

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the petition of  
**LOCAL 2634, AFSCME, AFL-CIO**  
Involving an Employee of  
**DANE COUNTY**

Case 53  
No. 60700  
ME-1040

**Decision No. 15696-B**

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**Appearances:**

**Mr. Michael J. Wilson**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Local 2634, AFSCME, AFL-CIO.

LaFollette, Godfrey & Kahn, by **Attorney Jon E. Anderson**, One East Main Street, Madison, Wisconsin 53701-2719, appearing on behalf of Dane County.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

Local 2634, AFSCME, AFL-CIO filed a petition on December 26, 2001, with the Wisconsin Employment Relations Commission seeking to clarify an existing bargaining unit of Dane County employees that Local 2634 represents by including the position held by Roger Celusta, hereinafter referred to as Mental Health Program Specialist. Dane County argues that Celusta is a managerial employee who should continue to be excluded from the bargaining unit.

Hearing in the matter was held in Madison, Wisconsin, on April 26, 2002, before Examiner Lauri A. Millot, a member of the Commission's staff. The Commission received written briefs by August 7, 2002.

Dec. No. 15696-B

By letter dated January 21, 2003, the Commission advised the parties of its intent to take official notice of certain matters pursuant to Sec. 227.45(3), Stats. The Commission hereby takes said official notice.

**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.**

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

### FINDINGS OF FACT

1. Dane County Professional Social Workers, Local 2634, AFSCME, AFL-CIO, hereinafter Union, is a labor organization with its offices located at Wisconsin Council 40, 8033 Excelsior Drive, Madison, Wisconsin.

2. Dane County, hereinafter County, is a municipal employer with its offices located at 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin. The County provides governmental services to the citizens of Dane County.

3. The collective bargaining agreement between the Union and the County for the time period December 19, 1999 through December 15, 2001 acknowledges that the Union is the collective bargaining representative of employees in the following bargaining unit:

. . . all professional employees of Dane County who are engaged in providing social and related services, but excluding all other professional employees, law enforcement personnel, supervisory, confidential and managerial/executive employees, craft employees and employees in other collective bargaining units. . . .

4. The incumbent in the disputed position of Mental Health Program Specialist is Roger Celesta. The County hired Celesta in August of 1968 to a Social Worker position working in Adult Services. Celesta voluntarily terminated his employment with the County and was re-hired in August, 1973, to a Social Worker position. Celesta held a bargaining unit Senior Social Worker position for 11 years until September of 2001 when his position was reclassified to Mental Health Program Specialist.

Celesta works a 40-hour workweek, Monday through Friday beginning at 8:00 a.m. Celesta's hourly rate is \$25.49. Celesta does not receive compensatory time or overtime for any hours worked in excess of 40 per week. Celesta's office is housed in a County building located at 1202 Northport Drive, Madison, Wisconsin. Celesta's supervisor is David LeCount, Mental Health Adult Services Coordinator.

5. Celesta's job description dated December 26, 2000, reads in pertinent part:

. . .

**POSITION SUMMARY: (Briefly describe what you consider to be the major purpose or objectives of your position. What are you attempting to accomplish in your position, or why do you feel your position exists?)**

The Mental Health section of the Adult Community Services Division provides comprehensive, ongoing support to 1,500 adults with serious and persistent mental illness and provides less intense support for many other people with mental health disabilities. The annual budget is \$14 million. Services are purchased from 24 community agencies. Two DCDHS staff manage and coordinate this network of services: David LeCount, Community Services Manager (M 13) and Roger Celusta, Senior Social Worker (SW 20). The purpose of Roger's position is, at the direction of the Community Services Manager, to perform clinical and management functions necessary to promote effective operation of the service system. Given that the complexity of the service system requires significant management oversight, Roger's managerial duties have increased in recent years and now comprise the majority of his responsibilities. His current duties are similar to those of Program Specialist positions in the Aging and Developmental Disabilities sections of the DCDHS Adult Community Services Division. The existing Program Specialist positions are in the M 10 range.

