STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

WISCONSIN STATE EMPLOYEES UNION (WSEU), AFSCME, COUNCIL 24, AFL-CIO

Involving Certain Employees of

THE STATE OF WISCONSIN

Case 11
No. 50909
SE-12

Decision No. 11245-S

In the Matter of the Petition of

STATE ENGINEERING ASSOCIATION

Involving Certain Employees of

THE STATE OF WISCONSIN

Case 36
No. 50935
SE-13

Decision No. 11667-C

Appearances:

Haus, Resnick and Roman, LLP, by **Attorney William Haus** and **Attorney Michael E. Banks**, 148 East Wilson Street, Madison, Wisconsin 53703-3423, appearing on behalf of the State Engineering Association.

Lawton & Cates, S.C., by **Attorney P. Scott Hassett** and **Attorney Lisa Pierobon Mays**, 214 West Mifflin Street, P.O. Box 2965, Madison, Wisconsin 53701-2965, appearing on behalf of the Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO.

Attorney David J. Vergeront, Chief Legal Counsel, Department of Employment Relations, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the State of Wisconsin.

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

On April 28, 1994, Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO (hereinafter WSEU), filed with the Wisconsin Employment Relations Commission a petition to clarify an existing collective bargaining unit of employees of the State of Wisconsin, Department of Transportation (hereinafter DOT), by removing certain positions from the Professional Engineering employee collective bargaining unit represented by the State Engineering Association (hereinafter SEA), and placing them in the Technical employee collective bargaining unit represented by WSEU.

On April 4, 1995, SEA filed with the Commission a petition to clarify an existing collective bargaining unit of employees of the State of Wisconsin by removing certain positions from the WSEU Technical unit and placing them in the SEA Professional Engineering unit.

On April 5, 1995, this Commission ordered that said petitions be consolidated for purposes of hearing.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

Pursuant to an off-the-record agreement between the parties, 1/ proof adduced at the hearing in this matter was limited to the appropriate collective bargaining unit placement of certain positions within the **Engineering Specialist** - Transportation classification. 2/ Written arguments of the parties contained in post-hearing briefs were similarly limited. DER took no position on the appropriate unit placement of positions within the **Engineering Specialist** – Transportation classification.

1/ This agreement is acknowledged in the "Principal Brief of the State Engineering Association" at p. 2.

2/ At the time of hearing, each position was included in the Professional Engineering bargaining unit represented by SEA.

Hearing in the matter was held in Madison, Wisconsin, before Commission Examiner Coleen A. Burns on February 12, 13, 14 and 15, 1996; June 12, 13 and 14, 1996; December 4 and 5, 1996; February 25, 26 and 27, 1997; and August 11, 12 and 13, 1997. Hearing was held by Examiner Burns in Superior, Wisconsin, on October 29, 1997. Further hearing was

held by Examiner Burns in Madison, Wisconsin, on March 11 and 13, 1998; and July 6, 7, 8 and 9, 1998. Post-hearing written argument was filed by December 1, 1999.

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

FINDINGS OF FACT

1. Wisconsin State Employees Union, AFSCME, Council 24, AFL-CIO, hereinafter WSEU, is a labor organization with offices at 8033 Excelsior Drive, Suite C, Madison, Wisconsin 53717-1903. WSEU is the exclusive collective bargaining representative of employees of the State of Wisconsin who are in the Technical employee collective bargaining unit.

2. State Engineering Association, hereinafter SEA, is a labor organization with offices at 4510 Regent Street, Madison, Wisconsin 53705. SEA is the exclusive collective bargaining representative of employees of the State of Wisconsin who are in the Professional Engineering collective bargaining unit.

3. The State of Wisconsin is the employer. The State's Department of Employment Relations (hereinafter DER) is statutorily designated to represent the interests of the State for the purposes of conducting labor relations involving State employees. DER has offices at 345 West Washington Avenue, Madison, Wisconsin 53707-7855.

4. By previous action of this Commission [Dec. No. 10591, 10592, (WERC, 11/71)], **Engineering Technicians** 1, 2, and 3 were included in the Technical collective bargaining unit represented by WSEU and **Engineering Technicians** 4, 5, and 6 were included in the Professional Engineering collective bargaining unit represented by SEA.

5. In mid-1990, DER completed a survey (hereinafter Engineers Survey) of the **Engineering Technicians**. DER implemented the conclusions it drew from said survey on June 17, 1990, by:

a. Redesigning the **Engineering Technician** series classification; and
b. Creating the **Engineering Specialist** series classification

6. Following implementation of the 1990 Engineering Survey, all employees in the **Engineering Technician** – Transportation Series were represented by WSEU in the Technical unit and all employees in the **Engineering Specialists** – Transportation Series were represented by SEA in the Professional Engineering unit. All of the employees included in the 1990

Engineering Survey were reallocated because all received a new classification code. Further, DER granted the employing agency the discretion to determine the reallocation when it assigned each position to a specific classification. Such reallocations were (and are) not subject to collective bargaining.

When the Engineering Survey was completed, virtually all of the persons then classified in **Engineering Technician 4, 5, or 6** positions as well as an unknown number of persons then classified in **Engineering Technician 3** positions and at least one person then in an **Engineering Technician 2** position were reallocated into various levels in the **Engineering Specialist** series. Said reallocations resulted in an estimated 600 employees moving from the WSEU Technical unit to the SEA Professional Engineering unit and less than 100 employees moving from the SEA Professional Engineering unit to the WSEU Technical unit.

Individual employees were permitted to contest their reallocation through an informal appeal process to DER and a substantial number of appeals were filed. Some of the employees who were dissatisfied with the results of the informal appeal process to DER subsequently filed appeals with the State of Wisconsin Personnel Commission.

7. Subsequently, at the direction of Administrator of DER's Division of Classification and Compensation James Pankratz, Michael Soehner, a staff person of said division, supervised a revision of the 1990 **Engineering Specialist** - Transportation Series Classification Specification. This revised **Engineering Specialist** - Transportation Series Classification Specification set forth below became effective on June 26, 1994. It eliminated all previous references to the term "professional" in connection with said series. It further listed the following levels of classifications in said series: Entry, Development, Journey, Senior, Advanced 1, and Advanced 2.

A. Purpose of This Classification Specification

> This classification specification is the basic authority [under Wis. Admin Code ER 2.04] for making classification decisions relative to positions primarily responsible for providing a specialized expertise for the Department of Transportation multi-modal transportation systems. Positions allocated to this classification are currently assigned to the Professional Engineering Bargaining Unit per s. 111.825(1)(f)(8), Wis. Stats., as determined by the Wisconsin Employment Relations Commission.

B. Inclusions

This series encompasses specialized positions at the Department of Transportation which devote the majority of their time and are responsible for duties related to the engineering support functions to the multi-modal transportation systems. The program areas include:

Positions included in this series must meet the Qualifications prescribed under Section I.C.

C. Qualifications

Specific qualifications for a position will be determined at the time of recruitment. Education required may include a two year degree. Training requirements may include work experience at construction sites or through an apprenticeship. Licensure requirements may include specific types of inspector licenses. Knowledge of mathematics, surveying, drafting and reading and comprehension techniques may be required. Skill may be required in verifying adherence to construction project plans and specifications; assisting with initial grade staking and measurements of items of work; verifying design manual standards and federal requirements are met; preparing or reviewing detail plans for highway design; preparing geometric computations; and performing standard material tests. The amount of knowledge, education, work experience or specific licensure requirements will be based on an analysis of the goals and worker activities of each positions (sic).

D. Exclusions

1. Positions that require a Bachelor of Science degree in engineering or equivalent and require a professional engineer responsibility.

2. Positions that are not located within the Department of Transportation.

3. Positions that do not spend the majority of their time in the multi-modal transportation systems in such areas as design, construction, maintenance, materials, planning, traffic and related programs identified herein.

4. All other positions which are more appropriately identified by other classification series.

E. Entrance Into and Progression Through This Series

Employes typically enter this classification series by competitive examination. Progression to the objective level will occur through reclassification, except for positions identified as a Lead Worker, Crew Chief, or similar title; these positions must be filled through competition. The majority (greater than 50%) of a position's duties and responsibilities must be recognized in the classification definition levels in order for the position to be assigned to this classification series.

DEFINITIONS

ENTRY: Work is performed under close supervision. Positions at this level perform the most routine duties having clearly defined objectives; receive specific guidelines and instructions; and exercise very limited discretion in decision-making.

DEVELOPMENTAL: Work is performed under close to limited supervision. Positions at this level receive work assignments that are longer-term; have objectives that are well defined but stated in general terms; have specific guidelines available; and exercise limited discretion in decision-making.

OBJECTIVE LEVEL: Work is performed under general supervision. This is the level an employe can reasonably expect to obtain based upon the following definitions of job duties assigned and encompassing the full range of duties as described.

NOTE: Recruitment for a position can occur at any level between the ENGINEER SPECIALIST – TRANS ENTRY and the objective level with the level based on the job duties identified on the Position Description. Determination of objective levels for job duties not identified will be done on a whole job match with the types of work activities identified at each level.

KEY: The number A1a means: the capital letter is associated with the program area (A = Airport); 1 is the Journey level, 2 is the Senior level, 3 is the Advanced 1 level and 4 is the Advanced 2 level; the small letter is the order within each level.

8. On or about October 12, 1997, DER revised the **Engineering Specialist** – Transportation Series Classification by collapsing it from six to four levels, to-wit (in ascending order): Specialist, Journey, Senior and Advanced. Existing levels of Entry and Developmental were collapsed into one level simply called **Engineering Specialist**. The existing level of Journey remained as Journey. The existing level of Senior remained as Senior. The **Engineering Specialist** levels of Advanced 1 and Advanced 2 were continued, but no employees were at the Advanced 1 level on the aforesaid effective date and it was deemed discontinued as a practical matter.

As in the revision of the **Engineering Specialist** series in 1994, all references to the term "professional" remained omitted.

The omissions of the term "professional" from the revisions in 1994 and 1997 were deliberate and reflected a belief on the part of the DER revision drafters that the classification specifications within said series were not intended to describe professional positions.

9. The **Civil Engineer** – Transportation Series Classification Specification, implemented on June 26, 1994, includes the following provisions:

A. Purpose of This Classification Specification

This classification specification is the basic authority [under Wis. Admin. Code ER 2.04] for making classification decisions relative to present and future professional engineering positions

within the Department of Transportation. Positions allocated to this classification perform duties that are professional in nature as defined in s. 111.81(15), Wis. Stats. and are currently assigned to the Professional Engineering Bargaining Unit, s. 111.825(1)(f)(8), Wis. Stats., as determined by the Wisconsin Employment Relations Commission.

B. Inclusions

This classification specification encompasses positions providing professional engineering duties and expertise for multi-modal transportation programs. The positions perform engineering work in such areas as planning, design, construction, operation and maintenance of transportation facilities. Positions included in this series must meet the Qualifications prescribed under I.C.

. . .

C. Qualifications

Positions included in this series have duties and responsibilities of such a nature that it is required (by federal or state law or by position analysis) that the incumbent have a PE (Registration as a Professional Engineer), EIT (Certification as an Engineer-in-Training) or have graduated from a recognized college or university with a degree in a related engineering field such as electrical, mechanical, civil or environmental engineering or have equivalent professional training and practical experience so as to be deemed a professional engineer as defined in Department of Regulation and Licensing per s. 443.01, Wis. Stat. and also deemed to be qualified to engage in professional engineering practice as determined by the Department of Regulation and Licensing per s. 443.04 or 443.05, Wis. Stats. Positions not having duties and responsibilities which require such credentials shall be allocated to a different classification series.

D. Exclusions

Excluded from this specification are the following types of positions:

1. "Management" and "Supervisor" positions are defined in s. 111.81(13) and (19), Wis. Stats., and as administered and interpreted by the Wisconsin Employment Relations Commission.

2. Employes who are not engaged for the majority of time in "Professional employe" work as defined in s. 111.81(15), Wis. Stats., and as administered and interpreted by the Wisconsin Employment Relations Commission.

3. Positions which do not require that the incumbent perform professional engineering duties and be a professional engineer by background and training for the successful performance of the tasks assigned to the position.

4. Positions which are not located at the Department of Transportation.

5. Positions which spend the majority of their time reviewing building plans and/or inspecting buildings to assure the minimum safety codes are met.

6. All other positions which are more appropriately identified by other classification specifications.

E. Entrance Into and Progression Through This Series

Employes enter positions within this classification series by meeting the qualifications under I.C. and by competitive examination. Progression to the objective level will occur through reclassification if the employe meets all the criteria for the next level. The majority (greater than 50%) of a position's duties and responsibilities must be recognized in the classification levels and functional work activities in order for the position to be assigned to that classification and level.

II. DEFINITIONS

Section A, Levels, describes the appropriate placement of an employe based upon the specific level of skills, knowledge, and abilities required of the position, and the amount of supervision received for the majority of time within the specific professional engineer program area.

Employes at the Entry, Developmental, and Journey levels may perform all, a portion of, or the routine aspects of the job duties described under Section B.

Section B, Functional Work Activities, describes the full range of duties performed at the objective level. [Objective Level is the level an employe can reasonably expect to obtain if he/she performs the full range of functional work activities.]

Employes may also perform the following types of duties, but they are usually performed at the Senior or Advanced levels:

1. Lead Worker: An employe who trains, assigns the work and reviews the work of other professional employes and which may also include technical employes. Lead Worker functions will cease for Entry, Developmental, and Journey level engineers when they have successfully attained the Senior level. Lead Worker functions are a permanent assignment but are dependent upon having developmental levels (below the Senior level) of engineer staff.

2. Program Leader: An employe who is the technical expert for a specific area(s) and who may have some program oversight to assure uniformity within a specific engineering area(s).

3. Project Leader: An employe who has the responsibility for coordinating the work of another professional engineer(s) when a project requires two or more engineers for completion and which may also include other technical and professional employes. This function would last only as long as the project takes. An employe can be a project leader and a team member for another project simultaneously. **OR** A project leader can be an employe who has the responsibility of oversight of nonpermanent, nonstate, or contract engineers and related staff.

. . .

10. Classification specifications for the **Engineering Technician, Engineering Specialist** and **Civil Engineer** classification series are broad. The current classification specifications in effect for the **Civil Engineer** – Transportation Series and the **Engineer Specialist** – Transportation Series overlap as do the current classification specifications in the **Engineer Specialist** – Transportation Series and the **Engineer Technician** – Transportation Series. Thus, **Civil Engineers** may perform some technical duties in addition to their primary professional engineering responsibilities, **Engineering Technicians** may perform some specialized professional engineering duties in addition to their primary technician responsibilities, and **Engineer Specialists** may perform elements of both professional engineering specialties and technical duties in varying mixtures.

