

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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MILWAUKEE COUNTY	:	Case LXAVIII
	:	No. 19102 ML-1190
For Clarification of the Bargaining	:	Decision No. 14169
Unit for Certain Employees of	:	
	:	
MILWAUKEE COUNTY	:	
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Appearances:

Mr. Robert P. Russel, Corporation Counsel, by Mr. Patrick J. Foster, Assistant Corporation Counsel, appearing on behalf of the Municipal Employer.

Podell & Ugent, Attorneys at Law, by Ms. Nola Hitchcock Cross, appearing on behalf of District Council 48, AFSCME, AFL-CIO and its Appropriate Affiliated Locals.

ORDER CLARIFYING BARGAINING UNIT

Milwaukee County, referred to herein as the Municipal Employer, having requested that the Wisconsin Employment Relations Commission issue an Order clarifying the existing collective bargaining unit of its employees represented by District Council 48, AFSCME, AFL-CIO and its Appropriate Affiliated Locals in order to determine whether certain positions in said bargaining unit, inter alia, that of Administrative Assistant II (WE & TP) are to be included in or excluded from the present existing bargaining unit described in previous Commission decisions 1/; and the Commission, pursuant to notice, having conducted a separate hearing with respect to the status of the Administrative Assistant II (WE & TP) on September 19, 1975 at Milwaukee, Wisconsin, Marshall L. Gratz, Hearing Officer, appearing for the Commission; and the Commission having considered all of the evidence, arguments and briefs of Counsel, and being fully advised in the premises, being satisfied that the Administrative Assistant II (WE & TP) position, is not a managerial position, and therefore the Commission issues the following

ORDER

IT IS ORDERED that the position of Administrative Assistant II (WE & TP) be, and the same hereby is, included in the collective bargaining unit described above.

Given under our hands and seal at the City of Madison, Wisconsin this 9<sup>th</sup> day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Thomas Slavney  
Morris Slavney, Chairman

Howard S. Bellman  
Howard S. Bellman, Commissioner

German Torosian  
German Torosian, Commissioner

1/ Milwaukee County, (7135-Q) 4/68; (6467-E) 4/66; (7462-E) 6/66; (7463-E) 6/66; (8393) 2/68; (9318) 11/69; (9768) 6/70; (9767) 6/70.

MEMORANDUM ACCOMPANYING ORDER CLARIFYING BARGAINING UNIT

Nature and History of the Issue:

The sole issue for determination herein is whether the position of Administrative Assistant II (WE & TP), created at the beginning of 1974, and held since that time by John Kropp, is managerial such that Kropp should be excluded from the large and diversified bargaining unit of County employes represented by the Union.

This dispute first came before the Commission as part of petition for unit clarification filed by the County on April 29, 1975 with respect to a substantial number of positions, some newly or recently created, and some existing for many years. Several days of hearing have been conducted with respect to many of the positions referred to in said petition, and those hearings have not yet been concluded. During the course of the hearings, the County, without objection from the Union, withdrew the instant position from consideration without prejudice to refiling. Thereafter, however, upon learning that John Kropp had been elected on September 8, 1975 as Chief Steward of Union Local 594 (representing certain County employes in welfare and welfare-related positions) the County requested, again without objection from the Union, that the status of Kropp's position be determined on an expedited hearing, transcription and briefing schedule. To that end, the parties, at their own expense, secured the services of a private reporter who distributed copies of the transcript to the parties and to the Commission on September 22, 1975. Briefing was completed on October 2, 1975.

POSITIONS OF THE PARTIES.

The Municipal Employer, contrary to the Union, argues that if the instant position were included in the bargaining unit, an intolerable conflict of interest would be created between Kropp's role in that position and in his role as Local 594's Chief Steward. The Municipal Employer also argues, contrary to the Union, that in numerous other respects Kropp's duties and responsibilities are sufficient to bring his position within the WERC's criteria for managerial employes.

The Union argues that the position in question is essentially a clerical and liaison position, which may gather and communicate information about policies and other matters, including contracts with outside entities, but which has in no significant degree, either a determinative role with respect to management policy or the authority to effectively commit the resources of the County. The Union also contends that Kropp's possession of a Union Chief Stewardship should have no bearing on whether or not the position he holds is managerial.

DISCUSSION.