## **FUNCTIONS**

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### **FUNCTION A - Manages Inpatient Utilization 25%**

**A 1:** Maintain an up to date list of individuals for whom Dane County has may have financial responsibility who are inpatients at Mendota Mental Health Institute, community hospitals or other inpatient facility.

**A 2:** Tracks discharge planning activities for people in inpatient settings and assures that appropriate inpatient treatment and appropriate discharge planning are taking place.

**A 3:** Addresses issues and resolves problems where possible to enable prompt, appropriate discharge from inpatient settings.

**A 4:** Assures that contracted agencies and other community organizations are working in a coordinated fashion to avoid inappropriate inpatient admissions and unnecessarily lengthy inpatient stays.

**FUNCTION B - Provides clinical review of high risk/high profile individuals. 25%**

**B 1:** Investigates and assesses the appropriateness of referrals from the Department of Corrections, other counties, facilities outside of Dane County and other sources.

**B 2:** In consultation with the Community Services Manager, determines whether Dane County should accept service responsibility for the referred individual.

**B 3:** Arranges service for prioritized individuals. Represents DCDHS on the MH system committee that has responsibility for waiting list prioritization.

**B 4:** Addresses issues and resolves problems for other high risk/high profile consumers for whom Dane County has ongoing service responsibility.

**FUNCTION C - Researches, plans and develops new programs and implements changes in existing programs. 15%**

**C 1:** Works with community agencies in adapting to changes in state/federal regulations and in responding to trends in service utilization and consumer need.

**C 2:** Works with state, county and community representatives to maximize new revenue opportunities, such as new benefits offered through Medicaid and private insurance.

**C 3:** Researches new treatment approaches and works to enable the MH system to incorporate approaches that have a high likelihood of success.

**FUNCTION D - Evaluates assigned agencies on a clinical/program basis. 15%**

**D 1:** Provides ongoing oversight of assigned programs.

**D 2:** Consults with community agencies on how to remedy identified problems.

**D 3:** Where chronically poor performance is evident, recommends a plan of correction or proposes other action that would result in improved consumer and MH system outcomes.

**FUNCTION E - Develops and manages a portion of the MH system budget. 10%**

**E 1:** Assists the Community Services Manager and accounting staff in developing the annual MH system budget.

**E 2:** Works with accounting staff in monitor fiscal performance of individual agencies and the MH system.

**E 3:** When fiscal problems are identified, works with the Community Services Manager and accounting staff in developing and implementing solutions.

**FUNCTION F - Performs other duties as assigned. 10%**

**F 1:** Performs other duties as assigned.

. . .

Experience: Two years of professional experience in community based adult mental health services.

. . .

**KNOWLEDGE, SKILLS AND ABILITIES:** Knowledge of the field of adult mental health services. Ability to assess the needs of individuals requesting or presenting for mental health services. Ability to work collaboratively with other agencies, professionals, consumers and their guardians. Ability to assess the effectiveness of programs and agencies serving adults with mental health needs. Understanding of the principles of administrative and fiscal management. Good written and verbal communication skills.

. . .

6. Celusta monitors the patient/client census at various County contracted inpatient care service providers on a daily basis to ensure that clients are appropriately admitted based on funding source and client service needs as identified in their case plans. Celusta initiates client relocation: (1) when the current client location is funded by County levy dollars and a different provider that offers services consistent with the client's needs is available and will accept payment from the client's funding source; (2) to ensure that clients are not "stuck" in the system, meaning that there is a less restrictive environment that the client will benefit from; or (3) when a client needs a specific level of supervision and one does not exist thus causing Celesta to coordinate client moves in order to create the vacancy necessary for the client. Celesta, in consultation and coordination with service contract providers and caseworkers who provide him with the case specific details of client needs, has the authority and responsibility to coordinate and direct these client movements. Celusta dedicates the majority of his time to this function.