11. The Department of Transportation includes a Division of Transportation Districts consisting of 8 districts. The districts cover the entire State of Wisconsin; each district covers a separate geographic area of the State. **District 1** is headquartered in **Madison**, **District 2** in **Waukesha**, **District 3** in **Green Bay**, **District 4** in **Wisconsin Rapids**, **District 5** in **LaCrosse**, **District 6** in **Eau Claire**, **District 7** in **Rhinelander**, **District 8** in **Superior**.

Each district is permitted to organize its work and staff in the manner deemed most suitable by its respective district directors. As a consequence, patterns of staffing assignments and the type of work assigned to individual staff members are not uniform among the several districts.

Lower and middle level (Beginning, Journey and Senior) **Engineering Specialists** generally work on teams/squads that include **Civil Engineer** members. Composition of teams and squads varies on a district-to-district basis.

12. Position descriptions and summaries for positions at identical levels within the **Engineering Specialist** - Transportation classification series vary widely and are highly individualized.

13. There is substantial variance in the educational background of the individuals classified as **Engineering Specialists** - Transportation. The educational levels achieved by **Engineering Specialist –** Transportation employees who testified in this matter range from a high school diploma to a high school diploma plus 3 years in an accredited school of engineering and a 2-year associate degree in civil engineering technology from a technical college.

14. **Engineering Technicians, Engineering Specialists** and **Civil Engineers** who are assigned to manage or design a construction project begin with small projects and progress to larger projects as they gain work experience. DOT supervisors make design management and construction management assignments on the basis of an employee's availability and ability, as demonstrated by work experience, rather than an employee's classification as **Civil Engineer** or **Specialist**. In determining design management and construction management assignments, DOT supervisors may also take into consideration an individual's preference for a specific work type or work site, or the supervisor's assessment that an employee needs more experience in the work of the assignment. Typically, DOT managers and supervisors, and not the design or construction manager, determine the scope of a design project.

15. As used in the Department of Transportation, the meaning of the term "project management" varies. On some projects "project management" requires "professional engineering services;" on other projects "project management" consists of superintending of construction. Thus a project engineer or project manager in either construction or design is not

necessarily but may be required to apply engineering theories or principles to perform a majority of his or her work. In some cases, project management consists of *superintending*, as opposed to *supervising*, the project. "Superintending" requires executive/administrative, organizational, communication, or coordination and scheduling skills, or all of these, but does not necessarily require the application of advanced engineering knowledge. The term "project manager" is synonymous with "project engineer."

16. Design Project Managers are required to obtain the approval of plans and designs by a supervisor who is a **Civil Engineer**. Upon completion of a construction project, all Construction Project Managers must obtain the final approval of a supervisor who is a **Civil Engineer.**

17. In Wisconsin any professional engineer is subject to discipline from the State Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Landscape Engineers for, *inter alia*, signing or impressing his or her seal upon documents not prepared by him or her or under his or her control. Possible discipline ranges from reprimand to suspension or revocation of his or her certificate of registration.

18. A college curriculum offered by institutions of higher learning leading to a degree in engineering is calculus-based and includes math coursework through calculus, along with science and engineering science coursework. The degree is usually based on a 4-year curriculum and emphasizes the theory of the subject topic being taught.

19. Education for **Engineering Technicians** generally reflects a "hands-on" approach involving repetitive work experiences. Generally, it includes no more that two years of coursework that leads to an associate degree from a technical college as distinguished from an institution of higher learning such as a college or university that offers 4-year bachelor degrees. **Technicians** should be able to do algebra, geometry and shop math. The **Technician** is being trained to understand the very broad aspects of engineering. Technical colleges in the State of Wisconsin offer 2-year associate degrees in Civil Engineering Technology.

20. On a scale of varying difficulty, typical technical activities include: performance of simple observations, measurements and computations at project site; routine inspection assignments under general supervision; independent highway construction inspection work including delegated responsibilities and duties for which engineering precedent exists as well as assignment of tasks and supervision of activities assigned to personnel; performance of common acceptance tests; monitoring of common construction procedures; verification of locations and quantities; preparation of project record entries; conducting common and specialized acceptance tests; overseeing specialized acceptance tests and monitoring of both common and unique construction procedures; maintenance of project records; processing of change orders; initiation of recommendations; overseeing specialized acceptance tests and

unique construction procedures; interaction with project engineers/managers and contractor; and making recommendations for corrective actions. Other technical activities can include: analysis and solving of technological problems, preparation of formal reports on experiments and tests and other projects, and carrying out technical support functions such as drafting, surveying, designing technical sales, advising consumers, technical writing or training, and superintending construction projects.

21. In Wisconsin there are four alternative routes that can lead to becoming registered as a professional engineer. Each is set forth in Chapter 443 of the Wisconsin Statutes and summarized in the Biennial Report of the State of Wisconsin Department of Regulation and Licensing as:

> 1. ABET* degree plus 4-years experience plus passing a written 16-hour exam.
> 2. Non ABET*, related or no degree plus 8-years experience (credit allowed for education) plus passing a written 16-hour exam.
> 3. ABET*, non ABET, related or no degree plus 12 years experience (credits allowed for education) plus passing a written 8-hour exam.
> 4. ABET* degree or equivalent, plus 8-years experience with 6-months in Wisconsin, and no exam required.

ABET* is an acronym for Accreditation Board for Engineering and Technology. It is a national board that reviews college curricula for engineering programs and issues accreditation to an institution of higher learning if the Board's standards are met. As used in the Department of Regulation and Licensing Biennial Report, ABET refers to a degree earned at an institution that received accreditation from ABET.

22. In Wisconsin, an applicant for certification as an Engineer-In-Training (valid for 10 years) must submit satisfactory evidence of: a) an ABET degree; or b) a specific work record of 4-years or more of experience in engineering work of a character satisfactory to the [engineering] examining board; or c) a combination of experience/education that is satisfactory to the [engineering] examining board. The applicant will then be permitted to take a written 8-hour examination. Certification is contingent on passing the examination.

23. The normal sequence for certification and registration as a professional engineer with the State of Wisconsin is graduation from an accredited school of engineering, passing a written 8-hour Engineer-in-Training examination given by the Engineer Examining Board, at least 4-years of engineering experience under the tutelage of a professional engineer, and finally passing a 16-hour written examination.

24. As a general matter, the majority of duties for **Engineering Specialists** (formerly designated as Entry and Developmental) are technical and in support of the work of **Civil Engineers.**

25. As a general matter, the majority of duties for **Engineering Specialists** - Journey are technical duties in support of the work of **Civil Engineers**.

26. Pursuant to the collective bargaining agreement between the State and the SEA, employees in the **Engineering Specialist** - Transportation series automatically progress to the Senior level after 3 years in the series, unless management exercises its right to curtail the automatic progression on the basis of an employee's poor work performance. Because an **Engineering Specialist** Senior classification can be attained through "time in grade," an employee's possession of this classification does not establish whether the employee's work requires engineering knowledge customarily acquired by a prolonged course of specialized intellectual instruction and study at an institution of higher learning.

27. Certification of an employee as an "Engineer-in-Training" creates a presumption of professional status for collective bargaining unit placement, provided the employee is predominantly performing work requiring engineering knowledge customarily acquired by a prolonged course of specialized intellectual instruction and study at an institution of higher learning.

28. At hearing in this matter, the following DOT employees testified and at said time each was classified in the **Engineering Specialist** - Transportation classification series at the level that follows his or her name: **Thomas Brennan, Journey; Roxanne Cuty, Journey; David Dallman, Senior; Russell Glime, Advanced 2; Jeff Kaarto, Advanced 1; Keith King, Advanced 2; Phillip Keppers, Senior; Jeanne Marchant, Journey; David McCosh, Journey; Barbara Moes-Kliefgen, Senior; Mark Mohlman, Senior; Duane Nelles, Senior; George Nicolaus, Developmental; Dale Oldenburg, Senior; Mary Pamperin-Volk, Journey; Timothy Pawlewski, Senior; Sandra Pease, Senior; Thomas Peronto, Senior; Timothy Radtke, Senior; Edward Riley, Advanced 2; John Ross, Developmental; Gary Schaeffer, Senior; Francis Shelfhout, Entry; Dennis Schmunck, Journey; Darwin Sering, Advanced 1; Paul Weidner, Journey; Eugene Werner, Journey; Keith Wickersham, Senior; John Wiledon, Senior; Dan Winrich, Advanced 2; John Yelich, Senior.**

29. The parties stipulated that the **Specialist Advanced 1's** and **Specialist Advanced 2's** would remain in the bargaining unit represented by the SEA.

30. Since testifying in this matter, the following persons have been reclassified to the level of **Engineering Specialist** - Transportation-Advanced 2: **Jeanne Marchant, Mark Mohlman, George Nicolaus, Mary Pamperin-Volk, Francis Schelfhout, Dennis Schmunck, Phillip Keppers, Dale Oldenburg, Timothy Radtke, Gary Schaeffer, Keith Wickersham.**

31. Since testifying in this matter, the following persons are no longer employed as **Engineering Specialists**: **Thomas Brennan, David Dallman, Timothy Pawlewski, John Ross, John Wiledon, John Yelich.**

32. Since testifying in this matter, the positions of the following persons have been reclassified as described: **Roxanne Cuty (promoted from Engineering Specialist - Journey to Engineering Specialist - Senior); David McCosh (promoted from Engineering Specialist - Journey to Engineering Specialist-Senior); Paul Weidner (promoted from Engineering Specialist Journey to Engineering Specialist-Senior); Eugene Werner (promoted from Engineering Specialist - Journey to Engineering Specialist – Senior).**

33. Upon reclassification, the position description of the employee whose position has been reclassified is altered to reflect the duties and responsibilities of the reclassified position.

34. Since testifying in this matter, the positions of the following persons have not been reclassified: **Barbara Moes-Kliefgen (Engineering Specialist-Senior); Duane Nelles (Engineering Specialist-Senior); Sandra Pease (Engineering Specialist-Senior); Thomas Peronto (Engineering Specialist-Senior).**

35. At the time of her testimony (December 5, 1996), **Barbara Moes-Kleifgen**, an **Engineering Specialist –** Senior in the classified service assigned to **District 4,** had earned an associate degree in Civil Engineering, plus ". . . a year of marketing out of technical school," and had been with DOT for 14 years.

Originally hired as a Engineering Aide, she was promoted to an Aide 2 level within a year. A year and a half later, she became an **Engineering Technician 1**. At the time the Engineering Survey was completed by DER in 1990, Moes-Kleifgen had risen to a **Engineering Technician 3** level.

While a **Technician 3**, she did some designing but was assigned to the Traffic Section where she has remained. The Traffic Section deals with signs, road markings, traffic signals, flashing beacons, and other traffic control measures. Until 8 months prior to her testimony, Moes-Kleifgen was the only other person in the Traffic Engineering Section besides the engineering supervisor (who is a **Civil Engineer** Supervisor 3).

Currently, she is on a traffic team consisting of the traffic engineering supervisor (who is a **Civil Engineer**) and herself. The team reviews traffic control signals, designs signal plans for state trunk highways, reviews consultant plans and city plans for signals and sets up the timing or the coordination between the signals. The team assesses traffic signal

needs and matches local demands for signals against department warrants (guidelines). Sometimes political pressure results in the approval of a traffic signal installation even if the guidelines have not been met. The team also designs temporary traffic control measures in highway construction areas. The traffic engineering supervisor makes all final decisions.

Moes-Kleifgen has taken five or six classes in traffic control at the Traffic Institute at Northwestern University. The classes run anywhere from two days to two weeks and are attended by **Civil Engineers**. Moes-Kleifgen has trained **Civil Engineers** in traffic control measures. She plans to transfer laterally into Maintenance where she anticipates acting as a liaison between the State and counties on county roadwork projects.

Moes-Kliefgen is not primarily engaged in work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

36. At the time of his testimony (February 26, 1997) **Duane Nelles**, an employee in the classified service then classified as an **Engineering Specialist –** Senior, had worked for DOT for 28 years. Nelles is assigned to **District 4**, and is a high school graduate with one year at technical school for civil engineering technology.

Following the completion of the DER Engineering Survey in 1990, Nelles was reallocated from an **Engineering Technician 4** to his present level in the Specialist series in which Nelles functions as a project manager working only in design. Nelles' responsibilities include putting together the contracts to carry out the design. He has functioned as the beta test person for CACE (computer-aided civil engineering software package) in **District 4**, and does one-on-one CACE training.

Nelles designs the approach-work to bridges. Nelles confers with his supervisor on projects he is managing as the project progresses. In his project management, Nelles is primarily in charge of making sure the plan is in compliance with state manuals and coordination of the plan. Nelles' position description lists one of his duties as "directing development of preliminary project design." The preliminary project design is the first draft of the design. Nelles is supervised by a **Civil Engineer**.

Nelles is not primarily engaged in work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

37. At the time of her testimony (October 29, 1997), **Sandra Pease,** an **Engineering Specialist –** Senior in the classified service assigned to **District 8**, had been with DOT for 10 1/2 years. Hired in April 1987 as an **Engineering Technician 1**, Pease had advanced to a **Technician 2** level by the time the DER Engineering Survey was completed in 1990. As a result of that survey, Pease was reallocated from **Engineering Technician 2** to the

Specialist series at the Developmental level.

Pease has a two-year degree in commercial architectural design; she also has 95 engineering credits, 40 of which were earned at Rock Valley Junior College (where she enrolled immediately following her high school graduation) and the balance at the University of Wisconsin-Superior.

Pease has taken and passed the eight-hour Engineer-in-Training exam administered by the Engineer Examining Board at the Department of Regulation and Licensing. Pease has at least 70 percent of the credits necessary to receive a bachelor's degree in engineering.

At the time of her testimony, Pease was actively working as design project manager for two highway reconstruction projects: 1) Highway 63, an estimated $355,000 project, and 2) Highway 77, an estimated $1,000,000 project.

The Highway 63 project is somewhat unique in that it is located in the Bivna Swamp where, according to soil experts, there are some of the worst soils in the United States (plastic fluid clays that extend down approximately a hundred feet) from a highway construction standpoint. The challenging soils condition required Pease to investigate three possible solutions before opting for one.

The Highway 77 project necessarily involved Pease in operational meetings and leadership and involvement in a design study report and a preliminary plan.

In design, Pease looks at the options at the operational planning meeting, narrows the scope, then follows it through to final design plans and specifications.

Pease also served as the construction project manager for the Poplar River Bridge project that had unique features, including a 13 percent grade coming down into the structure itself. The project required putting in five or six caissons on one side of the river to stabilize the grade. That was the first instance in the district that a caisson was used in that manner with respect to a bridge construction project.

She has done significant urban work, including East Second Street, Belknap Street, and all of the Tower Avenue projects in Superior.

The Tower Avenue work involved three simultaneous projects that amounted to approximately $920,000 worth of lighting and signal work. Pease was in charge of the electrical work. She worked with the contractor and the consultant, moved signals if necessary, and called on the designer to make changes or correct errors on the plans. She had the authority to accept or reject materials, and did reject poles that did not meet plan specifications.