Organizational Setting of the Position

The position at issue falls organizationally within the Work Experience and Training Division of the Office of the County Executive. The Division performs several functions generally related to providing employment and job training opportunities in County Departments, other municipalities, nonprofit agencies and private industry, for specific categories of individuals including welfare recipients, certain unemployed persons, and persons under 21 or over 55 years of age. The Division plans and directs certain projects of its own intended to create positions of employment and to identify and place appropriate individuals in such positions. It also assists County Departments, other governmental units, nonprofit agencies and private employes in establishing, administering and operating similar community projects, some of which

are the direct responsibility of the County and some of which are not. In addition, the Division coordinates the various federally funded employment programs in which the County is involved.

The Division employs, inter alia, counselors, various program and project directors and supervisors, general administrative personnel and clerical support personnel. The Division is headed by a Director, Kenneth Deal and an Assistant Director, Harold Burkhardt. Burkhardt supervises the day-to-day work of the Assistant Administrator II, although Kropp also frequently receives work assignments directly from, and confers directly with, Deal. Division personnel presently excluded from the bargaining unit are Deal, Burkhardt, Deal's secretary (whom he shares with Kropp), the director of Operation Mainstream (one of the Division's programs) and the latter's secretary.

One project with respect to which the Division performs a continuing function is the "pay for work" program. Under that program, the various departments of County government, and, to a lesser extent, other public and private employers employ, on a temporary basis, persons eligible for public assistance payments in order to permit such persons to attain a status of self-sufficiency and independence and to become employed elsewhere and avoid the necessity of receiving further public assistance. The Commission has held that such project workers employed by County departments should not be included in any bargaining unit, because their term of employment is short-termed and temporary, because their assignments constitute "make work", and because they are required to accept placement as a project worker or be subject to disqualification for further welfare benefits. 2/ The Division is responsible for placing such persons in an appropriate work experience program in order that they may receive the training deemed to be most suitable to permit them to attain the aforesaid status. In fulfilling that placement role, however, the Division must observe the express prohibition in Ch. 50.02(2) of County Ordinances which provides that project workers employed by County Departments must ". . . [u]nder no circumstances . . . replace Civil Service employes of Milwaukee County or [cause a] decrease [in] the appropriations required to carry on normal operations." 3/ The responsibility for deciding which requests from County Department heads for the creation of project worker positions in work sites in their Departments will be granted--and therefore the responsibility for conforming such placement decisions with the foregoing policy prohibition--rests with the Division Director. However, in practice, such requests are referred by Deal for consideration and ultimate determination to a ten-member Administrative Review Committee (ARC) consisting of five County Department heads or their delegates, and five representatives chosen from among the leadership of the Union, all ten of whom are appointed by the County Executive. Deal never overrides an ARC decision that a particular requested position not be created because, in his words, ". . . we are inviting problems [apparently in the form of grievances at the work site] if we do." A tie vote does not constitute ARC approval of a request. Thus, since the holder of the rotating ARC chairmanship votes on all issues, the five Union representatives can, voting together, effectively block creation of any requested position.

The Division also plays a role in work-study programs in institutions of higher learning within the County. Under such arrangements, which presently involve only a total of five positions, County Departments employ, on a part-time basis, needy students enrolled in such institutions,

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2/ Milwaukee County, (11411) 11/72 aff'd sup. nom. County Work Experience Project Workers, Local Union No. 1 v. WERC, Dane Co. Cir. Ct., No. 138-154 (6/73).

3/ Chapter 50.02(2) Ordinances of Milwaukee County, Wisconsin (1973) (Exhibit 1), referred to herein as Ch. 50.02(2).

and the federal government pays a substantial portion of the student's compensation. The nature of the County's relationships in these programs and in similar programs with nonprofit agencies, such as the Jewish Vocational Service in Milwaukee, is set forth in contracts approved and signed on behalf of the County by either Deal or the County Board Chairman and on behalf of the institution or agency by either the head of its governing body or a representative.

#### Duties and Responsibilities of the Position

The evidence in the record concerning Kropp's duties and responsibilities consists primarily of the testimony of Deal and Kropp. The County, in its brief, has stated that ". . . if the testimony of Mr. Kropp is to be believed in its entirety, the County could probably not support its contention that the position is managerial . . ." The County argues, however, that since Kropp was an evasive witness and one who has an admitted interest in the outcome of the proceeding, Deal's description of the position's duties and responsibilities should be credited over Kropp's.

