

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 :
 In the Matter of the Petition of :
 :
 LAURA WORKMAN : Case 22
 : No. 44014 ME-417
 Involving Certain Employes of : Decision No. 11983-C
 :
 BROWN COUNTY :
 :

Appearances:

Ms. Laura Workman, Petitioner, 1943 Darwin Avenue, Green Bay, WI 54303,
 Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys
 Brown County did not appear at the hearing.

on beh
 at Law

FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION

Laura Workman, Analyst/Programmer II and Petitioner herein, having, on May 7, 1990 filed a petition for an election to determine whether the Analyst/Programmer II position incumbents (A.P. II's) wished to remain in an existing non-professional collective bargaining unit represented by Drivers, Warehouse and Dairy Employees Union, Local No. 75, or whether the A.P. II's should be excluded from said unit as professional employes; and hearing having been held on August 1, 1990, before Sharon Gallagher Dobish, a member of the Commission's staff, in Green Bay, Wisconsin; and a stenographic transcript having been made of the hearing, and the parties having filed post-hearing briefs, the last of which was received by the Examiner on September 10, 1990; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Brown County, hereafter the County, is a municipal employer having its offices at 305 East Walnut Street, P.O. Box 1600, Green Bay, Wisconsin 54305-5600.
2. That Drivers, Warehouse and Dairy Employees Union, Local No. 75, hereafter the Teamsters Union, is a labor organization having its offices at 1546 Main Street, Green Bay, Wisconsin 54302.
3. That Laura Workman, hereafter the Petitioner, is an employe of the County who currently occupies one of the five Analyst/Programmer II positions which are at issue herein.
4. That in Brown County, Dec. No. 11983 (WERC, 7/73), the Teamsters Union was certified as the collective bargaining representative of "all employes of Brown County employed in the Courthouse, Safety Building, Courthouse Annex, Northern Building, Reforestation Camp and University Extension (Agricultural Agents Department), excluding department heads, supervisors, craft and professional employes, police officers, elected and appointed officials and confidential employes"; that some time during 1977, the County and the Teamsters Union voluntarily agreed to put the Analyst/Programmers I and II into the

bargaining unit and the Teamsters Union has represented that group from 1977 to the present; that the County and the Teamsters Union's currently effective 1989-90 collective bargaining agreement lists the negotiated wage rates for Analyst/Programmers II as follows:

<u>Classification</u>	<u>Start</u>	<u>6 mo.</u>	<u>1 yr.</u>	<u>18 mos.</u>	<u>24 mos.</u>	<u>Year</u>
Programmer/Analyst II	12.51	13.01	13.51			1989
(2 or more years of exp.)	12.95	13.45	13.95			1990
Programmer/Analyst I	11.62	12.12	12.62			1989
(Less than 2 years exp.)	12.03	12.53	13.03			1990

that there are currently approximately 200 employes including the Analyst/Programmers employed in positions included in the above-described unit.

5. That currently there are no employes occupying the position of Analyst/Programmer I and that position is not in issue here; that currently the following individuals are occupying the bargaining unit position of Analyst/Programmer II (A.P. II):

Amy Noll
Steve Hansen
Daryl Rauterkus
Michelle Walla
Laura Workman

that these individuals are all employed in the County's Data Processing Department which is located in the Northern Building; that there is a Data Processing Manager (D.P. Manager) currently employed, Stephen L. Thomas and his Assistant D.P. Manager is Peter Yonts; that both are undisputedly excluded from the above-described unit as managerial/supervisory employes; that also currently employed in the County's Data Processing Department is Jean Cuene, Personal Computer Support Technician (P.C.S.T.); that Cuene is also a bargaining unit member and her position is covered by the collective bargaining unit.

6. That the relevant job descriptions for the Analyst/Programmer II (A.P. II) position is as follows:

General Description

Analyzes system requirements; designs and creates computer programs of moderate to complex nature; maintains existing computer software and makes changes as required by users.

Examples of Duties

Assists department heads and principle representatives in the evaluation of current manual and computerized operations; develops general and specific data flow in regard to user requests and limitations; formulates data base requirements based on users data retention needs; designs layouts for all file specifications, screen formats, reports, and special form requirements; determines reasonable time estimates of major projects and their smaller components after analysis of complexity; completes operational tests on developed software and monitors for necessary modifications in design specifications; trains user department personnel on program function and related hardware; investigates impact of modifications and adjustments on existing systems and software; performs adjustments to developed software as required by user departments; performs telephone support functions and addresses hardware/software questions or malfunctions; attends workshops and training courses, keeps abreast of new technology to improve system and program operation.