The Belknap Street (bridge) project in Superior also featured complicated electrical work and required Pease to coordinate her efforts with those of the Minnesota Department of Transportation.

Pease has performed independently but, consistent with **District 8** practice, she is a member of a squad. However, her squad leader does not necessarily review her work. Rather, her work is channeled through her supervisor.

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

38. At the time of his testimony (December 5, 1996) **Thomas Peronto** had been with DOT since July 1982 and was working out of **District 4**. He has a two-year associate degree in civil engineering technology from the Madison Area Technical College. Prior to obtaining that degree, Peronto earned 69 civil engineering credits from the University of Wisconsin School of Engineering. He needs a total of 135 credits to receive his bachelor's degree in engineering.

An **Engineering Specialist – Senior** at the time of his testimony, Peronto began his employment with DOT as an **Engineering Technician 1**. By February 1989, Peronto had advanced to a **Technician 4** level. Peronto has been groomed to take on ever-increasing engineering responsibilities since he was a **Technician 3**. Peronto's promotion to **Technician 4** occurred when the **Civil Engineer – 4** (Senior) for whom he had been working as an assistant project manager was promoted to a supervisory level. When the engineer became a supervisor, Peronto succeeded him as project manager for all the projects on which the engineer had been working and his reclassification to **Technician 4** soon followed as did assignments handling consultant design projects. After that, Peronto became an assistant project manager on in-house design projects, where he assisted managers of higher classifications in developing plans and specifications.

In 1990 following the completion of the DER Engineering Survey, Peronto was reallocated to the **Engineering Specialist** series, Senior level. Peronto works as an assistant project manager on in-house designs and does actual "hands-on" design work. Peronto sometimes works with in-house Entry and Journey level **Civil Engineers** and consistently works with an **Engineering Specialist** – Advanced 2.

Peronto's work has included projects involving Highway 29, Main Street Wautoma and Highway 21.

His responsibilities on the Highway 29 work included teaching entry-level **Civil Engineers** how to work with private consultants. It was necessary for him to understand fully what the consulting firm was doing on the plan and to integrate that with his own engineering knowledge of what will be required for the project to work and to meet DOT's standards.

The Main Street project in Wautoma is a more recent example of the type of work Peronto does in projects involving private consultants. The project consisted of converting a two-lane roadway in the downtown area with parking into four-lanes without parking that required curb and gutter and storm sewer installation. Peronto was able to trim $1.2 million of the initial cost estimate of $4 million, thus shortening the distance to be worked on by about three-quarters of a mile. Peronto was also able to find an alternate funding source for certain intersections that also reduced costs while retaining as much of the project as possible. Peronto raised some concerns he had about the profile as to right-of-way impact and worked out the concerns with the consultant. Peronto also was responsible for dealing with adjacent property owners. Peronto was listed on the design plans as the "district examiner."

The Highway 21 project had a number of environmental implications that required Peronto to coordinate his design efforts with the Wisconsin Department of Natural Resources. Peronto wrote the mitigation plan to show how DOT proposed to mitigate any effects of the highway widening to the adjacent lakes. The plan included flattening a curve, moving a portion of the roadway into the waterway, replacing any wetlands that were being lost (as well as a spawning bed), and reducing access points to the lake.

Coordination with the Wisconsin State Historical Society was also necessary on the Highway 21 project. Where collision with an archeological site could not be avoided in the design, Peronto worked with the Historical Society to mitigate damage to the site.

Peronto's continuing responsibilities on the Highway 21 project included making engineering judgments as to right-of-way, reducing costs, and acquisition costs.

As project manager on consultant design projects, Peronto reviews the plans submitted by private sector design consultants who are professional engineers. On occasion, entry and developmental level **Civil Engineers** are assigned to Peronto's projects as a learning experience for the engineers. On consultant projects, Peronto works with the consultant company's **Civil Engineers**. At the time of his testimony, 30 percent of his work was with consultant design and 40 percent involved in-house design and other miscellaneous duties.

Peronto's design work is the same type of work that DOT **Civil Engineers** perform in connection with private consultants on state projects.

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

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

CONCLUSIONS OF LAW

1. The professional employee status of employees who are no longer employed in the **Engineering Specialist** – Transportation classification is moot.

2. Because there is neither testimony as to current employment duties nor position descriptions and summaries that describe the positions to which Roxanne Cuty, David McCosh, Paul Weidner and Eugene Werner have been reclassified following their testimony in this matter, we cannot determine whether they are professional employees within the meaning of Sec. 111.81(15), Stats.

3. Sandra Pease and Thomas Peronto are professional employees within the meaning of Sec. 111.81(15), Stats.

4. Barbara Kliefgen-Moes and Duane Nelles are not professional employees within the meaning of Sec. 111.81(15), Stats.

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

ORDER CLARIFYING BARGAINING UNITS

1. By stipulation of the parties, all employees classified as **Engineering Specialist** - Advanced will remain in the bargaining unit represented by the State Engineering Association.

2. All matters raised by the parties in their petitions but not subsequently addressed by the parties at hearing or in written argument are dismissed without prejudice.

3. Sandra Pease and Thomas Peronto shall continue to be included in the Professional Engineering bargaining unit represented by the State Engineering Association.

4. Barbara Kliefgen-Moes and Duane Nelles shall be included in the Technical employee bargaining unit represented by Wisconsin State Employees Union.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

STATE OF WISCONSIN

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

POSITIONS OF THE PARTIES

WSEU

WSEU observed that at the time that the petition for unit clarification was filed, the classifications within the **Engineering Specialist** – Transportation series were Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2. However, WSEU continues, effective October 12, 1997, the five levels of **Engineering Specialist** - Transportation were collapsed. But for purposes of remaining consistent with the testimony provided at the hearings, WSEU stated its intent that its arguments would reference the classifications in effect at the time of the hearings.

According to WSEU the **Engineering Specialist** - Transportation series was collapsed for the purpose of eliminating the reclassification process that permitted DOT to place a position into another collective bargaining unit without DER approval. WSEU recalled the testimony of DER Executive Human Resource Specialist Cornell Johnson to the effect that **Engineering Technicians** placed in the Specialist classification did not necessarily progress to the objective level, thereby indicating that the individual was not truly performing Specialist work.

WSEU asserted that the **Engineering Specialist** positions in dispute should be included in the Technical bargaining unit on a four-point basis:

1) none of the positions require a professional Engineering designation or even a Technical certification;
2) the work of the disputed positions is virtually identical to work performed by individuals in the Technical bargaining unit at the time the petition was filed in 1994;
3) the only changes in the specifications for such positions were the addition of certain buzz words and phrases such as “professional level work” or “functions independently; ” all job performances remained the same; and
4) all the duties being performed in such positions are mandated by and measured against existing rules and guidelines.

WSEU contended that at best, the duties of the **Engineering Specialists** are technical or para-professional in nature. Use of independent judgment is either non-existent or severely limited.

In considering whether **Engineering Specialist** work fits within the concept of "professional engineering," WSEU urged the Commission to consider the definition of "practice of professional engineering," under Sec. 443.01(6), Stats., "professional engineer" under Sec. 443.01(7), Stats., and "professional employee" under Sec. 111.81(15), Stats.

WSEU noted that a graduate of a highly recognized four-year engineering school or college, without the additional four years of experience, is not eligible to apply for registration as a professional engineer or represent himself as such under Sec. 443.04(1)(a), Stats.

WSEU further noted that Sec. 443.01(7), Stats., associates the practice of professional engineering with a "knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experiences." Under Sec. 443.04(1), Stats., argues WSEU, a person does not have to have a particular type or level of formal education to have this level of knowledge. But, says WSEU, however the knowledge is learned, it must be of the nature and level that would be associated with a professional education.

WSEU cited in STATE EX REL WITH REGISTRATION BOARD OF ARCHITECTS AND PROFESSIONAL ENGINEERS V. T.V. ENGINEERS OF KENOSHA, 30 WIS.2D 434 (1966), in which the Wisconsin Supreme Court held:

> We therefore determine that the word "engineer" is used to describe persons of various learning and skills while "professional engineer" connotes and identifies a person with a high degree of learning, experience, and competence in mathematics, physics and chemistry. The word "engineer" and the term "professional engineer" as they are thus [statutorily] defined and commonly understood are not synonymous.

Thus, says WSEU, it is only after an individual has met the requirements of a high degree of learning, experience and competence in mathematics, physics and chemistry that an individual may be considered a professional engineer.

WSEU underscored the following portion of the definition of "practice of engineering" found in Sec. 443.01(6), Stats: "any professional service requiring the application of engineering principles and data, in which the public welfare or the safeguarding of life, health

or property is concerned and involved. . . .” The key question in this case, said WSEU, is whether a majority of the work being performed by DOT employees in the **Engineering Specialist** series consistently involves reliance on the knowledge of mathematics, the physical sciences, and the principles of engineering acquired by professional education and practical experience.

WSEU believes it is impossible to distinguish an **Engineering Specialist** from the **Engineering Technician** where each is performing activities that affect the public health and safety while using engineering principles and data at some level. WSEU asserted that Wisconsin is the only State that has DOT engineering support positions in a professional bargaining unit.

WSEU cites the testimony of its Assistant Director, Karl Hacker. Hacker stated that prior to 1970 there was only one bargaining unit for employees of DOT. But, testified Hacker, in 1970 the statutes were amended to allow separate bargaining units. Hacker recounted that DER collective bargaining negotiator Al Hunsicker and Hacker worked together to place DOT classifications within the appropriate collective bargaining unit, i.e., Technical or Professional. In determining this placement, Hacker contended, Hunsicker and Hacker considered an individual to be professional if they either had a degree or certifications from the Department of Regulation and Licensing or final approval authority of documents along with total independent judgment.

WSEU posited that SEA made an agreement with DER in which DER agreed to conduct a survey of the classification levels in the **Specialist** and **Technician** series. WSEU alleged that although the **Technicians** represented by Council 24 requested an opportunity to provide input, the request was denied. WSEU claimed, despite assurances it received from DER that the impact of the Survey would be minimal, the subsequent Survey moved approximately 600 employees from the **Technician** series into the **Specialist** series.

WSEU recounts that James Pankratz, now the Division Administrator for the Division of Classification and Compensation at DER, was responsible for updating position descriptions for the Engineering Survey. According to WSEU, Pankratz was confronted with a dilemma because **Technician** levels 4 and 5 were performing work comparable to that of the Technicians 1 - 3 and a compensation and classification analysis of other states indicated that Technician level 4 and 5 positions were performing work considered to be non-professional or technical. WSEU quoted Pankratz as acknowledging that he described the jobs in SEA as “professional engineering jobs in the field of engineering,” not because he believed that they were professional, but rather because the positions were already in the “professional” bargaining unit and Pankratz was powerless to move them into the WSEU bargaining unit.

Adding to the difficulty, said WSEU, was Act 331 that came into existence in the 1980's, and required the State to bargain with SEA over the implementation of the Survey's proposed classes and pay ranges. WSEU believes it unlikely that SEA would have agreed to implement a survey that proposed to move hundreds of **Engineering Specialists** back to WSEU.

Upon completion of the Survey in 1990, WSEU asserts that new classifications were created for everyone in the SEA bargaining unit. Existing Technicians 4, 5, and 6 were reallocated to Specialist positions. WSEU believes that DER's objective was to obtain a salary reclassification in a tight labor market. WSEU concludes that DER did not analyze the positions on the basis of professional or non-professional work, but rather, rushed the class specifications after the pay ranges were negotiated in April 1990, and it was agreed that the Survey would go into effect in June of 1990.

WSEU cites the testimony of DER Personnel Specialist Judy Burke as confirmation that things were done differently in implementing the new 1990 Specialist classification specifications because of the brief time frame, including the granting of authority to agencies to make the placement decisions as to individual positions within classifications, an authority that had not been previously (or subsequently) granted.

WSEU views the chief purpose of the Survey completed in 1990 as not analyzing positions in terms of professional or non-professional, but to convert an outdated class specification into more relevant class specifications.

WSEU argues a DER belief that if the 1990 Survey resulted in the capture of some non-professional positions by SEA, it was WSEU's responsibility to recapture such positions. According to WSEU, DER recognizes that WSEU-represented positions have slowly eroded into the SEA-represented unit, even though only a handful of these employees were qualified to remain or move into the Specialist series.

WSEU points out that in 1994 the **Engineering Specialist** classifications were revised by removing any reference to professional criteria. The reference to "professional" was removed, WSEU contends, because the compensation staff in the Division believed that the positions were not professional and that the positions at issue belonged to WSEU.

WSEU takes issue with SEA's description of DER's Judy Burke as the most knowledgeable DER witness, pointing out that Burke claimed ignorance or no recollection when questioned as to why all the references to the term "professional" were taken out of the 1994 classification specifications.

The displacement of Technicians into the Specialist series shifted employees from one bargaining unit to another without a change in job duties, according to WSEU. WSEU believes SEA President Johnson is mistaken in his view that the reason for the transfer of Technicians from WSEU to SEA was due to DER's judgment that the Technicians were more appropriately classified at a higher level.

WSEU reiterates that Specialists are now doing work performed by Technicians prior to the implementation of the Survey in 1990. In WSEU's opinion, the exemption of Specialists under the FLSA is a separate matter and thus irrelevant to the Commission's determination of professional status.

WSEU asserts that a position must be classified on the basis of the majority of its duties and responsibilities. WSEU believes that classification specifications for **Engineering Specialist** - Transportation express duties that are "engineering support functions." Thus, submits WSEU, the Specialists are devoting a majority of their time in support of engineering functions, rather than performing independent activities of professional engineering.

WSEU argued that the principles of structural engineering apply to every project at DOT, whether performed by **Technicians, Specialists** or **Civil Engineers**. It is the quality and complexity of such principles in decision making that is at issue in this matter, according to WSEU.

WSEU pointed to the testimony of Jeffrey Kronser, **Civil Engineer** at Strand and Associates Consulting Firm in Madison, as demonstrating that, in the private sector highway construction field, the **Engineering Specialist** – Transportation employed at DOT is considered to be doing non-professional work. WSEU also notes that the National Institute for Certification and Engineering Technologies (NICET), a private sector credentialing body for **Engineering Technicians** and Engineering Technologists, considers the Specialists to be similar to the **Engineering Technician** in the highway construction field.

WSEU's underscored the testimony of its expert witness, Dr. John Antrim, as supportive of WSEU's position. WSEU recalled Antrim's testimony that the work performed by the Specialists is similar to the type of work routinely done by Technicians in the highway field, where there is oversight by an Engineer either directly or infrequently. WSEU further noted Antrim's opinion that the assignments carried out by the Specialists do not rise to the level of professional engineering work.

WSEU described Antrim's testimony as simply a means to enlighten the Commission on the type and quality of work being performed by Technicians in the highway field.

WSEU expressed the view that SEA's expert, Professor Wortley, is under a mistaken assumption that the Specialists have been properly classified by the State to be a professional rather than a technical series. Wortley's opinion that the Specialists are doing professional work is flawed, in WSEU's opinion, because too much weight was given to position descriptions and the testimony of the Technicians was not considered.