In analyzing the character of the witnesses' testimony, we note that both Deal and Kropp appeared to color their testimony to some extent so as to be more favorable to the position of the County and the Union, respectively. Moreover, we note that Deal's testimony was often conclusory in nature and lacking in first-hand supportive factual detail. Thus, although Kropp's personal interest in the determination of the issue herein, and the difficulties experienced at the hearing in causing him to respond directly to questions have been taken into account in analyzing the record herein, we have considered the record as a whole--including the testimony of both Deal and Kropp and of the other witnesses--in developing the following discussion.

Kropp generally performs a variety of tasks to assist Deal and Burkhardt in administrating of the Division's activities, and especially in administering the Division's relationships with other persons, groups, committees, departments, agencies, institutions and municipalities within and outside of County government. Many of Kropp's tasks are performed pursuant to individual assignments from Deal or Burkhardt. Kropp has on-going responsibility for certain other tasks.

Examples of the kinds of individually assigned tasks performed by Kropp for Deal or Burkhardt include the following.

#### Responsibilities with respect to designated contracts

On several occasions, Deal has called upon Kropp to perform certain functions in connection with the development of contracts including work study contracts between the County and institutions of higher education, similar contracts with nonprofit agencies (e.g. Jewish Vocational Service), and at least one contract between the County and the federal government with respect to a certain federally funded program (Operation Mainstream). Kropp receives directions from Deal as to the nature of the contract to be drawn up and of the concerns which Deal wishes the contract to meet. Frequently, there is a near-standard contract supplied by the other contracting party, such as is the case with work study contracts. In other cases, Kropp does limited drafting, as was the case when he developed a first draft of the JVS contract based to a considerable extent on a previous contract which was "lacking as to specific intent". Deal guided Kropp through the drafting of the Operation Mainstream contract and its supporting documents because that was Kropp's first experience with a federal contract. Deal testified that the content of those documents was substantially dictated by existing federal regulations and existing County policies. The record does not indicate whether Kropp has since played a role in any other federal contracts. Kropp submits draft contracts to the County Corporation Counsel's

office, and thereafter receives the inputs from representatives of that office as to any legal problems with the documents. Kropp then communicates on behalf of the County with representatives of the other side and, within a limited scope of authority, attempts to achieve an agreement with the other party which resolves the concerns that either Deal or the Corporation Counsel's office may have expressed. Kropp occasionally touches base with Deal during the "negotiation" process concerning "points of clarification", and once any contract negotiation reaches the "final stage", Deal and Kropp go over the document and the situation together. Kropp does not execute any contracts, instead, Deal executes the work study agreements, and the County Board Chairman executes most other contracts. During the course of his discussions with Deal concerning contracts, Kropp has, on occasion, called to Deal's attention possible problem areas for Deal's consideration in deciding what the County's position should be. Following execution of many such contracts, Kropp "follows up" the agreement by seeing to the accounting, reporting, paperwork arrangements and other details that are called for in such agreements.

#### Preparation of other documents

Deal has occasionally directed Kropp to prepare certain other documents, but such directions are apparently specific as to the content desired by Deal. Examples include an update of the Division's function description and organizational chart for inclusion in the County manual of administrative policies and procedures. Kropp has also prepared procedural directives relating to matters such as how certain paperwork is to be routed or filled out. He has also been asked to prepare other reiterations of existing Division policies.

#### Research projects

Deal and Burkhardt have occasionally asked Kropp to research certain matters for them in libraries or other repositories of information or records. For example, Kropp made a review of prior County Board activity to determine whether any study had ever been conducted as to the feasibility of using project workers in waste recycling projects. Other research projects have ranged from outlining the nature of particular federal regulations to occasional checks as to the welfare-benefit eligibility status of particular project workers.

#### Operation Mainstream

Before the federally funded Operation Mainstream program was assigned its present Project Director, Kropp was responsible for its administration from before inception until sometime after it began operations. The present Project Director of that program has been excluded from the bargaining unit, but his position is higher paid than the position at issue herein (pay range 21 vs. pay range 18), and Kropp has a pending grievance, in which he is claiming out-of-classification pay for the period of time when he was entirely responsible for the program. In any event, Kropp is no longer responsible for the direction of that program.