Knowledge, Skills and Abilities

Knowledge of components of quality software design; ability to interact effectively with representatives of a variety of departments; ability to understand user's needs and to design a system to meet those needs; knowledge of the principles and techniques of computer programming; knowledge of a variety of program languages; knowledge of computer application and machine usage and capabilities; knowledge of file design, access I methods, storage media, input/output techniques; knowledge of principles of operating a

computer and peripheral devices; ability to diagnose software execution failures and other hardware problems; ability to work and communicate effectively with others.

Education and Experience

Associate Degree in Data Processing or Computer Programming; or any combination of education and experience which provides the necessary knowledge, skills and abilities, plus two to four years of experience in computer programming.

7. That the existing job description for the Analyst/Programmer I (A.P. I) position (currently vacant) is as follows:

General Description

Under direct supervision of the Assistant Data Processing Manager, analyzes system requirements and codes computer programs of a moderately complex nature; maintains existing computer programs making changes as required by users, and does related work as required.

Examples of Duties

Designs, codes, tests and debugs new programs of a moderately complex nature; analyzes system requirements; prepares complete documentation for implementation phase of computer systems; may code in a variety of languages; responsible for logical tests of programs; maintains existing operational computer programs and makes changes as required by users; maintains contacts with user representatives; processes data according to defined procedures; recommends changes in scheduling and application to utilize the computer more efficiently; keeps abreast with new and updated procedures in the operations of a computer system.

Knowledge, Skills and Abilities

Knowledge of the principles and techniques of computer programming on a computer; knowledge of CoBol necessary, other languages helpful; knowledge of computer application and machine usage and capabilities; knowledge of file designs, access methods, storage media, input/output techniques; ability to assist in the diagnosis of execution failures and other software/hardware problems; ability to communicate effectively, orally, and in writing, with representatives of a variety of user departments; ability to work effectively with others.

Education and Experience

Any combination equivalent to an associate degree in data processing or computer programming.

8. That the effective job description for the Personal Computer Support Technician (PCST), currently occupied by Jean Cuene, requires the following:

EDUCATION AND EXPERIENCE:

Associate Degree in Micro-Computers or equivalent experience. Working knowledge of the IBM and compatible personal computer and its electronic circuitry.

9. That the Data Processing Manager job description (currently in effect and accurate although still in "draft" form) requires that the incumbent have graduated

"from college with a Bachelor's Degree in Information Systems or an Associate Degree in Data Processing with equivalent work experience. Three to five years post-graduate work experience of increasing responsibilities in Data Processing or Information Systems. Any combination of education or work experience which provides the necessary knowledge, skills and abilities;"

10. That the Assistant D.P. Manager (A.D.P. Manager) job description

currently in effect states, inter alia, that the A.D.P. Manager "supervises" line D.P. employes; and that the job description states that the A.D.P. Manager position requires:

"Associate Degree in Data Processing or a related field, plus five (5) years of increasingly responsible experience in systems analysis and design, programming and computer operations; or any combination of education and experience which provides the necessary knowledge, skills and abilities;"

11. That the D.P. Department created by the County in 1975, currently provides data processing, word processing, analysis, design of systems/applications and implementation of systems/applications for approximately 40 County departments as well as a number of municipalities and outside agencies so that these user departments or entities can receive and record timely and accurate information; that at the time of its creation, the staff was limited and some of the work was contracted out, while some was time-shared with other entities because the County had no mainframe computer of its own; that thereafter, the County entered into an agreement with the City of Green Bay to share the City's computer and as a result, the City and the County created and operated a joint data processing center; that by approximately 1984, the D.P. Department had put many functions on the County's then-new computer system; that since approximately 1987, the duties of the D.P. Manager, A.D.P. Manager and the A.P. II's have shifted and changed; that in this regard, the D.P. Manager and A.D.P. Manager no longer currently make the day-to-day decisions regarding user problems, although the D.P. Manager continues to consult directly with other department heads and County officials regarding their needs prior to assigning a project to an A.P. II; that formerly, the A.D.P. Manager had consulted with the users and then designed the entire system/application, down to designing flow charts, print charts, and how the screens would look after on-going consultation with the user and then the A.P. I's and II's simply took the designs/plans of the A.D.P. Manager and coded them into the computer; that the A.D.P. Manager presently no longer consults with users, no longer designs systems/applications down to screen presentations but that the A.P. II's now perform all of this work; that although the A.D.P. Manager was formerly and continues to be the County's computer security code officer, the A.D.P. Manager now does only a limited amount of system testing and other system/application design and development, and the A.P. II's have taken over the majority of this work as well; that in the past three years, the D.P. Manager's duties have expanded in the areas of overall project management, budgetary considerations and on-going D.P. accountability for computer functions to such an extent that the D.P. Manager no longer does any programming and he is not otherwise involved in the day-to-day business of directly providing D.P. services, except through his assisting on the Help Desk; that the D.P. Manager has supervisory responsibilities over to P.C.S.T.; that the A.D.P. Manager is responsible for the supervision of the A.P. I position (currently vacant) and of the A.P. II's; that the D.P. Manager prepares the D.P. budget and represents the County in coordinating computer services; that decisions regarding whether to buy, build, or borrow a system or application are collective decisions made by the D.P. Manager, A.D.P. Manager and the A.P. II involved in the case but the D.P. Manager's recommendation, if different from the A.P. II's, would be controlling; and that the user department ultimately approves or disapproves of the plans/work of the A.P. II's.