WSEU points to the **Engineering Specialists** who testified that they were doing project management work when they were Technicians; that, prior to the establishment of the Specialist series, all levels of Technicians performed these project management functions; and that Technicians continue to perform these project management functions. After the 1990 Survey, in order to continue receiving credit for being a project manager, many Technicians took a demotion into the Specialist series.

WSEU continued to argue that Specialists, along with Technicians and Engineers, are involved in projects requiring decision-making but that it is the quality of the decision-making that distinguishes the level of work involved.

WSEU stated that the majority of work performed by Specialists involves drafting, or constructing and using typical department standards that were previously reviewed by **Civil Engineers**, for small projects. WSEU argued that Specialists do not use higher math in their jobs and noted that in the event a project does require the use of complicated math, the calculation is already solved and available for reference in State and Federal manuals.

WSEU acknowledged that some work performed by both Specialists and Technicians could be characterized as the practice of professional engineering. However, members of neither group are performing a majority of their work at a professional level, says WSEU.

With the advent of computer software programs, technologies have taken over engineering work, according to WSEU. Asserting that many Specialists testified that they utilize no more than high school level math in their work at DOT, WSEU concluded that few, if any, of the Specialists actually have had significant formal education in math and science.

WSEU also acknowledged that the Specialists called as witnesses by SEA believe that they are performing professional Civil Engineering work because they are performing duties comparable to those of a **Civil Engineer**/Developmental or Journey. But, said WSEU, these **Civil Engineers** are usually no more than 2 – 3 years out of college and require practical job experience before moving on to the next level.

WSEU asserted that SEA's claim that the duties and responsibilities of Technician 4, 5, and 6 changed following the Survey is not supported by any proof or supporting citations. Moreover, said WSEU, STATE OF WISCONSIN, DEC. NOS. 10591, 10592 (WERC, 11/71), relied upon by SEA, is inapposite because it was decided in 1971 when the **Engineering Technician 4, 5,** and **6** positions required experience equivalent to the **Civil Engineer I, II** and **III** positions. Today such training and experience qualifications are non-existent.

WSEU argued that any prior recognition by this Commission or the Legislature that the **Technician 4, 5,** and **6** levels were properly included in the Professional Engineering unit is seriously undercut by the fact that employees from the DOT Technician series have moved into the Specialist series with no controlling criteria to ensure that the work being performed by such employees is truly engineering work. WSEU recalled the testimony of several Specialists that they entered the Specialist series with minimal work experience - such as limited-term employment - and by taking an exam that tested only basic math and communication skills.

In WSEU's opinion, the Specialists have gained their skills and knowledge from training acquired on the job at DOT rather than through a prolonged course of specialized intellectual instruction and study in an institute of higher learning as required under Sec. 111.81(15), Stats. Therefore, WSEU concludes that the work performed by the Specialists does not meet the definition of "professional employee" under Sec. 111.81(15), Stats.

WSEU faults the opinion of SEA's expert witness, Professor Wortley, that the Specialists are performing "professional" engineering duties within the meaning of Sec. 111.81(15), Stats., as lacking credibility because Wortley failed to differentiate between on-the-job acquired learning at DOT and specialized intellectual instruction that meets the requirements of Sec. 111.81(15), Stats.

WSEU cites MILWAUKEE COUNTY, DEC. NO. 14786-B (WERC, 4/80), in which the Commission concluded that **Engineering Technicians**, whose jobs included responsibility for planning the building and improvement of county trunk highways, were not professional within the meaning of the Municipal Employment Relations Act. WSEU notes that the controlling statutory language in MERA is virtually identical to the language of Sec. 111.81(15), Stats., and believes the case supports WSEU's position in the instant matter.

WSEU also cites STATE OF WISCONSIN, DEC. NO. 11243-L (WERC, 12/85), in which the Commission stated "while it would unquestionably take a substantial length of time to gain all of the knowledge and skills required to perform the disputed positions at the objective level, we are satisfied that the nature and manner of acquiring same is more akin to an apprenticeship than to a "prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital." WSEU asserts that the same is true in the instant matter in that Specialists may require a substantial amount of time to gain all the knowledge and skills required to perform the disputed positions at the objective level. Furthermore, argued WSEU, the Specialists' own testimony demonstrates that the requisite knowledge and skills are acquired by on-the-job training at DOT, instead of a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

In conclusion, WSEU contends that the Specialists spend a majority of their time at DOT working in support of engineering functions, rather than in independent activities of professional engineering. Moreover, said WSEU, whatever skills and knowledge applied by the Specialists in the work they perform at DOT have been learned on the job, not through specialized intellectual instruction. While WSEU concedes that some of the work performed by Specialists does require discretion and independent decision making, it argues that their work level does not reach the level of complexity expected of professional engineering work. In fact, stated WSEU, most of the projects worked on by the Specialists are pre-engineered and involve variations of established designs.

Thus, concludes WSEU, the disputed positions in the **Engineering Specialist** - Transportation series belong in the Technical bargaining unit because the work of these positions is technical, not professional. WSEU urges that those positions be removed from the SEA professional bargaining unit and placed into the WSEU Technical bargaining unit.

SEA

SEA begins by noting that WSEU had challenged the allocation of a number of positions in various classifications that had been included in the SEA bargaining unit as part of the Engineering Survey implemented on or about June 17, 1990. *SEA then explained that pursuant to a stipulation between the parties, the hearings to date have been limited to addressing the proper unit placement of the* ***Engineering Specialist*** *– Transportation classification only*.

SEA also notes that on December 4, 1996, WSEU stipulated on the record to the placement of **Engineering Specialist** – Advanced 1 and Advanced 2 levels in the SEA unit. Thus, SEA explains, the positions remaining at issue include only positions in the **Engineering Specialist** - Transportation Series that are classified at levels below that of **Engineering Specialist** - Transportation Advanced 1. SEA, contrary to WSEU, argues that the remaining disputed positions are appropriately included in the collective bargaining unit of professional engineering employees represented by the SEA and should not be removed to the Technical (non-professional) bargaining unit represented by WSEU.

SEA asserts that since its adoption, the State Employment Labor Relations Act (SELRA) has been amended in ways that are significant to the matter before the Commission. From 1969 to 1972, the appropriate occupational groupings for State bargaining units were a matter submitted to the discretion of the Commission. The 1969 definition of "professional employee" contained in Sec. 111.81(9), Stats., is the same as today.

The SEA recounts that in 1970 and 1971, petitions were filed by the Wisconsin State Employees Association (currently WSEU) and the State Highway Engineers Association (currently SEA) requesting elections for the selection of a collective bargaining representative for employees in the Wisconsin Department of Transportation (DOT). The Commission ordered separate elections for two separate bargaining units: (1) DOT employees engaged in the profession of engineering, and (2) all other employees of DOT. Excluded from both groups were limited term, non-permanent, seasonal, confidential, supervisory and managerial employees.

SEA argues that both the above decision and the subsequent statutory mandates that required separate bargaining units for professional employees have provided a separate unit for those engaged in the "profession of engineering" and have not used the term "Professional Engineer." Indeed, submits SEA, the decision in which a separate unit for the profession of Engineering was created, found non-degreed positions in the Technician series to be within the occupational grouping performing professional Engineering work based on the fact that such positions were performing the same duties performed by "degreed" Engineers in State service.

SEA notes that effective April 30, 1972, SELRA was amended, and the definition of "collective bargaining unit" was changed to mandate the statewide structuring of specific occupational groups for purposes of collective bargaining. Since the 1972 amendment, there has been a statutory mandate requiring separate collective bargaining units for those engaged in technical work and those engaged in professional Engineering work. The decision of the Commission in STATE OF WISCONSIN, DEC. NOS. 10591, 10592 (WERC, 11/71) was essentially codified and mandated by the 1972 amendments to SELRA. This decision of the Commission remains binding precedent in terms of its analysis of the position/classification engaged in professional Engineering work because the current statutory definition of "professional employee" is identical to the definition in effect at the time the Commission decided the case, according to SEA.

Moreover, asserts SEA, the WERC has explicitly recognized that an occasional overlap in duties on the part of **Engineering Technicians 1, 2** and **3** was insufficient to achieve "professional" status.

In 1985, SELRA underwent a series of amendments. SEA describes those amendments that are relevant to the current issue before the Commission as changing SELRA from mandating the creation of bargaining units in appropriate occupational groupings to expressly recognizing that the then-existing bargaining units in appropriate occupational groupings had been duly established.

At the time of the 1985 amendment to SELRA, those who were classified as **Engineering Technicians 4, 5** and **6** were part of the professional Engineering bargaining unit and had been for approximately 14 years. SEA believes that in 1985 the Legislature recognized that the composition of the Professional Engineering bargaining unit was appropriate, and that such recognition constitutes legislative ratification of the Commission's decision as to what positions are appropriately included in the professional Engineering bargaining unit.

SEA next recites events leading to the current dispute. A major Engineering Survey was implemented in June 1990, affecting the classification titles of all positions at issue in this proceeding.

From approximately November 1, 1985 through June 17, 1990, DER conducted a Personnel Management Survey of the Engineering occupational area to determine the appropriate classification structures for professional Engineering positions in State employment.

The Survey was implemented on or about June 17, 1990, and, according to SEA, resulted in individuals classified as **Engineering Technician 4, 5** and **6**, with some exceptions, being reallocated to new classification titles in the newly formed **Engineering Specialists** classification series. These positions continued to include the same duties and responsibilities as before the Survey. The **Engineering Technician** classification titles were retained, but the duty/responsibility content of these positions changed. Substantial modifications were made to the **Engineering Technician** classification specifications, resulting in all of the new **Engineering Technician** classifications being placed in the Technical bargaining unit represented by WSEU.

With few exceptions, says SEA, individuals who previously held **Engineering Technician 4, 5** and **6** positions prior to the Survey were not moved to WSEU, but were given new job titles within a new series of classification, i.e., **Engineering Specialist**. SEA argues that the 1990 Engineering Survey presents no rationale, either on a legal or common sense basis, that would justify the dramatic and wholesale realignment in unit composition sought by the WSEU.

With few exceptions, SEA reasserts, those individuals previously classified as **Engineering Technician 4, 5,** or **6** within DOT and reallocated to the **Engineering Specialist** - Transportation series, continued to occupy positions that the Commission had previously determined to be engaged in professional Engineering work. SEA argues that the Commission should give considerable weight to its previous determinations regarding the status of a disputed position, citing GREEN LAKE COUNTY, DEC. NO. 24955-B (WERC, 3/96).

SEA charges that WSEU has consistently failed to recognize the historical fact that prior to the 1990 Engineering Survey there was no **Engineering Specialist** - Transportation series. Rather, says SEA, the **Engineering Specialist** - Transportation series was newly created as part of the 1990 Engineering Survey. SEA also charges that WSEU has additionally failed to grasp the historical fact that prior to the 1990 Engineering Survey individuals classified as **Engineering Technician 4, 5** and **6** (along with those in the **Civil Engineer** - Transportation classifications) were included in the professional Engineering bargaining unit represented by SEA.

Contrary to the repeated suggestions of WSEU, argues SEA, the inclusion of the **Technician 4, 5** and **6** in the professional Engineering bargaining unit was not based on any unilateral action by DER, DOT or any "deal" between SEA and any agency. Rather, says SEA, the inclusion was based on the WERC's decision that the duties performed by those in the **Engineering Technician** classifications 4 - 6 were identical to those being performed by degreed Civil Engineers in State service and that such work satisfied the definition of "professional employee" within the meaning of Wisconsin law.

SEA points out that the 1990 classification specifications for the newly created **Engineering Specialist** - Transportation series specifically provided that those included in the **Engineering Specialist** - Transportation series must be performing professional Engineering work within the meaning of Sec. 111.81, Stats., and must be "professionals" within the meaning of the Federal Fair Labor Standards Act (FLSA). Persons performing "simply routine or non-professional technical work" were specifically excluded from the series.

While not dispositive, SEA believes the exempt status of the **Engineering Specialist** - Transportation classifications under FLSA is relevant. According to SEA, each element of the definition of a professional employee under Sec. 111.81, Stats., is contained in virtually identical language in the professional definition contained in the FLSA. Furthermore, says SEA, federal law places on the State an affirmative obligation to conduct an individualized analysis of the duties performed by individuals prior to classifying them as exempt from the FLSA. Thus, contends SEA, the rigorous analysis of the survey data led the State to the same conclusion as that reached by the Commission more than 27 years ago when "**Engineering Specialist** - Transportation" existed largely under the titles of **Engineering Technician 4, 5** and **6.**

In 1994, the classification specifications were redrafted. SEA describes the redraft as having been prompted by the inclusion of new position titles and the outcome of many appeals that were filed placing individuals into higher classifications. SEA found additional motivation for the 1994 redraft as having resulted from DER's desire for greater uniformity in classification specifications.

Personnel Specialist Judy Burke, the principal drafter of the 1994 class specifications, omitted the numerous references to professional work contained in the 1990 class specifications. SEA reads Burke's testimony as indicating that she did not intend to change the professional status of the work performed. The deleted references did not reflect a change in professional status as much as the view that there was no need for this language in the specifications, according to SEA. SEA asserts that both Burke and her supervisor, Michael Soehner, confirmed that the class specifications are very general, and that an employee's position description is a far better indicator of duties actually performed by any individual employee.

Ultimately, SEA reiterates, the Commission must determine the duties actually being performed by those holding positions in the **Engineering Specialist** - Transportation classification series, and whether those duties constitute "professional" Engineering work within the definition of SELRA. SEA argues that the Commission has repeatedly and consistently held that the designation of "professional employee" contained in SELRA is not limited to those who possess college degrees. Whether an employee has received State certification and licensing is not determinative of professional status. The mere elimination of the classification, or the fact that a position has been given a new job title, is irrelevant if there has been no corresponding change in the duties performed by an employee. STATE OF WISCONSIN, DEC. NO. 10592-F (WERC, 1/73); STATE OF WISCONSIN, DEC. NO. 8340-A (WERC, 2/68).

SEA argues that under SELRA, the definition of "professional employee" in Sec. 111.81(15) is identical to the definition contained in the Municipal Employment Relations Act (MERA) -- thus making the decisions of the Commission under MERA precedential.

SEA contends that the duties performed by those occupying the **Engineering Specialist** classification go far beyond those found to constitute "professional Engineering" work in prior Commission cases such as CITY OF SUN PRAIRIE, DEC. NO. 20841-B (WERC, 10/86), and CITY OF CUDAHY, DEC. NO. 19507 (WERC, 3/82).

Furthermore, asserts SEA, licensing of engineers is a matter of State law and states vary in terms of their licensing standards and requirements. SEA notes that in Wisconsin, one can obtain a professional engineering license under Chapter 443 without a formal education. SEA further notes that while it is necessary for one to have an engineering license to engage in the practice of engineering on one's own and hold out oneself to the public as such, a license is not required for individuals practicing engineering within an organizational framework such as State service.