#### Meeting attendance

At the request of Deal or Burkhardt, Kropp often attends meetings of the County Board, its committees and of other groups. Kropp's designated role at most such meetings is to observe, take notes and determine whether particular items come up on the agenda. There is conflicting testimony as to whether he has been given the authority to speak for Deal or the Division if questioned at such meetings. In any event, it appears that he has had little or no occasion to do so, and it cannot fairly be said that he is a Division spokesperson at

such committee or board meetings. Kropp also meets on an ad hoc basis with a wide variety of persons during the course of his duties. In such ad hoc meetings or phone conversations, he often responds to questions as to the Division's functions, procedures and forms.

Kropp also has a number of tasks which he performs on an on-going basis. One such task is that of Division affirmative action officer. In that capacity, Kropp attends periodic meetings concerning affirmative action efforts with County government.

Another area of on-going responsibility for Kropp, and one to which considerable attention was paid at the hearing, is in relation to the "pay for work" program described briefly above. Essentially, Kropp gathers information to assist the Administrative Review Committee in carrying out its function of determining whether or not to grant Departmental requests for the creation of new project worker positions within designated work sites in the requesting Department. In doing so, Kropp also assists requesting Departmental personnel in the processing of their requests for creation of such positions.

The position creation request process begins when a Department Head or his representative communicates to Deal or to the Division generally that his or her Department is interested in the creation of one or more project worker position(s) in one or more of its work sites. Such a requestor is asked to put the request in writing. All written position requests received are referred immediately to Kropp who sends the requestor a form letter and an additional form each of which calls upon the requestor to answer questions designated by the ARC to elicit the information it desires to have before reviewing any position request. The information so requested involves the number and nature of the positions requested, the working conditions to be encountered and minimal qualifications for project workers sought, and Ca. 50.02(2) compliance information including numbers of existing or recent vacancies or staff reductions in the Department's Civil Service positions, and whether Civil Service personnel would be performing similar duties to those proposed for the requested project workers.

Questions that Departmental requestors have concerning their completion of the forms are referred to Kropp who answers same by phone or in person (apparently, in some cases, after a visit by Kropp to the work site involved). Often such discussions center on questions as to the meaning of terms used in the Division's forms with which the requestor is unfamiliar. 4/

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4/ Deal described Kropp's role in such discussions with requestors as one of "negotiating" the number of positions to be requested (Tr. 12-13), asserting that Kropp could influence the number of positions requested by offering advice to the requestor based on Kropp's experience in ARC deliberations as to other requests. (Tr. 29). Kropp insisted at the hearing that he does not negotiate the numbers of positions to be requested (Tr. 98-99) and added that he avoids interpretations or applications of Ca. 50.02(2) by referring the requestor to the language of that provision so as to defer to the role of the ARC for interpretation and application of that provision and for determination of the number of positions that is proper. (Tr. 98-99). We note that there was no first-hand testimony presented at the hearing to the effect that in any situation whatever Kropp in fact offered advice such as was described by Deal or in any other way (than by simple reference to Ordinance language) encouraged or discouraged any particular requestor with respect to the number or nature of the positions to be requested.

The Division usually receives requestor responses within two weeks. However, when the forms are sent out to the requestor shortly in advance of a scheduled ARC meeting, Kropp notifies the requestor that a prompt reply will permit early ARC consideration thereof. When received by the Division, the responses are date stamped (as is all mail received in the Division) and routed to Kropp. Kropp then, within a day or so, submits such material without modification to an available secretary for duplication. As the date of an ARC meeting approaches the secretary (who is shared by Deal and Kropp) asks Kropp whether there are any matters that he wishes placed on the ARC agenda which said secretary prepares. Kropp identifies those position requests for which responses have been received and duplicated as those which should be placed on the ARC agenda, and the secretary attaches copies of the duplicated responses relating to same to the copies of the agenda and other materials supplied to each ARC member. In some cases, Kropp anticipates that the responses submitted by the requestor are insufficient (either because of the nature of the responses or the unusual nature of the work site involved) to provide the "standard" information generally sought by the ARC. In such cases, Kropp consults the County Directory or calls the requestor to determine such routine details as the number of County positions in the requesting Department overall, and the precise work location, starting time and number of hours of work intended for the requested position. Kropp also generally asks requestors to have a representative present at the ARC meeting to answer any questions that may be raised by ARC members.

