, are the regular teachers of the theory classes and have the ultimate responsibility for the program. Further, the position of Assistant does not require the advanced knowledge customarily acquired by a prolonged course of study in an institution of higher learning.

The District contends that the position of Student Health Nurse is not a professional position. The Nurses' work is of a routine mental nature and does not involve the consistent exercise of discretion. Their key duties are providing emergency care and maintaining records. The Nurses are not trained in counseling and have never been assigned responsibility for counseling. Any service by the Nurses as resource persons for classes is also performed by other District employees, both professionals and non-professionals. Further, the Nurses have not been integrated into the District's educational programs, unlike previous cases involving nurses in K-12 school districts, and, therefore, should not be included in a bargaining unit of teachers.

DISCUSSION

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

1. Any employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercises of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an

institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or

2. Any employee who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in subd. 1.

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

#### COSMOTOLOGY TEACHER ASSISTANT

Although the Assistants and Instructors perform basically the same activities in the overseeing of student activities in the Clinic, the Instructors have additional responsibilities for teaching classes, establishing curriculum, complying with State requirements and standards, and maintaining academic standards. Further, the Instructors must have certain academic training which is not required of the Assistants. The job duties of the Assistant and the educational training required for those duties as described in Finding of Fact 9 are not sufficient to establish that the occupants of the position of Cosmotology Teacher Assistant are professional employees. Accordingly, said position appropriately is not placed in the professional teacher bargaining unit, but rather remains in the non-professional bargaining unit.

#### STUDENT HEALTH NURSE

The Commission has consistently found Registered Nurses to be professional employees because of their training and duties. 3/ In the instant case, we find the fact that the occupants of the Student Health Nurse position are Registered Nurses and are required to possess said degree as a condition of employment is sufficient in and of itself to conclude that the occupants are professional employees. However, the District contends that the duties of the Nurse are not professional in nature.

The records-keeping function of the position, a minor task, does seem to be of a routine type. Nevertheless, the provision of first aid and emergency care certainly involves professional judgment in each situation and is seldom viewed as a routine activity. Said activity is a major responsibility of the Nurse. Also, the record shows the Nurse to be very involved in the District's wellness program through the administration of blood pressure screenings and the giving of advice concerning diet and weight reduction. Such activities clearly involve the exercise of discretion and judgement and are varied in character for each individual.

The job description specifically lists as a duty the provision of health in-service programs for staff. Although the testimony of the Nurse at the Superior campus was that she made only one class presentation during the first semester of the 1986-87 school year, such an infrequency does not establish that the presentation was not of a professional level. The fact that other staff employees, including non-professional employees, act as resource persons for the educational programs does not prove that consequently the nurse is a non-professional employee.

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2/ Outagamie County (District Attorney's Office), Dec. No. 21143-A, (10/86).

3/ School District of Maple, Dec. No. 17463 (WERC, 11/79).

The Nurse's job description does not specify student counseling to be an assigned task. The Nurse at the Superior campus testified that she had not received any formal training as a counselor outside of the training normally included in her nursing degree program. However, she also testified that she has talked with and counseled students concerning a variety of problems, including suicidal tendencies and drug abuse. Such counseling would appear to be an essential component of the process of making referrals to appropriate agencies and following up on those referrals. That process involves varied considerations for each individual, rather than being routine in nature. Moreover, the job description specifies the Nurses are to act as a resource for the distribution of health information to students and staff. While providing information on health matters to students and staff or discussing their health status, counseling is a natural and necessary occurrence for the Nurse. Such activities certainly are intellectual in nature and involve the consistent use of judgement. A closely related activity is the advising of teachers on how to handle situations which might arise with students who have certain health problems such as diabetes or epilepsy. While such an activity is less formal than is participation by a nurse on an M-Team in a K-12 setting, the giving of advice to teachers concerning student health conditions is related to the District's educational programs.

While the District may not have intended the position of Nurse to be of a professional nature when it created the position, a review of the education required of, and the duties performed by, the Nurses results in the conclusion that said position is occupied by professional employees. Since those duties are performed in support of the District's educational program, it is appropriate that the position of Student Health Nurse be included in the professional teacher bargaining unit.

Dated at Madison, Wisconsin this 18th day of June, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld  
Stephen Schoenfeld, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Danae Davis Gordon  
Danae Davis Gordon, Commissioner