SEA recites the provisions of Sec. 443.01(6), Stats., that define the practices of professional engineering, and believes they cover Specialist duties.

SEA reviews testimony expressed by its expert witness, Professor Wortley: 1) Wortley confirmed that no licensing authority in Wisconsin has adopted certifications or standards of the National Institute for Certification and Engineering Technologies (NICET); 2) Wortley believes that the work done by the **Engineering Specialists** was at a higher level than the work listed as being at the highest levels of work within the scope of the NICET standards.

SEA recounts Wortley's testimony that both large and small DOT projects involve the application of engineering analytical skills and principles; engineers commonly use standard designs when they are available, and the selection of standard designs, in and of itself, involves the exercise of engineering judgment as does the determination that standard designs are not appropriate or need to be altered for a specific situation. SEA emphasizes Wortley's opinion that the positions in the **Engineering Specialist** series perform professional engineering duties within the meaning of the Wisconsin Statutes and that they perform duties similar to the ones he would expect licensed Civil Engineers to perform in the design and construction of highways should be persuasive.

SEA contrasts the testimony of Dr. Antrim, offered by WSEU as its expert. SEA quoted Antrim as making this distinction between technologists and engineers.

> Technologists are trained to be kept up to date on the current state of the art. Engineers advance the state of the art due to their more theoretical college work.

SEA finds this statement interesting, but derogates it as being of little help in resolving the issue herein. According to SEA, none of the opinions offered by Antrim were moored to any applicable definition of the term "professional," but were rather based on his own definitions.

Position descriptions and classification specifications may be relevant, says SEA, but they are not determinative of the issue of professional status under SELRA. According to SEA the relevant inquiry is the actual duties performed.

SEA argues that the testimony it offered confirms that the work being performed in the positions contained within the **Engineering Specialist** - Transportation series is identical to the duties performed by degreed Engineers in both State service and the private sector who are responsible for the design, building and maintenance of roads, highways and bridges. SEA asserts that projects are assigned to those in the Engineer and **Engineering Specialist** classification on the same basis and that the authority of **Engineering Specialist** project managers to make and implement design changes is identical to that of Civil Engineer project managers in State service. SEA further asserts that the **Engineering Specialists** and Civil Engineers have common levels of supervision, have a substantial overlap between pay ranges, perform the same duties and responsibilities and exercise the same authority and discretion as degreed Civil Engineers in the Engineer classification.

According to SEA, DOT Engineering Supervisors assign work to and exercise supervisory authority over DOT **Engineering Specialists** as well as DOT **Civil Engineers**. SEA finds confirmation from the Engineering Supervisors that **Engineering Specialists** act as project managers, manage projects that require an understanding of complex engineering principles and theories, are in charge of the projects which they manage and are assigned to the very same types of projects as **Civil Engineers** in State service. SEA finds further confirmation from the Engineering Supervisors that the **Engineering Specialists** perform the same functions and are required to exercise the same level of discretion and judgment as **Civil Engineers** in State service.

SEA complains that WSEU relies on statutes and case law that are irrelevant to the disposition of this unit clarification proceeding, and that WSEU fails to grapple with the controlling statutory standard found in Sec. 111.81(15), Stats. SEA finds the definition of "professional Engineer" under State licensing statutes outside Wisconsin, or the criteria employed by an independent credentialing body not recognized by the State of Wisconsin (NICET) to be irrelevant to this proceeding.

SEA notes that WSEU presented testimony from a total of four individuals holding positions in the **Engineering Specialist** - Transportation classification. SEA pointed out that of these four individuals, one was in a classification conceded by WSEU to be professional, i.e., Advanced 1. WSEU did not present any testimony from individuals in the entry or senior classifications.

SEA further notes that two of the **Engineering Specialists** called by WSEU are former and/or current officers of WSEU, two of the **Engineering Specialists** called by WSEU performed unique duties, and that one of the Engineering Specialists called by WSEU performed duties as a Project Manager under general supervision - the very same duties performed by Engineers in State service.

According to SEA, WSEU relies on the testimony of witnesses who have political motivations and who are performing work entirely different than that being performed by the overwhelming majority of **Engineering Specialists**. In SEA's opinion, the **Engineering Specialists** called by WSEU did not provide credible support for WSEU's request that hundreds of **Engineering Specialists** represented by SEA be included in the Technical bargaining unit represented by WSEU.

SEA acknowledges that the State's classification system is not perfect. SEA believes that there are statutory procedures available before the Personnel Commission or within the Civil Service System to correct the isolated examples of individuals in State service who are improperly classified. In SEA's view, it would be imprudent to base the outcome of these proceedings on anecdotal evidence or aberrant work assignments.

SEA avers there is not absolute precision between the date on which one commences performing professional duties and the date on which one is placed in a professional classification included in the SEA bargaining unit. SEA points to hearing testimony as confirmation that a pre-condition to reclassification is often established by an employee performing duties of the higher classification for a period of six months prior to the reclassification. Thus, concludes SEA, WSEU's argument that Technicians perform project management work is invalid because it is based on two examples of project management performed just prior to the individuals being reclassified to the **Engineering Specialist** classification.

SEA also attacked that portion of Michael Soehner's testimony that was based on definitions contained in the Dictionary of Occupational Titles as not mirroring the controlling standard for unit determination under Sec. 111.81(15), Stats. Moreover, says SEA, Soehner specifically testified that he had not reached a conclusion as to the professional or technical status of the positions at issue and that it was not his intention to indicate whether such positions were professional or technical.

SEA disagrees with WSEU's argument that DER believes the positions at issue perform technical work. Rather, says SEA, DER has declined to participate in the present unit clarification and has continuously treated the **Engineering Specialists** as professionals, exempt from the overtime requirements of the Fair Labor Standards Act. SEA finds DER's Judy Burke to be the single most knowledgeable person at DER concerning the **Engineering Specialist** positions and the person intimately involved in analyzing these positions during the Engineering Survey. SEA views Burke's testimony as clearly indicating that the **Engineering Specialist** positions were analyzed during the 1985-90 DER Survey and that DER concluded that such positions were performing professional work within the meaning of Sec. 111.81, Stats., and the Fair Labor Standards Act.

SEA charges that WSEU witnesses Karl Hacker and William Schmit fail to recognize that prior to 1990 the **Engineering Technician 4 - 6** levels were already included in the professional Engineering bargaining unit represented by SEA. SEA asserts that such persons are continuing to do the same work and that such fact actually supports SEA's position.

SEA further finds Hacker's anecdotal third-hand information from unidentified members of WSEU as unreliable, not probative, and useless to the Commission. SEA asserts that Schmit's opinions are not based upon personal knowledge and are expressed without any basis in, reference to, or reliance on the controlling statutory standard.

SEA also finds fault with Jeff Kronser's definition of a professional Engineer as one who has graduated from college or University, takes an Engineer-in-Training examination, and then works for four or five years under a professional Engineer before becoming a professional

Engineer himself. According to SEA, Kronser's proffered standard ignores the single determining factor in determining unit composition under Wisconsin law, i.e., the duties actually performed by the person holding the position at issue. Moreover, SEA adds, Kronser does not have personal knowledge of the duties actually performed by **Engineering Specialists**.

In summary, SEA believes that the **Engineering Specialist**, Engineering Supervisor and Engineer Senior testimony all confirm that the **Engineering Specialists** are engaged in professional engineering work within the meaning of SELRA and that the **Engineering Specialists** perform duties identical to those performed by individuals within the Engineer classification. SEA urges that the record herein overwhelmingly supports the decision made by the Commission more than 25 years ago that the duties performed by those occupying the current **Engineering Specialist** classification title are engaged in professional engineering work within the meaning of SELRA.

DISCUSSION

Relevant Statutes

Sections 111.825(1) and (3), Stats., provide the following:

> **111.825 Collective bargaining units. (1)** It is the legislative intent that in order to foster meaningful collective bargaining, units must be structured in such a way as to avoid excessive fragmentation whenever possible. In accordance with this policy, collective bargaining units for employees in the classified service of the state, except employees in the collective bargaining units specified in s. 111.825 (1m), are structured on a statewide basis with one collective bargaining unit for each of the following occupational groups:
> (a) Administrative support.
> (b) Blue collar and nonbuilding trades.
> (c) Building trades crafts.
> (cm) Law enforcement.
> (d) Security and public safety.
> (e) Technical.
> (f) Professional:
> 1. Fiscal and staff services.
> 2. Research, statistics and analysis.
> 3. Legal.
> 4. Patient treatment.
> 5. Patient care.
> 6. Social services.
> 7. Education.
> 8. Engineering.
> 9. Science.

. . .

(3) The commission shall assign employees to the appropriate collective bargaining units set forth in subs. (1), (1m) and (2).

. . .

Section 111.81(15), Stats., defines a "professional employee" as follows:

(15) "Professional employee" means:

(a) Any employee in the classified service who is engaged in work:

1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

2. Involving the consistent exercise of discretion and judgment in its performance;

3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

4. 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 learning 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 processes; or

(b) Any employee in the classified service who:

1. Has completed the courses of specialized intellectual instruction and study described in par. (a) 4.; and

2. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in par. (a).

As evidenced by the text of Sec. 111.81(15)(a), Stats., all four components of the statutory definition must be present for an employee to be a professional under Sec. 111.81(15)(a), Stats. The focal point of our analysis in this proceeding as to Sec. 111.81(15)(a), Stats., is on Sec. 111.81(15)(a)4, Stats.

Also relevant in this proceeding are the following statutory provisions:

Section 443.01(2), Stats., defines "Engineer-in training" as follows:

(2) "Engineer-in-training" means a person who is a graduate in an engineering curriculum of 4 years or more from a school or college approved by the examining board as of satisfactory standing, or a person who has had 4 years or more of experience

> in engineering work of a character satisfactory to the examining board; and who, in addition, has successfully passed the examination in the fundamental engineering subjects prior to the completion of the requisite years in engineering work, as provided in s. 443.05, and who has been granted a certificate of record by the examining board stating that the person has successfully passed this portion of the professional examinations.
>
> . . .

Section 443.01(3) defines "Examining board" as follows:

> (3) "Examining board" means the examining board of architects, landscape architects, professional engineers, designers and landscape surveyors.

Section 443.01(6), Stats., defines the "Practice of professional engineering" as follows:

> (6) "Practice of professional engineering" includes any professional service requiring the application of engineering principles and data, in which the public welfare or the safeguarding of life, health or property is concerned and involved, such as consultation, investigation, evaluation, planning, design, or responsible supervision of construction, alteration, or operation, in connection with any public or private utilities, structures, projects, bridges, plants and buildings, machines, equipment processes and works. . . .

Section 443.01(7), Stats., defines "Professional engineer" as follows:

> (7) "Professional engineer" means a person who by reason of his or her knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as defined in sub. (6).

Section 443.01(8) defines "Responsible supervision of construction" as follows:

> (8) "Responsible supervision of construction" means a professional service as distinguished from superintending of construction, and means the performance or the supervision thereof, of reasonable and ordinary on-site observations to determine that the construction is in substantial compliance with the approved drawings, plans and specifications.

Section 443.04, Stats., lists the alternate routes that may be followed to registration as a Professional Engineer:

> (1) An applicant for registration as a professional engineer shall submit satisfactory evidence to the examining board of one of the following:
>
> (a) A diploma of graduation or a certificate from an engineering school or college approved by the examining board as of satisfactory standing in an engineering course of not less than 4 years, together with an additional 4 years of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to be placed in responsible charge of such work; or
>
> (b) A specific record of 8 or more years of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to be placed in responsible charge of such work; or
>
> (c) A specific record by an applicant of 12 years or more of experience in engineering of a character satisfactory to the examining board and indicating the applicant is competent to practice engineering; or
>
> (d) A diploma of graduation or certificate from an engineering school or college approved by the examining board as of satisfactory standing in an engineering course of not less than 4 years, together with an additional 8 years of experience in engineering work of a character satisfactory to the examining board and indicating that the applicant is competent to practice engineering.
>
> 2) Graduation in engineering from a school or college approved by the examining board as of satisfactory standing shall be considered as equivalent to 4 years of experience, and the completion satisfactory to the examining board of each year of work in engineering in such school or college without graduation shall be considered as equivalent to one year of experience. Graduation in a course other than engineering from a school or college approved by the examining board as of satisfactory standing shall be considered as equivalent to 2 years of standing. No applicant may receive credit for more than 4 years of experience under this subsection.

Section 443.05, Stats., provides for the certification of engineers-in-training as follows:

> (1) An applicant for certification as an engineer-in-training shall submit satisfactory evidence to the examining board as follows:
>
> (a) A diploma of graduation in engineering or a certificate in engineering from a school or college approved by the examining board as of satisfactory standing.
>
> (b) A specific record of 4 years or more of experience in engineering work of a character satisfactory to the examining board.
>
> 2) Graduation in engineering from a school or college approved by the examining board as of satisfactory standing shall be considered as equivalent to 4 years of experience and the completion satisfactory to the examining board of each year of work in engineering in such school or college without graduation shall be considered as equivalent to one year of experience. Graduation in a course other than engineering from a school or college approved by the examining board as of satisfactory standing shall be considered as equivalent to 2 years of experience. No applicant may receive credit for more than 4 years of experience under this section.

Section 443.11(1), Stats., provides as follows:

> 443.11 [Disciplinary proceedings against architects, landscape architects and engineers.] (1) The examining board may reprimand an architect, registered landscape architect or professional engineer or limit, suspend or revoke the certificate of any registrant, and the certificate of record of any engineer – in – training, who is found guilty of:
>
> (a) Fraud or deceit in obtaining a certificate of registration or a certificate of record.
>
> (b) Signing or impressing his or her seal upon documents not prepared by him or her or under his or her control or knowingly permitting his or her seal or stamp to be used by any other person.
>
> (c) Knowingly aiding or abetting the unauthorized practice of . . . professional engineering by persons not registered under this chapter.
>
> (d) Any gross negligence, incompetency or misconduct in the practice of . . . professional engineering as a registered professional engineer or in the professional activity of a holder of a certificate of record as engineer-in-training.

BACKGROUND

Once again this Commission is invited to distinguish professional from non-professional (technical) employees at DOT. The challenge of sorting out these two groups at DOT for the purposes of appropriate bargaining unit placement is not a new one. The task is complicated because the professional and technical employees work together and perform essential engineering or engineering-related work, or both. In any event, the instant matter is merely the latest and lengthiest 3/ manifestation of a dispute that began in 1971.

3/ Hearings, spread out over a period of almost 2 ½-years (February 12, 1996 through July 9, 1998), created a transcript that runs to almost 4,000 pages contained in 22-separate volumes. Initial briefs were submitted in late April 1999 with the last reply brief being filed on November 30, 1999. During the 5 ½-year period running from April 1994 to December 1999, DER twice modified the Engineering Specialist classification specifications, the first time effective June 26, 1994, and the second, on October 12, 1997.