Kropp usually attends the ARC meetings and presents to the ARC the information contained in the responses from the requestors, copies of which are by then in the possession of each ARC member present. Kropp does not ordinarily supply any further information to the ARC except that in response to questions from the ARC members, he will, if able, provide further details based upon his anticipatory gathering of "standard" information referred to above or based upon his knowledge of the work site involved. A representative of the requesting department is often present to answer any questions that may arise, and Deal also normally attends to serve as an additional resource person. On occasion, the ARC defers a particular request in order to gather information which those present at a given meeting cannot provide. While the ARC members themselves sometimes investigate such matters on their own, Kropp is often asked to obtain such information either by garnering same from the requestor and reporting same himself at the next meeting or by causing the requestor to have a spokesperson capable of providing the particular information sought present at the next ARC meeting.

While it is clear that Kropp makes no recommendations concerning whether position requests being considered by the ARC should be approved or denied, he may indicate areas of concern that the ARC might wish to consider before making a decision. 5/

#### Conflict of Interest

Prior to approximately September 5, 1975, Deal had a practice of sending a wide variety of his correspondence to County Department Heads, the County Board, its committees and others, to Kropp for his general information. In addition, prior to that time, it has been Deal's standing instruction to his secretary that she was free to release to Kropp any such correspondence that Kropp might request

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5/ Deal testified that because Kropp "would" make such indications in his presentations to the ARC about each position, Kropp could thereby influence the ultimate ARC decision as to such request. (Tr. 31) We note however that no witness described any circumstance in which Kropp actually did make any such indication.



regardless of whether Kropp had received a copy of it originally or not. Hence, with few exceptions, Kropp was provided with any such correspondence requested without specific authorization from Deal.

On or about September 5, 1975, Deal restricted those items of his correspondence routinely sent to Kropp and instructed that before Kropp was to be provided by the secretary with any correspondence not originally routed to him he was to receive specific authorization from Deal. Deal testified that he took that action because he believed that the Union had created difficulties for one of the County's federally-funded employment programs by complaining to the U.S. Department of Labor predicated upon information received from Kropp. Though the information in question was, in Deal's words, "by and large public in nature", the incident also led Deal to limit the documents directed to the Union's information by the Division to those which he himself sends to it apparently as an alternative to permitting Kropp to send public documents to the Union on his own authority.

We note, however, that the County has not argued and the record nowhere suggests that Kropp's effectiveness as the Administrative Assistant II has been reduced on account of Deal's limitation of Kropp's access to documents. It would therefore appear that any conflict of interest that Kropp might have experienced concerning the confidentiality of sensitive information concerning federal or other Division projects or activities has been resolved by Deal's above-noted action without interference with Kropp's effectiveness in the performance of the duties of the position in question.

Because of the pay-for-work project workers are not a part of the Union's bargaining unit--or any bargaining unit for that matter--there is a natural Union interest in seeing to it: 1) that the creation of project worker positions does not affect departmental funding levels so as to jeopardize bargaining unit jobs; 2) that project workers are not placed in positions which would, in general, necessarily cause them to perform work which would otherwise be performed by bargaining unit employees; and 3) that project workers in positions not inherently inconsistent with Union work jurisdiction integrity are not given any particular assignments that constitute bargaining unit work.

Those Union concerns have, in fact, been manifested by Union representatives in various ways. For example, the ARC deadlocks in its votes some 25-30 percent of the time, frequently along Union/management lines. In addition, "pay for work project" position creation requests have often met with Union resistance and, when ARC approval does evolve, it is often after considerable delay. Moreover, the Union has processed grievances on behalf of bargaining unit employees in work sites where project workers are employed challenging particular work assignments to project workers as invasions of the Union's work jurisdiction. Such grievances have arisen, inter alia, in work areas where the grievants were represented by Local 594. The President of that Local, Henry Zielinsky, testified that such grievances are generally resolved by management's rescinding of the challenged project worker work assignment. As the Chief Steward of Local 594, it would be Kropp's responsibility to represent the grievants in any such grievance that might arise with respect to the work assignments hereinafter made to the numerous project workers now working in Local 594 work sites.