12. That as a general matter, the County has various ways of providing D.P. services, as follows: D.P. employes can design and develop a system or application; the D.P. employes can maintain and/or modify a County-purchased system/application; or the County can borrow or share a system/application and bring in software to modify the system/application to meet the County's needs; that generally the A.P. II's have programmer manuals that they refer to to show them how to write programs and how the files are laid out, where to place and find certain functions on a system; and that the A.P. II's also have technical manuals (which are purchased or come with the machinery) to which they can refer on how to write on screens.

13. That both the D.P. Manager and the A.D.P. Manager possess Associate Degrees in Data Processing plus prior work experience in the Data Processing field; that D.P. Manager Thomas has earned one-half of the credits he needs to earn a Bachelor of Science degree; that three of the incumbent A.P. II's have earned Associate Degrees in Data Processing (Walla, Noll and Rauterhaus); that Petitioner Laura Workman had a Bachelor's Degree in Computer Science at the time she was hired by the County into an A.P. I position in 1982; that upon completion of two years of work for the County as an A.P. I, Workman was promoted to an A.P. II position; that Steve Hansen is the only A.P. II who currently does not possess an Associate or other degree in Data Processing; that Hansen had two years work experience with a Green Bay company in data processing prior to his hire by the County; that the Associate Degree in Data Processing requires completion of 60 credit hours at a Technical College; that Jean Cuene, the P.C.S.T., has one-half of the credits necessary to receive an Associate Degree in Programming plus 12 years experience in programming and data processing; that Amy Noll as well as other A.P. II's (including Workman)

have been automatically promoted from A.P. I's to A.P. II's based solely upon gaining two years experience (in or out of County employment) in Data Processing; that an Associate Degree in Programming is distinct from one in data processing and, generally, a person with such a degree in programming would not be considered for an A.P. I position unless that person had prior work experience in data processing.

14. That although the work of the position Analyst Programmer II is predominantly intellectual and varied in character, involves the consistent exercise of discretion and judgment in its performance, and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, said work does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

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

CONCLUSION OF LAW

That the Analyst/Programmer II's are not professional employes within the meaning of Sec. 111.70(1)(L), Stats., and thus no question concerning representation has been raised within the meaning of Sec. 111.70(4)(d)3, Stats., by the petition.

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

ORDER 1/

That the election petition hereby is dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of January,
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

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

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

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

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from page 6.)

the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

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

. . .

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

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

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER DISMISSING PETITION

POSITIONS OF THE PARTIES

Petitioner:

Petitioner asserted that the duties which have been shifted over the past three years from D.P. Manager Thomas and A.D.P. Manager Yonts to the Analyst/Programmer II's justify the A.P. II's being removed from the bargaining unit because the A.P. II's are now professional employes under MERA. Petitioner pointed out that the large number of County and other outside entities with which the A.P. II's must communicate and with whose special business the A.P. II's must be familiar, supports a conclusion that the A.P. II's work is intellectual and varied in character. The Petitioner also argued that the A.P. II's consistently exercise independent judgment and discretion in their work. The Petitioner contended that the output produced by the A.P. II's cannot be standardized in relation to time and A.P. II assignments have no hard-set time targets or parameters. Finally, Petitioner urged that the A.P. II's education (Associate Degrees in Data Processing) and their two or more years experience meet the statutory requirement that professionals must possess knowledge of an advanced type gained through prolonged study in an institution of higher learning. Thus, Petitioner urged that the A.P.'s should be excluded from the existing bargaining unit because they are professional employes.

Contrary to the Teamster's assertions, the Petitioner argued that the Property Analyst and Assistant County Surveyor positions included in the unit as nonprofessionals are not like the A.P. position because the work of these positions is more routine in nature; and that the Administrative Coordinator position is a supervisory rather than professional and thus should not be compared to the A.P. position. Petitioner cites City of Cudahy, Dec. No. 19507 (WERC, 3/82) as dispositive of this case.