1971 marked the year the Commission began its involvement with the parties on this issue when it advised them that professional engineering is a recognized and identifiable profession.

> As we have previously determined, "Employes engaged in a recognized and identifiable profession, because of the nature of the specialized skills utilized in performing their duties, may constitute units separate and apart from all other employes, including the professional employes." We are satisfied that employes engaged in the profession of engineering are engaged in a recognized and identifiable profession, and, therefore, the Commission sees no compelling reason to deny a separate unit to those engaged in such profession in the Department of Transportation. [Footnote omitted] STATE OF WISCONSIN, DEC. NOS. 10591, 10592 (WERC, 11/71)

Having concluded that a bargaining unit of employees engaged in the profession of engineering was appropriate, the Commission next attempted to determine which employees were engaged in the profession of engineering.

> The State Employer [DOT] contends that in addition to the "Civil Engineer – Transportation classifications, those employees occupying the classifications of Engineering Technician 1 through 6 are all engaged in the profession of engineering, and, therefore, if the Commission should establish a professional

> engineering unit, all engineering technicians should be included in said unit. The Civil Engineer positions require a degree in civil engineering, while the Engineering Technician positions require no such degree. However, the Engineering Technician 4, 5, and 6 positions require an experience equivalent to the Civil Engineer 1, 2 and 3 positions, and such Engineering Technicians perform duties and responsibilities similar to the Civil Engineer 1, 2 and 3 positions. The Engineer Technician 1, 2 and 3 classifications do not require the experience of any Civil Engineer position, nor do they perform the duties or assume the responsibilities of the latter positions to the extent that they are entitled to be deemed professional employes. The fact that Engineering Technicians 1, 2 and 3 may be promoted to higher positions in the Engineering Technician series does not warrant their present inclusion in the unit of professional engineers. Such promotion and qualification is not automatic, but depends on the progress and ability of the particular employe involved to qualify for the Engineering Technician 4 position, as well as on other factors.

Thus the Commission concluded that an appropriate unit consisted of "(a)ll employes engaged in the profession of engineering in the employ of the Department of Transportation, excluding all other employes, limited term employes, non-permanent seasonal employes, confidential employes, supervisors and managerial employes." The Commission further determined an additional unit was also appropriate: "(a)ll employes in the Department of Transportation, excluding all employes engaged in the profession of engineering, and all limited term, non-permanent seasonal, confidential, supervisory and managerial employes." The Commission directed that an election be conducted in each of these units.

On January 28, 1972, the Commission certified WSEU as the collective bargaining representative of "all employes in the Department of Transportation, excluding all employes engaged in the profession of engineering, and all limited term, non-permanent seasonal, confidential, supervisory and managerial employes." (DEC. NO. 10591-A) On January 28, 1972, the Commission certified the State Highway Engineers Association (SHEA) as the collective bargaining representative of "all employes engaged in the profession of engineering in the Department of Transportation, State of Wisconsin, excluding all other employes, limited term employes, non-permanent seasonal employes, confidential employes, supervisors and managerial employes." (DEC. NO. 10592-A)

In DEC. NO. 10591-C (WERC, 1/73), the Commission issued an Order Determining Challenged Ballots, in which the Commission stated:

> That since no representative of the Wisconsin Association of Right of Way Agents appeared at the above noted hearing to present any evidence with regard to the claim that Right of Way Agents in the employ of the Department of Transportation were professional employes, the Wisconsin Employment

> Relations Commission concludes that the Wisconsin Association of Right of Way Agents has abandoned its claim to that effect; and, therefore, Right of Way Agents are included in the collective bargaining unit consisting of all employes in the Department of Transportation, excluding all employes engaged in the profession of engineering, and all limited term, non-permanent seasonal, confidential, supervisory and managerial employes and are represented for the purposes of collective bargaining by Wisconsin State Employees Union, Council 24, AFSCME, AFL-CIO. 2/ (footnote omitted)

On January 31, 1973, the Commission issued an Order Clarifying Bargaining Unit. (DEC. NO. 10592-F) In this decision, the Commission determined that Civil Engineer 5 positions performing staff functions in the Department of Transportation were neither supervisory nor managerial, but were employees within the meaning of SELRA and appropriately included in the collective bargaining unit represented by the State Highway Engineers Association (SHEA).

In STATE OF WISCONSIN, DEC. NO. 11667 (WERC, 3/73), the Commission issued a Certification of Representatives based upon a stipulation between SHEA and the State of Wisconsin "setting forth the classifications agreed upon between SHEA and the Department of Administration as being included in the professional engineers unit, as well as the number of such positions employed in the various departments of the State, and further as well as the number of such employes included in the unit in which SHEA had been certified as the collective bargaining representative in a previous election conducted by the Commission, which stipulation indicated that SHEA had been certified as the representative of the majority of the employes in the classifications stipulated as being in said unit . . .". In that decision, the Commission certified as follows:

> That pursuant to Section 111.81(3)(c)1 of the State Employment Labor Relations Act, State Highway Engineers Association is the exclusive collective bargaining representative of all employes employed in the professional engineering positions of the State of Wisconsin, excluding limited term employes, sessional employes, supervisory, managerial and confidential employes. 1/

1/ See Appendix "A" attached hereto reflecting the classifications in said unit. [This "appendix" is entitled "Professional Engineers" and includes, inter alia, the following DOT classifications: Civil Engineer 1, 2, 3, 4, and 5 Transportation (4 and 5 were each identified as a split class) and Engineering Technician 4, 5, and 6 (6 was identified as a split class).]

In STATE OF WISCONSIN, DEC. NO. 11667-A (WERC, 9/74), the Commission issued the following Order:

> That the unit consisting of "Professional Engineers" be clarified so as to include the classification of Civil Engineer 5 in said unit.

On September 6, 1990, the State of Wisconsin, Department of Employment Relations, filed a Petition for Unit Clarification and Declaratory Ruling in which the State requested the WERC to assert jurisdiction and take the following action:

> a. Due to the changed circumstances affecting the Professional Engineering Bargaining Unit as a result of the Survey implementation, conduct a unit clarification of all the classifications in the new classification structure of the Survey to determine the propriety of their inclusion within the Professional Engineering Bargaining Unit represented by SEA and the Technical Bargaining Unit represented by WSEU.
>
> b. Due to the changed circumstances affecting the Professional Science Bargaining Unit as a result of the creation of the Hydrogeologist classification series, conduct a unit clarification to determine the propriety of the inclusion of that classification series in the Professional Science Bargaining Unit represented by WSP.
>
> c. Issue a Declaratory Ruling that reallocations of positions from one classification to another is a prohibited subject of bargaining under SELRA sec. 111.91(2)(b)(2), Wis. Stats., and that jurisdiction to review such classification decisions lies solely with the statutory body charged with that responsibility, namely the Personnel Commission under sec. 230.45(1)(a), Stats.

In STATE OF WISCONSIN, DEC. NO. 26725, (WERC, 12/90), the Commission dismissed the Petition for Declaratory Ruling, stating that it would not exercise its discretionary jurisdiction under Sec. 227.41, Stats., over the matters raised in subsection (c) of the State's petition because:

> (1) No specific set of facts presently exists which would allow for a meaningful examination of issues raised in subsection (c);

(2) The petition raises issues relative to the alleged exclusive jurisdiction of the Wisconsin Personnel Commission as to which the Wisconsin Employment Relations Commission may have no jurisdiction to rule upon under Sec. 227.41, Stats.; 1/ (footnote omitted) and

(3) The Wisconsin Employment Relations Commission has already explained its view of the respective roles of the WERC and the Personnel Commission in the determination of the composition of the bargaining units of State employes: 2/ [Citing STATE OF WISCONSIN, DEC. NO. 18696 (WERC, 5/81)]

In a final footnote, however, the Commission did indicate that it would proceed to process the unit clarification petition as to those positions whose unit status is disputed.

This brings us to the instant petitions for unit clarification filed respectively by WSEU and by SEA.

Factual Summary of Immediate Dispute

The seeds for the instant dispute took root in 1990 when DER created a new employment classification it called **Engineering Specialists** – Transportation. Specifications for the new classification called for six-levels: Entry, Developmental, Journey, Senior, Advanced 1 and Advanced 2. Virtually all DOT employees who had been previously classified as **Engineering Technician 4's, 5's** and **6's**, plus an unknown number of Technician 3's and, in at least one case, a Technician 2 were reallocated into one of the levels of the new classification. The specifications for the new classification described the positions included as "professional." This, in turn, resulted in the **Engineering Technicians** who had been reallocated into the new "professional" classification being removed from the Technical (non-professional) bargaining unit represented by WSEU and placed in the bargaining unit for DOT professional engineers (represented by SEA).

In 1994, DER revised its specifications for the **Engineering Specialist** classification. Included in its revisions was the total elimination of the term "professional" as a modifier for the classification. According to DER witnesses involved in the revision, the elimination of the term was intentionally and advisedly accomplished.

Effective October 12, 1997, the Entry and Developmental levels of the **Specialist** series were collapsed or merged into one. Although that classification level is still the "beginning" or lowest level of the class, it is now simply called "***Engineering Specialist***." The levels of Advanced 1 and Advanced 2 were also collapsed or merged into one level now called "*Advanced*." Thus, in summary, the revised classification now has only four levels: engineer Specialist, Journey, Senior, and Advanced.

The 1997 DER revisions continued to entitle each employee entering the newly named beginning point of the series to progress automatically to the *Journey* level unless held back by *poor* performance. This automatic progression was codified in the 1997-99 collective bargaining agreement between the State of Wisconsin and SEA. Thus, a beginning **Engineering Specialist** who has spent at least two years in the classification series will progress to the *Journey* level without the need to have done anything more than avoid censure for "poor performance." Professional growth and development is *not* a requirement for promotion to Journey.

Following DER's 1997 revision of the **Specialist** series that provided the initial impetus for automatic progression to the Journey level, the same collective bargaining that codified that development also caused inclusion in the labor contract of a similar automatic progression to the S*enior* level. Thus, an employee who has spent at least three years in the classification series will progress to the *Senior* level without the need to have done anything more than avoid censure for "poor performance." Professional growth and development is *not* a requirement for promotion to Senior.

The 1994 DER revisions that eliminated the word "professional" from the **Specialist** classification specifications remained unchanged in the 1997 revisions: the word "professional" continued to be excluded.

On April 28, 1994, WSEU initiated this action by filing a petition for unit clarification with the Commission. In apparent response, on April 4, 1995, the SEA filed its own petition for unit clarification with the Commission.

WSEU's petition sought the removal of certain DOT employees from the *professional* bargaining unit represented by SEA and placement of said employees in the Technical *(non-professional)* bargaining unit represented by WSEU. SEA's petition sought the removal of certain DOT employees from the Technical *(non-professional)* bargaining unit represented by WSEU and placement of said employees in the *professional* bargaining unit represented by SEA.

By order dated April 5, 1995, this Commission ordered the consolidation of the two petitions for hearing purposes. However, by agreement between the parties, the only issue raised in either petition that the parties addressed at hearing and in their respective post-hearing briefs was whether the **Engineering Specialists** – Transportation employed at DOT should be removed from the professional bargaining unit represented by SEA and placed in the Technical bargaining unit represented by WSEU.

Legal Authority

Section 111.81(15) found in the State Employment Labor Relations Act (SELRA), offers a definition of "professional" that is virtually identical to that found in Sec. 111.70(1)(L) of the Municipal Employment Relations Act (MERA). Cases interpreting MERA language may be cited as authority in cases involving identical SELRA language, for "(i)t would be illogical to apply a different test to MERA and SELRA [where the respective statutory sections are virtually identical] merely because a different group of protected persons are involved (municipal employees versus state employees)." EMPLOYMENT RELATIONS DEPT. V. WERC, 122 WIS.2D, 132, 143 (1985).

Thus, MERA cases in which we decided the professional/technical issue as to engineering type work are a useful starting point.

In one case, the Commission found a municipal employee to be a professional, on the following facts: his job title was Senior **Engineering** Technician, his normal duties were based on directives or work orders from the City Engineer; he had only a 2-year associate's degree from Madison Area Technical College in civil engineering technology with no university or college advanced engineering education; his past engineering-related experience was limited to one year of DOT employment as a material inspector, tester, and member of construction survey teams. CITY OF SUN PRAIRIE, DECISION NO. 20841-B (WERC, 10/86).

Six years earlier, the Commission found six Engineering Technicians employed by Milwaukee County *not* to be professionals. One had earned 80 credits towards his bachelor's degree in engineering, another had an associate degree in civil engineering, a third had a degree in civil engineering technology and a fourth had 23 credits towards his bachelor's degree. All were experienced in their employment, with one Technician having 10 ½ years experience in his job with Milwaukee County. Duties of these technicians included drafting construction plans based on survey data, producing computer print-outs containing additional data such as land elevations and rough sketches from engineers, occasional inspection of construction projects insuring compliance with plan specifications, serving as members of survey crews, writing legal descriptions in order to acquire right-of-ways, and drawing right-of-way slats from quarter section slats. MILWAUKEE COUNTY, DEC. NO. 14786-B (WERC, 4/80).

Falling somewhere in the middle is a third case in which the Commission decided that assistant construction superintendents were professional employees. In its decision, the Commission noted that "the County's minimum qualifications for the job indicated that 'accredited college or university training in architecture or civil engineering' is 'desirable' in addition to the required experience in building construction activities." The Commission noted that ". . . of the incumbents in the instant positions each have [sic] such higher education in their backgrounds." MILWAUKEE COUNTY, DEC. NOS. 14786, 8765-E (WERC, 7/76).

As reflected by these decisions, deciding whether the majority of an employee's work requires *"knowledge of an advanced type in a field of . . . [engineering] . . . customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . ." 4/,* can be a challenging task. That kind of a determination is made more difficult by the fact that in Wisconsin, by statutory directive, a four year bachelor's degree in engineering from a duly accredited university, college or school of engineering is not the only route towards recognition and registration as a "professional engineer."

4/ Excerpt in quotation marks from Sec. 111.81(15)(a)4, Stats.

We find assistance in making these determinations in Chapter 443 of the Wisconsin Statutes which, in part, regulate the engineering profession.

Although not directly related to labor relations, Chapter 443 is clearly not inconsistent with Sec. 111.81(15), Stats. Under this circumstance, we believe we are required to construe the latter with the former to give force and effect to each. PELICAN AMUSEMENT CO. V. TOWN OF PELICAN, 13 WIS.2D 585 (1961). This is not a new notion. It is axiomatic that statutes in *pari materia* (upon the same matter or subject) should be construed together. FOSTER V. SAWYER COUNTY, 197 WIS. 218 (1922). Indeed, a basic tenet of statutory construction requires the application of all statutes relating to the same subject matter. AIELLO V. VILLAGE OF PLEASANT PRAIRIE, 206 WIS.2D 68 (1996).