In regard to the matters set forth in the preceding paragraph, the County seems to raise two lines of argument. First, the County is apparently arguing that Kropp can exert influence on the number and nature of positions requested by requesting Departments, on the nature of the information considered by the ARC and the context in which and the time at which it is considered, and thus on the ultimate ARC decision



with respect to the requests submitted; that Kropp as Administrative Assistant II is thus in a unique position to further and protect the Union's above-noted interests and concerns regarding project worker position creation; and that those Union interests are not always consistent with the goals of the Division. Second, the County argues that Kropp could be placed in a direct conflict situation if he were called upon either within the Division or elsewhere to defend the Division's decision to create a particular position in response to a grievance challenging the propriety of work assignments to the project worker placed in said position--especially if such grievance were one arising in a Local 594 work place.

We find, however, that the factual premises underlying those two County arguments are not sufficiently supported in the record to warrant the conclusions predicated upon them.

For example, Kropp is not responsible for initiating position requests or apparently for promoting their initiation. He is not responsible for and has not made recommendations as to the number or nature of requests that a requestor ought to make. Instead, his discussions with requestors have dealt primarily with routine questions as to the meaning of terms used in the Division's forms. Matters of application and interpretation of Ch. 50.02(2) have been left by Kropp to the ARC. <sup>6/</sup> Furthermore, Kropp, in practice, has not been a factor in the timing or request processing; such has depended, instead, on the promptness of requestor responses and on the ARC's desires for additional information. Any foot-dragging by Kropp could be easily detected by Deal or ARC management members since documents (including requestor responses) are date-stamped upon receipt by the Division. Moreover, Kropp does not have significant control or impact on the range of information considered by the ARC or on the results reached by the ARC in its position request deliberations since: 1) Kropp provides the ARC with the requestors' responses in unedited form; 2) the additional "standard" information or other matters that might be noted or highlighted by Kropp during ARC deliberations do not appear likely to be highly result-affective; and 3) the ARC members are, themselves, knowledgeable about many of the work sites they are considering, and they may and often do postpone voting until they have investigated questionable matters further for themselves or obtained further information from Deal or requestor representatives.

In addition, the record does not support the County hypothesis that Kropp could be called upon to state or defend the Division's action of creation of a position after the ARC has approved same. There is no evidence that the Division is ever called upon to play such a role or that if it ever is that such a role would be part of the Administrative Assistant II's responsibilities. Moreover, it is undisputed that Kropp has no role in determining day-to-day work assignments made to project workers at their respective work places. Thus, even if it is assumed, arguendo, that Kropp's Chief Stewardship may be considered in determining the status of his position with the municipal Employer, the record does not support the concerns voiced by the County that a conflict of interest is or would be created or threatened by reason of Kropp's holding that Union office position or by reason of his inclusion in the bargaining unit generally.

For the foregoing reasons, we conclude that it cannot be said that the Administrative Assistant II position is so closely related to or aligned with management as to in fact present a potential conflict of interest.

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<sup>6/</sup> See footnote 4, supra.

### Applicable Legal Standards

"Managerial" employees are expressly excluded from the definition of "municipal employe" set forth in Sec. 111.70(1)(b) of MERA, but the precise meaning of that is not statutorily provided. Instead, the Commission has developed the parameters of those exclusions on a case-by-case basis with the following results. Managerial employees are those persons whose relationship to management imbues them with interests significantly at variance with those of other employes. 7/ Such a divergence of interests has been found where the employe involved participates ". . . in the formulation, determination and implementation of management policy" 8/; but to yield managerial status, such involvement with the municipal employer's policies must be ". . . at a relatively high level of responsibility" 9/ and to a ". . . significant degree." 10/ Managerial status may also--but need not necessarily--be related to a position's effective authority to commit the municipal employer's resources. Such status does not require possession of either confidential information relating to labor relations or supervisory authority over subordinate employes. 11/

### Application of Legal Standards to Instant Case

In applying the foregoing standards to the position at issue herein, we have already noted above that the record does not present facts sufficient to support the County's arguments that Kropp's position is so closely related to or aligned with management that a potential conflict of interest is created such as would require exclusion of his position from the bargaining unit.