Finally, Petitioner contended that to continue to include the A.P.'s in the existing unit would be inappropriate for the following reasons: (1) A.P. II's work with virtually every County department to which they charge back all time spent rendering services; (2) A.P. II's possess skills, they have training, education and experience and they perform duties different from other unit members; and (3) A.P. II's wages are substantially higher, they have access to secured data, they are often in charge of the Data Processing Department in the absence of Yonts and Thomas and the P.C. Support Technician. Petitioner also argued that it would not cause any undue fragmentation to exclude the A.P.'s from the unit since they would willingly go into the non-represented management group. The Petitioner therefore sought exclusion of the A.P. II's from the existing unit.

Teamsters

The Teamsters, representing the bargaining unit which has included the A.P.'s since a 1977 agreement between the County and the Teamsters, contended that unless the A.P.'s can demonstrate that they should be removed from the unit because they are professional employes as defined by MERA, they must remain in the Teamster-represented unit. The Teamsters asserted that the A.P.'s do not satisfy the statutory criteria for exclusion as professionals. The A.P.'s do not consistently exercise discretion and judgment and the A.P. work does not require an advanced degree characteristically required by the WERC in these cases. In this regard, the Teamsters noted that, for example, the A.P.'s make no budget decisions; and that D.P. Manager Thomas decides which systems will be implemented and what to do if a system does not fit the computer system. Thomas and Yonts' job descriptions demonstrate that they, not the A.P.'s, are exercising the discretion and judgment and that their jobs require a four-year college degree.

The Teamsters also cited several cases in support of their contentions in this case. For example, in Waukesha County, Dec. No. 26020-A (WERC, 9/89), the Commission found that "Senior Computer Systems Specialists", with job tasks very similar to the A.P. II's, were not professional employes in view of the higher level non-professionals who provided supervision and control in the department. The Teamsters further cited West Allis - West Milwaukee School District, Dec. No. 16405-A (WERC, 9/89) and Rock County, Dec. No. 13670-A (WERC, 10/75) and Dane County, Dec. No. 21397 (WERC, 2/84) for the proposition that an Associate Degree is normally insufficient to prove professional status under MERA.

In addition, the Teamsters noted that the A.P. II's exercise of independent judgment has increased because they have gained on-the-job experience in the A.P. I position. Furthermore, the Teamsters noted that the bargaining unit in which the A.P. II's are currently included contains a number of higher level non-professional positions, such as the Assistant County Surveyor and Property Analyst, which require an Associate Degree plus

experience and which share a community of interest with the A.P.'s in the area of wages and fringe benefits. The Teamsters argued that the A.P. II's also share a community of interest with the Personal Computer Support Technician position, which position also requires an Associate Degree, shares the same office space with the A.P. II's and shares duties such as the Help Desk, regularly working with user clients, and arranging for the preparation of reports and addressing on-screen warning signals.

The County

The County took no position in this case and chose neither to appear at hearing nor to file a brief herein.

DISCUSSION:

The primary issue before us is whether the Analyst/Programmer II's are professional employes and therefore inappropriately included in the Teamsters non-professional unit.

Section 111.70(1)(L), Stats. defines a professional employe, in pertinent part, as follows:

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

All factors must be present for an employe to be professional. As reflected in our Findings of Fact, we are satisfied that the work of the Analyst/Programmers has evolved to a level which meets the requirements of Sec. 111.70(1)(L)1 a through c., Stats. Their work in meeting the diverse programming needs of their many user clients is predominantly intellectual and varied, involves consistent exercise of judgment and discretion and is of such a character that the output cannot be standardized in relation to a given period of time.

However, we are not satisfied that the work in question requires knowledge of an advanced type in a field of science or learning customarily required by a prolonged course of specialized intellectual instruction and study in an institution of higher education. Instead, as evidenced by the job description and the incumbents' backgrounds, the work requires knowledge which is acquired through experience or a combination of experience and technical training.

The Petitioner correctly notes that, in City of Cudahy, supra., a Data Processing Analyst position was found to be professional. However, the position at issue in Cudahy had job responsibilities involving control over departmental budget and policy matters and the City of Cudahy "preferred" a four-year degree with specific accounting training for the position. Here, as in Waukesha County, Dec. No. 26020-A (WERC, 9/89), the positions do not have overall departmental responsibilities and experience and/or experience and technical training is sufficient to provide the knowledge needed to perform the work.

Given the foregoing, we conclude that the positions are not professional, and thus should remain in the Teamsters' unit. 2/ Accordingly, we have

2/ To the extent that Petitioner argues that even if the Analyst/Programmers are not professionals, they should be excluded from the Teamsters' unit because they lack a community of interest with other unit employes, we note that the Teamsters unit does include other para-professional positions and that broad bargaining units like that present herein inevitably include employes with diverse wages, hours and conditions of

dismissed the election petition.

Dated at Madison, Wisconsin this 11th day of January, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

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

employment.