Thus, statutes should not be read in a vacuum, but must be read together in order to best determine the plain and clear meaning. CARPENTER V. MUMAW, 230 WIS.2D 384, 397 (CT. APP. 1999), citing JLW V. WAUKESHA COUNTY, 143 WIS. 2D 126, 130 (CT. APP. 1988). Applied to the instant matter, we believe we should no longer determine issues concerning engineering professionalism solely under Sec. 111.81(15), Stats., but read that section together with the relevant provisions of Chapter 443, Stats.

Our use of Ch. 443 in this matter is limited to the assistance its relevant provisions may give us in determining and defining professional *engineering* positions. *We find particularly instructive the guidelines contained in Sec. 443.04, Stats., as to the minimum acceptable period of work experience that can be substituted for a bachelor's degree in engineering for professional certification purposes.* We note that engineering coursework short of a bachelor's degree combined with acceptable work experience can be credited towards professional certification purposes. We find these time periods reflect the minimum period of time a non-degreed person might be expected to have acquired knowledge of the advanced type and duration required by Sec. 111.81(15)(a)4, Stats.

We are aware that in the past this Commission has never determined professional status solely on the basis of state licensing or certification as a professional. CITY OF CUDAHY, DEC. NO. 19507 (WERC, 3/82); CITY OF SUN PRAIRIE, SUPRA. We are also aware that we have not limited professional employees to only those possessing college degrees. DANE COUNTY, DEC. NO. 21397 (WERC, 2/84); MILWAUKEE COUNTY, DEC. NOS. 14786 & 8765-E (WERC, 7/76), citing CITY OF APPLETON, DEC. NO. 11784 (WERC, 8/72). We do not reverse or modify those lines of cases today.

However, we do believe that Sec. 443.04, Stats., underscores the legislatively-determined relationship between advanced engineering knowledge gained at institutions of higher learning and advanced engineering knowledge gained through engineering-related work experience. It specifically supports the notion offered in more general form by Sec. 111.81(15), Stats., that an employee who has not completed a prolonged intellectual course of instruction and study in an institution of higher learning can nonetheless be a professional employee if the work he/she is performing requires knowledge customarily so acquired.

As to the former – the advanced, theoretical engineering knowledge –- it seems obvious to us that the reason it is *customarily* gained through a formal education process is because that route normally offers the fastest, most efficient means of achieving it. In contrast, it seems to us that a work duty is not usually assigned for the *primary* purpose of imparting advanced theoretical engineering knowledge to the employee, but rather to obtain an immediate, practical result for the benefit of the employer's enterprise – a work duty that may or may not constitute a new learning experience for the employee.

We readily acknowledge that advanced, theoretical knowledge can be imparted by work experiences. But it also seems evident that if the object is to gain the same advanced, theoretical knowledge base as that held by an engineering student that has obtained a four-year bachelor's degree in engineering, the work experience route is normally and necessarily a much slower means of traveling towards that goal than enrollment in an accredited educational institution.

We find Sec. 443.04, Stats., both relevant and entirely consistent with the provision of Sec. 111.81(15)(a)4., Stats., that describes professional work, in part, as "requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher learning. . . ."

Equally relevant are the definitions contained in Sec. 443.01(6), Stats., ["Practice of professional engineering"] and Sec. 443.01(7), Stats., [Professional engineer].

The Wisconsin Supreme Court has provided further guidance. First, the Court judicially recognized that under the provisions of Chapter 443, even a graduate of a four year course at a highly recognized engineering school or college is not eligible to apply for registration as a professional engineer without an additional four years of experience. Second, the Court offered its definition of the term "professional engineer."

> "We therefore determine that the word "engineer" is used to describe persons of various learning and skills while "professional engineer" connotes and identifies a person with a high degree of learning, experience, and competence in mathematics, physics and chemistry. The word 'engineer' and the term 'professional engineer' as they are thus defined and commonly understood are not synonymous." STATE EX REL. WISCONSIN BOARD OF ARCHITECTS & PROFESSIONAL ENGINEERS V. T.V. ENGINEERS OF KENOSHA, INC., 30 WIS. 2D 434, 442 (1966).

Third, we note the Court's explanation that the regulation contained in Chapter 443, Stats., is founded in the police power of the state to protect the public welfare and to safeguard the life, health, and property of its citizens. "This statute, as all licensing regulatory statutes, is not enacted for the benefit of persons licensed thereunder, but for the benefit and protection of the public." SUPRA AT 438.

Finally, we view the Court's rationale as persuasive legal justification for the creation and imposition of disciplinary sanctions by a legally authorized body should there be deviation from properly adopted standards of professional conduct. Thus the professional standards and an authorized body to administer and enforce them may be relevant evidence of the professional status of the activity involved. 5/

5/ The "Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors" is the official name of the body statutorily designated to administer professional sanctions to professional engineers and engineers-in-training. Section 443.01(3)., Stats. For simplicity's sake, we have hereinbefore and will hereinafter refer to said Board as the "Engineering Examining Board."

It is also important to note that given the statutory use of the word "predominantly" in Sec. 111.81(15)(a)1, Stats., the advanced, professional knowledge required of the employee must be required in performing a majority of the employee's work, not merely a smaller portion of it. See CLARK COUNTY, DEC. NO. 19744-E (WERC, 8/93), citing with approval CITY OF CUDAHY, DEC. NO. 19507 (WERC, 3/82).

FLSA

We acknowledge SEA's argument that the Engineering Specialists have been declared "exempt" from the provisions of the Fair Labor Standards Act (FLSA). The exemption of employees from the provisions of the FLSA is a determination by a federal agency. That agency's decision was based on its interpretation of a federal statutory framework rather than the Wisconsin statutory framework that must be followed herein. Hence, each decision is made for separate reasons and stands independent of the other. Inasmuch as we have no standing to resolve FLSA issues we decline to comment further.

Statement of the Issue

We state the issue in this matter in the identical form the Commission found it to be 29 years ago in STATE OF WISCONSIN, DEC. NO. 11667 (WERC, 3/73).

> The issue is whether the Engineer Specialists are employed in professional engineering positions.

Merits

Stipulation Regarding Engineer Specialists – Advanced:

We begin with the **Engineering Specialists** – Advanced. Six testified in this matter, Russell Glime, Jeff Karto, Timothy King, Edward Riley, Darwin Sering and Dan Winrich. At the time each testified, each had reached a level of Advanced 2 except for Sering who was an Advanced 1. For our purposes, however, the exception is irrelevant due to DER's subsequent collapse or merger of the two "Advanced" levels into only one level that is designated simply as "Advanced."

Since completion of the hearing we are advised that ten additional **Engineering Specialists** that testified in this matter have been reclassified to the Advanced 2 level of the **Engineering Specialist** classification. 6/

6/ Phillip Keppers, Jeanne Marchant, Mark Mohlman, George Nicolaus, Mary Pamperin-Volk, Dale Oldenburg, Timothy Radtke, Gary Schaeffer, Dennis Schmunck, and Francis Schelfhout.

On December 4, 1996, WSEU and SEA, by their respective attorneys, entered into a stipulation, the terms of which were stated for the record by counsel for WSEU: "We will stipulate and concede that the levels of Advanced 1 and Advanced 2 will remain in the SEA [bargaining]) unit . . . But as far as the ultimate disposition, we'll stipulate that those positions remain in SEA." Tr. 1317-18. DER did not oppose the stipulation.

By virtue of this stipulation, there is no issue as to the proper bargaining unit for any **Engineering Specialist** classified as "Advanced." 7/

7/ We are confident the parties understand that under the law they are not free to negotiate a bargaining unit composition that is contrary to that permitted by law. At the same time, it is not the practice of this Commission to scrutinize closely bargaining unit compositions to which the parties have agreed. WONEWOC-UNION CENTER SCHOOL DISTRICT, DEC. NO. 29813-B (WERC, 12/00). We do not alter that practice herein. Should a dispute develop over the status of any position included in a unit composition agreement, consistent with our legal obligation to do so, we will determine whether the duties of the positions in issue are compatible with bargaining unit status. SUPRA.

Entry, Developmental, Journey and Senior Levels

We are aware that through attrition or promotion to "Advanced," only eight **Engineering Specialist** positions remain unresolved. Of the eight, four testified as "Seniors and have remained at the "Senior" level. Of the other four, three testified as "Journeys" and one as a "Developmental."

We are also aware that upon reclassification the position description and summary of the reclassified employee is normally altered to reflect the duties and responsibilities of the position to which such employee has been reclassified. (See Finding of Fact 33). Since the hearing in this matter was concluded prior to the aforesaid reclassifications to the "Senior" level, none of the four **Engineering Specialists** that testified had an opportunity to explain his or her new duties or offer revised position descriptions and summaries into evidence. For this reason, as to them we are unable to reach an informed conclusion as to professional or non-professional status. We simply lack sufficient information. We are therefore withholding any assessment as to the *current* status of these four. 8/

8/ Roxanne Cuty, David McCosh, and Eugene Werner were promoted from Journey to Senior. George Nicolaus was promoted from Developmental to Senior. Each testified prior to her or his reclassification and understandably provided position descriptions and summaries only for their respective position levels as they existed at the time of their testimony.

We briefly reiterate DER's latest (1997) revision of the **Engineering Specialist** series. From their inception to 1997 the **Engineering Specialist** – Transportation series contained six-levels. Beginning with Entry, the series continued with Developmental, Journey, and Senior. It peaked with Advanced 1 and Advanced 2.

The 1997 modifications served to merge or collapse the two lowest levels (Entry and Developmental) into only one level that is simply called "**Engineering Specialist**." 9/ We do not find this to be a material factor in our analysis, for DER continued to designate the new beginning level as a "progression level" to Journey, just as it had previously designated the now collapsed Entry and Developmental levels. A change we do perceive that followed the 1997 revision, however, is the contractual codification of that designation reached through collective bargaining of the "progression" to the Journey level.

9/ The previous levels of "Advanced 1" and "Advanced 2" were also merged or collapsed into one level called "Advanced."

As a practical matter, by itself that contractual codification changed very little. A more significant change had also found its way into the parties' collective bargaining agreement, however, in which the parties agreed to extend to the Senior level the progression that had previously ended at the Journey level. Though originally regarded by DER as an "objective" or "full performance" level, through collective bargaining the Journey level began to do double-duty as both the terminal point of a two year progression and a mid-point of a three year progression to the Senior level. In summary, the expanded progression now begins at the beginning level called "**Engineering Specialist**." Once an employee has spent at least two years in that classification series, absent poor performance he or she is automatically moved upward to the Journey level. One more year in the classification series garners a promotion to the Senior level.

Thus the primary qualifying factor for promotion to both the Journey and Senior levels is not additional professional knowledge gained by the employee, but mere "time-in-grade" (unmarred by any "poor performance" that management may have documented).

At hearing, Cornell Johnson, a 14 year Human Resource Specialist at DER, described a "progressive level" as constituting a period of time during which the employee (who has already brought some knowledge of the work to the job) becomes more familiar with whatever

it is that he or she does. (Tr. 3818) 10/ Johnson added that the revised **Specialist** classification specifications did not specifically identify the work. He described the specifications as "very generic" and "more related to time in grade." SUPRA. Johnson did not comment on the expanded "progression" to which the parties had agreed in collective bargaining.

10/ "Tr." refers to the hearing transcript. The number following identifies the transcript page number.

We emphasize that we are not concerned with relatively rapid timelines for promotions or pay increases that the **Engineering Specialists** may have bargained for themselves. Our concern is that to maintain eligibility for upward reclassification, employees who claim to be employed in professional engineering positions need not demonstrate that they are performing work requiring knowledge customarily gained through prolonged intellectual instruction and study at an institution of higher learning. The only requirement for advancement (progression) to placement in the Senior level is time-in-grade during which the employee must avoid censure for "poor performance." 11/

11/ We note the term "poor performance" is undefined, and could arguably have as much or more to do with general conduct than the acquisition of professional knowledge.

We also perceive substantial variance in the educational backgrounds of the individuals classified as **Engineering Specialists** - Transportation. As generally referenced in Finding of Fact 13, the range of educational levels achieved by witnesses at hearing employed as **Engineering Specialists** - Transportation included the following: 1) high school diploma, only; 2) high school diploma plus one-year at a technical college; 3) high school diploma plus a 2-year associate degree in civil engineering technology from a technical college; 4) high school diploma plus a semester or two of college coursework that may or may not be related to civil engineering; 5) high school diploma plus a 4-year bachelor's degree from an accredited college or university in a field unrelated to engineering; 6) high school diploma plus 1, 2, or 3-years of enrollment at an accredited school of engineering; 7) high school diploma plus 1, 2, or 3-years of enrollment in an accredited school of engineering plus a 2-year associate degree in civil engineering technology from a technical college.

Obviously, with as broad a diversity as this in the quality, quantity, and relevance (to engineering) in the educational backgrounds of each of the incumbent **Engineering Specialists**, any judgment that the employees in general will be able to apply advanced engineering knowledge and principles to a majority of their respective job responsibilities within only two or three years does not appear to represent a reasonable expectation, but will ultimately depend on each employee's job duties and educational background.

Finally, the competing contentions as to the professional status of the **Engineering Specialists** necessarily requires some definitional assistance with the term "technician," a descriptive category to which the **Specialists** belong, according to WSEU (except for the "Advanced" level). To avoid unnecessary confusion we emphasize that the definitional assistance we seek pertains solely to the *generic* term "technician."

We find instructive the testimony of John Antrim, General Manager of NICET (National Institute for Certification and Engineering Technologies). NICET's list of typical technician activities includes the following on varying scales of difficulty: performance of simple observations, measurements and computations at the project site; routine inspection assignments under general supervision; independent highway construction inspection work with little or no supervision; independent highway construction inspection work including delegated responsibilities and duties for which engineering precedent exists as well as assignment of tasks and supervision of activities assigned to personnel; performance of common acceptance tests; monitoring of common construction procedures; verification of locations and quantities; preparation of project record entries, conducting of specialized acceptance tests; overseeing specialized acceptance tests and monitoring of both common and unique construction procedures; maintenance of project records, processing of change orders, initiation of recommendations, interaction with project engineers/managers and contractors, making recommendations for corrective actions. "Profile for NICET Certified Highway Construction Engineering Technicians," (Exhibit 11).

Antrim augmented this listing by referring to a definition of "Engineering Technician" found in the NICET General Information Booklet, 10th Edition: "Under the direction of engineers and scientists, an Engineering Technician analyzes and solves technological problems, prepares formal reports on experiments and tests and other projects, and carries out technical support functions such as drafting, surveying, designing, technical sales, technical writing or training." Tr. 266-7.

We acknowledge the background provided by DER's Michael Soehner, State Compensation Coordinator and former classification analyst. Soehner said:

> "A bit of background in the definition of what is professional and what is technical. In the technical definition you'll find almost universally among personnel manuals, and you'll find it in The Dictionary of Occupational Titles. It will talk about technical staff or paraprofessional staff in almost all cases are (sic) assisting professional staff in doing work. A paramedic helps a doctor. A paraprofessional helps an attorney, and so they simply work for a professional." Tr. at 377.