Furthermore, unlike the housing manager and the purchasing agent in cases relied upon by the County, 12/ Kropp does not, himself, effectively commit the resources of the Municipal Employer. Much of the contract drafting that he does appear from the record to have been based upon existing contracts and/or has involved close adherence to existing County policies, federal regulations and specific instructions from Deal. The degree of latitude Kropp has in negotiating with persons outside the Division appears quite limited as does the degree to which Kropp makes inputs to Deal regarding contract contents. Moreover, Deal seems to remain in touch with Kropp's negotiations with persons outside the Division by way of Kropp's occasional clarifications during the course thereof and Kropp's final briefing during the final stage thereof. Furthermore, Kropp does not have the authority to execute any of the contracts with which he is involved.

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7/ City of New London, (12170) 9/73; City of Milwaukee, (12035-A) 6/73, aff'd sub. nom. Dane Co. Cir. Ct., No. 142-170 (7/74).

8/ City of Milwaukee, cited notes 7 above.

9/ City of Milwaukee, (11917) 7/73.

10/ See, cases cited in note 7 above.

11/ City of New London (12170) 9/73.

12/ City of Manitowoc, (11069) 6/72 (manager of public housing project excluded as managerial where position holder was responsible for day to day management under general direction of a board and for relationships with tenants.); Spoooner Community Memorial Hospital and Nursing Home, (11098) 7/72 (head of purchasing department held managerial where holder exercised independent judgment in purchasing goods and dealing with suppliers).

In addition, Kropp's work in connection with the project worker position creation process does not involve policy-making or policy implementation to any significant degree since, for the reasons already discussed above under "Conflict of Interest", Kropp's influence on the number and nature of positions requested and on the ultimate ARC determination is quite limited.

Kropp's drafting of documents other than contracts, such as the Division's organizational chart and functions statement appear to have been descriptive rather than prescriptive exercises. The same can be said of the research project reports that Kropp has been called upon to prepare. In addition, Kropp's preparation of Operation Mainstream documents was done under close supervision and, in any event, involved close adherence to existing federal regulations and County policies so that there was apparently little, if any, policy determination or interpretation rendered by Kropp in their preparation.

Kropp's attendance at meetings of the County Board, its committees and other entities appears to be for the purpose of providing information to Deal and the Division as to what occurs at such meetings rather than to provide such other bodies with an authorized spokesperson for the Division and its policies. In his interactions with Department Heads and others day-in and day-out, Kropp is no doubt called upon to explain the Division's mission and to give information as to Division procedures, but in such interactions, Kropp does not appear to be formulating Division policy, but rather, at most, reiterating same.

Although Kropp has apparently recommended changes in Division procedures and policies to Deal from time to time, the record does not indicate whether any such recommendations have ever been given effect or whether the making of such recommendations is a part of Kropp's duties and responsibilities. So far as the record would indicate the character of the recommendations offered by Kropp is similar to that of any employe's suggestions as to how his organization could operate more efficiently. 13/

The responsibilities that Kropp undertook during the start-up of Operation Mainstream were not specified in the record. Even if it is assumed that those duties were managerial in character, Kropp is no longer performing same and appears unlikely to resume same since there is not a project director specifically assigned to run that program. No evidence appears in the record to suggest whether the position in question is likely to be assigned similar operational responsibilities during the start-up period of any other similar programs in the future.

In sum, then, much of what Kropp does appears to be follow-up of details and maintenance of communications between various parties. He is primarily a liaison person and an arranger of details for Deal rather than being a decision-maker or one who, to any significant degree, interprets or gives substance to the policies of the County or of the Division. For that reason and the others set forth above, we conclude

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13/ Kropp concluded in this testimony that he does not recommend policy "in any effective manner". (Tr. 155) Deal, on the other hand, testified that from time to time Kropp "recommends changes in programs and policies", but when his counsel asked him to elaborate, Deal offered only that Kropp's recommendations related to (unspecified) areas that Kropp believed required further clarification or changes in procedure that might enhance the Division's efficiency. (Tr. 23-24).

that Kropp is not responsible for participating to any significant degree in the formulation, determination and implementation of the policies of the County.

Conclusion

Based upon the record as a whole and for the foregoing reasons, it is our conclusion that the position of Administrative Assistant II (WB & TP) is not managerial and that said position is included in the Bargaining unit.

Dated at Madison, Wisconsin this *26* day of December, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By *Morris Slavney*  
Morris Slavney, Chairman

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