We also note Soehner's caution that overlap is common from one job to the next or one classification to the next. From this Soehner concludes:

> ". . . so that it's not unusual for, let's say, someone who's in a particular position of, let's call it technician, to perform higher level work which might be professional or lower level work which might be subtechnical or clerical, and that's very common in State service." Tr. 375-6.

As to the Beginning and Journey levels of the **Engineering Specialist** classification series, we generally reject the notion that two years of on-the-job engineering-related work experience is sufficient to produce an employee capable of performing professional engineering work that requires "knowledge of an advanced type . . ." and that further constitutes a majority of an individual's employment responsibilities. We agree that positions at these levels can provide essential support for the professional employees (i.e., **Civil Engineers** and **Engineering Specialists** - Advanced). Although warm collegiality may exist between the **Specialists** that occupy positions and the professionals with whom they work, we think it is clear that the **Specialists** at these lower levels are generally subject to the direction and guidance of the professionals. 12/

12/ One Engineering Specialist-Journey, when asked to distinguish between Civil Engineers and Engineering Specialists, directly alluded to the specialists' supportive role: " . . . We're working under their [civil engineers'] direction more or less the way things should be built." Tr. 113.

Moreover, the level of skills required for each of the incumbent **Specialists** in the positions we examined is not necessarily consistent, even for employees at the same classification level. Position descriptions and summaries are highly individualized in an apparent effort to match the capabilities of the employee with the requirements of his or her position. We see nothing invidious about this: to us it appears to be a rational attempt to deal with significant variances in educational backgrounds and work experiences of employees that have been placed at identical classification levels.

Finally, for at least the lower level **Engineering Specialist** incumbents we examined, the skills required to perform the duties of the next higher level have been either absorbed from on–the-job experience or learned, at least in part, from civil engineering technology coursework. To the extent that requisite technician skills for these positions have been obtained through a relatively short on-the-job experience or a truncated educational experience, the learning process is not unlike an apprentice system.

Based on the aforesaid and the entire record, we believe that the positions we examined in the Beginning and Journey levels generally provide essential technician support (as opposed to performing professional work) for the work of the **Civil Engineers** and **Engineering Specialists** - Advanced. In our opinion, these positions are generally not professional within the meaning of Sec. 111.81(15)(a) or (b), Stats.

As to the Senior level of **Engineering Specialist**, we are doubtful that only three years of on-the-job experience produces an employee capable of performing professional engineering work that requires "knowledge of an advanced type . . ." and constitutes a majority of an individual's employment responsibilities. 13/ Consistent with the provisions of Sec. 443.04, Stats., however, we readily acknowledge that prior attendance at an accredited engineering school, although insufficient for a bachelor's degree, could assist an employee in achieving "professional engineering" status if coupled with sufficient experience in engineering or engineering-related work. Further, if a senior **Engineering Specialist** is primarily performing work that "is predominantly intellectual . . . and requires knowledge of an advanced type . . .", that individual is a "professional employee" under Sec. 111.81(15), Stats.

13/ At hearing, an Engineering Specialist - Senior stated:

> ***". . . (O)bviously I mentioned before I have two years of college. I have an associate degree. An engineer has that much more schooling and they have their engineering degrees. They have gone through their engineering tests, whether it's time and [in] grade or their PE exams, whatever. They have that schooling. They have that knowledge in their back pocket, always at their access.***
>
> ***Yes, the knowledge I have is my own in my back pocket, but we're talking about two different areas of schooling, where they have another two years of schooling that I don't have access to. Tr. 1676***

Specific Employees

As set forth in Finding of Fact 35, **Barbara Moes-Kliefgen**, a District 4 **Engineering Specialist** – Senior, has an associate degree in civil engineering (which we understand to be a 2-year degree in civil engineering technology). Moes-Kliefgen has been with DOT for 14 years.

Originally hired as an Engineering Aide 1, she subsequently rose to the level of Technician 3. The record contains no description of when or how Moes-Kliefgen became an **Engineering Specialist**. While a Technician 3, she did some designing but was ultimately assigned to the Traffic Section where she has remained.

The Traffic Section deals with signs, road markings, traffic signals, flashing beacons, and other traffic control measures. Until eight months prior to her testimony, Moes-Kleifgen was the only other person in the traffic engineering section besides the engineering supervisor, a **Civil Engineer** Supervisor 3. Currently, she is on a traffic team consisting of the traffic engineering supervisor, a **Civil Engineer** – Senior, and herself. The team reviews traffic control signals, designs signal plans for state trunk highways, reviews consultant plans and city plans for signals, and set up the timing or the coordination between the signals. The team assesses traffic signal needs and matches local demands for signals against department warrants (guidelines). Sometimes political pressure results in the approval of a traffic signal installation even if the guidelines haven't been met. The team also designs temporary traffic control measures in highway construction areas. All final decisions are made by the traffic-engineering supervisor.

Moes-Kleifgen has trained **Civil Engineers** in traffic control measures and attends seminars at Northwestern University's Traffic Institute.

Although of unquestionable importance, Moes-Kliefgen's specialty is a narrow one. It deals exclusively with road signs, road markings, traffic signals, flashing beacons, and other traffic control measures. The training she provides civil engineers in traffic control measures is well within the range of supportive training responsibilities that may be assigned to technicians. Her work as a member of a two-person traffic team consisting of herself and the traffic-engineering supervisor (a **Civil Engineer** – Senior who makes all final decisions) indicates that she is performing in a support capacity for the professional engineer.

We find Moes-Kliefgen to be an experienced, knowledgeable technician. We do not believe she is required to apply advanced professional engineering knowledge to the responsibilities of her specialty. She is not a professional employee within the meaning of Sec. 111.81(15, Stats.

As set forth in Finding of Fact 36, **Duane Nelles**, a District 4 **Engineering Specialist** - Senior, had been an employee of DOT for 28 years when he testified. Nelles' educational background consists of a high school diploma with one year at a technical school where he studied civil engineering. Nelles was reallocated from his former slot of Technician 4 to his present Senior level in the **Specialist** series as a result of DER's Engineering Survey completed in 1990.

Nelles functions as a project manager working only in design. His responsibilities include putting together the contracts to carry out the design. He describes himself as "the expert engineering software user and expert resource in the district." He functioned as the beta test person for CACE (computer-aided civil engineering software package) in District 4, and does one-on-one CACE training.

Nelles designs the approach-work to bridges. Nelles confers with his supervisor on projects he is managing as the project progresses. In his project management, Nelles is primarily in charge of coordination of the plan and making sure the plan is in compliance with State manuals. Nelles' position description lists one of his duties as "directing development of preliminary project design." The preliminary project design is the first draft of the design. Nelles is supervised by a **Civil Engineer**.

We conclude Nelles is a technician and not a professional employee within the meaning of Sec. 111.81(15), Stats. The CACE training he provides for others is within the range of supportive training responsibilities that may be assigned to technicians. Other tasks he performs, such as "putting together contracts," acting as the "beta test" person in the district, and preliminary project design also indicate he contributes the focus of an experienced, knowledgeable, and valuable technician as opposed to the perspective of a professional engineer whose position requires the application of advanced professional engineering principles and knowledge. We note that he confers with his civil engineer supervisor on projects he is managing as the project progresses, which indicates to us that he continues to receive counsel, advice, and guidance as to matters requiring the application of advanced engineering knowledge and principles.

As set forth in Finding of Fact 37, **Sandra Pease** is an **Engineering Specialist** – Senior that has been with DOT in District 8 for 10 ½ years. Pease has earned 95 engineering credits of the 135 required for graduation. Pease has taken and passed the eight-hour Engineer-in-Training examination. Although Pease has completed only an approximate 70% of the credits necessary for her bachelor's degree in engineering, the Engineering Examiner Board regarded the combination of her engineer-related work experience, the length of such experience, and her college education as a sufficient qualification for her to take the eight-hour written EIT examination. We believe the primary significance of this achievement is that it constitutes a tangible demonstration of the advanced engineering knowledge Pease was able to absorb through a combination of 95 credits in advanced engineering coursework and engineering-related work experience under professional supervision for a sufficient period of time. We also note that as an Engineer-in-Training Pease is subject to the jurisdiction of the Engineering Examiner Board.

Pease has had experience in both bridge work construction and design. (The bridge structure is always designed in Madison). Pease has been the construction project manager on four bridge construction projects where she was the sole DOT person on the job (except for routine once-a-week stops by the supervisor). Her duties included laying out the bridge, accepting materials, submitting estimates, keeping daily diaries, coordinating the work, and working with the general contractor.

Pease has developed experience and expertise in multiple areas of civil engineering. She has particular expertise in electrical work, and probably has the most experience in dealing with electrical structures within her district. Pease has made changes in the field to electrical plans due to conditions in the field impossible to foresee. Pease determines the location of electrical structures. If Pease is managing the entire project, then she does the electrical portion of the plans. Pease also does the electrical portions of the as-built plans for large projects.

Based on the foregoing, we have no difficulty in finding that Pease possesses the advanced knowledge referenced in Sec. 111.81(15)(a)4., Stats., and most importantly that a predominant portion of her work requires such knowledge. Pease is a professional employee within the meaning of Sec. 111.81(15), Stats.

As set forth in Finding of Fact 38, **Thomas Peronto** is an **Engineering Specialist** – Senior who has been with DOT in District 4 since 1982. Peronto has earned 69 civil engineering credits – slightly more than 50% of the credits necessary for his bachelor's degree in engineering – as well as an associate two year degree in civil engineering technology.

Peronto's current work is in a combined section of design and construction where he has been principally engaged in design work for the three or four years prior to his testimony. Peronto has been groomed to take on ever-increasing responsibilities ever since he was a Technical 3.

Peronto's work on Highway 29 and Highway 21 projects is instructive as to the question of his professional status.

The relocation of 7.9 miles of Highway 29 beginning in 1989 actually consisted of a series of 15 different construction contracts. Peronto, originally assigned as assistant project manager for the project, became project manager when his supervisor, a **Civil Engineer**-senior, was promoted to a supervisory position. As the project manager overseeing the consultant-design portion of the project(s), Peronto had significant engineering responsibilities. One phase, alone, of the project amounted to an estimated cost of $9.5 million. The entire project has a number of bridges and interchanges involved with it, and was classified as major-complex. The Highway 29 work subsequently demanded 100 percent of Peronto's time.

The reconstruction (road widening) of Highway 21 offers a more current example of Peronto's work. Broken into four projects (for budget purposes), the goal was to widen several miles of Highway 21 from a two-lane rural and urban section to a four-lane urban and rural section.

Peronto worked on all phases of the design for this project, including minimizing encroachment on the archeological site, profile design, setting grade-lines, ditch-line profiles, and right-of-way acquisition limits. Peronto suggested an alignment change that significantly reduced the number of landowners from whom it would be necessary to purchase land by one-half and saved the State of Wisconsin the approximate sum of $600,000. Peronto's initials are one of two sets that appear in the lower right-hand corner of the plans for the Highway 21 widening project, indicating that Peronto was one of the designers. Parts of the plan Peronto developed by himself; other parts of the plan were developed solely by his partner. The two worked as a team or partnership and frequently consulted with each other.

Currently Peronto works with a 30-year DOT employee who is an **Engineering Specialist** – Advanced 2, a classification the parties have stipulated is appropriately included in the professional bargaining unit.

Given all of the foregoing, we are satisfied that Peronto is a professional employee within the meaning of Sec. 111.81(15), Stats.

Remaining Issues

As we indicated above, WSEU's petition also sought to remove additional positions from the bargaining unit represented by SEA and place them in the bargaining unit represented by WSEU. In its petition, SEA sought to remove certain positions from the bargaining unit represented by WSEU and place them in the bargaining unit represented by SEA. Although the Commission ordered the consolidation of both petitions for hearing purposes, at hearing the only issue that the parties chose to address was that involving the **Engineering Specialists**.

Inasmuch as each party has had an opportunity to address at hearing each issue it had raised in its respective petition but chose not to do so, we are dismissing without prejudice all remaining issues raised but not addressed by the parties.

Conclusion

Although we have not previously utilized the regulatory provisions of Chapter 443, Stats., when deciding the professional status of employees performing engineering type work, we have been led to consider them in the instant matter by the parties' references to them. We have found these provisions to be helpful guidelines, but we emphasize that we have not

substituted them for the traditional singular guidance of Sec. 111.81(15), Stats. Instead, we read the relevant provisions of Chapter 443 in conjunction with the provisions of Sec. 111.81(15), Stats., as we sort out "professionals" from "technicians."

Through our consideration of Chapter 443, we learned that the engineering knowledge needed to be a "professional engineer" consists of two parts: 1) advanced, theoretical engineering knowledge customarily gained at an accredited engineering college or university and 2) practical engineering knowledge customarily gained through sufficient on-the-job experience.

As to the latter – the practical engineering knowledge – under the provisions of Sec. 443.14, Stats., practical engineering knowledge gained through engineering work experience is deemed as essential to the development of a "professional engineer" as is advanced, theoretical intellectual instruction at an accredited school of engineering. Without a minimum of four years experience in engineering work, the employee that has gained "only" a bachelor's degree in engineering is no more qualified for registration as a *professional engineer* than is a long-time civil **Engineering Technician** without a bachelor's degree in engineering who has failed to gain through work experience a full range of advanced civil engineering knowledge. 14/

14/ It is clear to us that the experienced Engineering Specialists in this case are the "practical knowledge" experts. Explaining at hearing why Student Engineer Trainees (SET) are assigned to Engineering Specialists, one Engineering Specialist – senior touched on that point:

> ***"They [SET students] learn the practical part of it from us, you know, and then when they come to work for us they have that much more practical knowledge that they probably wouldn't have had if all they did was go to school." Tr. 992.***

Due to the circumstances explained, above, we lacked sufficient information to resolve the bargaining unit status of four **Engineering Specialists**. We suggest that with the guidance provided herein, the parties themselves can resolve the bargaining unit status of these four. If the parties are unable to do so, we will review the matter on proper application.

We are aware that the individual cases we reviewed herein constitute what the parties had hoped would be a representative microcosm of all **Engineering Specialists** employed by DOT. Given the great variance in educational background, engineering work-experience, and

position descriptions and summaries for **Engineering Specialists** at identical classification levels, we are unwilling to assess the professional status of positions for which testimony was not taken and evidence not submitted. As to those positions, we believe the guidance provided herein should enable the parties to resolve any remaining issues. If the parties are unable to do so, as with the small group of four referenced in the previous paragraph, we will resolve any issues on proper application.

Reduced to its essence, we find, again, that "professional status" is a *knowledge-based* status. Consistent with our past cases, we reemphasize that it is the *required application of professional knowledge (i.e. "knowledge of an advanced type . . .") to the performance of a majority of an employee's duties and responsibilities* that is of primary importance to us as we determine whether an employee is employed in a professional position.

Dated at Madison, Wisconsin this 15th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

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