7. Celusta troubleshoots treatment service and resource problems. Celusta is responsible for having knowledge of the resources that the mental health service system has available to clients. Celesta assists case managers secure services or resources when impediments arise that delay or deny a client a service need. Celesta responds to concerns raised by contract service providers. Celusta considers contract service provider relations, fiscal efficiency, political realities and client needs when making decisions. Celusta monitors the supply and demand of services to clients. Celesta makes effective recommendations to his supervisor to expand or constrict specific services based on system needs.

8. Celusta assists the Community Services Manager in preparing a budget. Celusta also monitors services provided to protect County levy dollars. Celusta reviews patient funding eligibility and determines what services should/could be provided consistent with the patient's funding sources. Celusta steers patients to treatment sources that are consistent with their individual funding source.

9. Celusta is responsible for monitoring the budget plan for three contract-specific programs. These contract programs include the ROLO conditional release program, the PATH federal grant and the PASAAR program. Celusta dedicates approximately ten percent of his time to these programs.

ROLO is a conditional release program. A caseworker and/or service provider builds a service plan with service requirements that identify a method for the client to safely and successfully remain in the community. A budget is prepared for each service plan and submitted to Celusta. The budgeted services includes hours of service, time, costs, housing, medications, psychotherapy, etc. Celesta and the Mental Health Division accountant review the budgets to verify that plans have identified the appropriate funding sources. Celusta approves/denies client service plans giving consideration to whether the mental health system meets the needs of the client. Celusta's approval is a prerequisite to service. Celusta may participate in negotiating for service for clients when the caseworker has been unsuccessful due to the unavailability of a service. The County currently has a census of approximately 20 individuals participating in the ROLO program.

The PATH grant is a federal grant that provides flow-through funds to transition individuals from homelessness to shelter. Celusta is not a grant writer, but monitors the grant once it is obtained. The grant is budgeted to provide the County with \$57,000 in 2002.

Celusta is responsible for PASARR (Preadmission Screen and Resident Review), which assists mentally ill County residents with Nursing Home admission funded by County Medical Assistance. Completed forms for potential patients are submitted to Celusta for review and authorization. Lacking Celusta's signature, Medical Assistance payment is denied.

10. Celusta represents the County and the Adult Mental Health Division as a member of the Probation and Parole Committee and the Criminal Justice/Mental Health Interface Committee. These Committees problem solve solutions to specific service provision issues.

Celesta serves as chairperson of the System Service Coordination Committee that establishes patient priority for admission to system programs. LeCount appointed Celesta to the Committee and the chair position. Celesta meets with LeCount prior to and following System Service Coordination Committee meetings to prepare for agenda topics and to report any action taken at the meeting.

Celusta was the chair of a committee addressing a new statutory standard relating to mental commitments. Celusta studied the new statute, considered the ramifications and developed policies on implementation for the Mental Health Division.

11. Celusta meets with LeCount on various issues to inform, to consult and/or to discuss emerging problems. Celusta meets with LeCount prior to and immediately following a Service Coordinator Committee meeting to advise LeCount of the agenda content and action. Celusta and LeCount have a collegial relationship. Celusta responds to situations requiring immediate attention when LeCount is not present.

12. Celusta sufficiently participates in the formulation, determination and implementation of County policy and has sufficient authority to allocate County resources to be a managerial employee.

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

#### **CONCLUSION OF LAW**

1. The incumbent in the position of Mental Health Program Specialist is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

#### **ORDER CLARIFYING BARGAINING UNIT**

The bargaining unit described in Finding of Fact 3 is hereby clarified by continuing to exclude Mental Health Program Specialist Celusta.

Given under our hands and seal at the City of Madison, Wisconsin, this 10<sup>th</sup> day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Dane County

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

**The Union**

The Union argues that the Senior Social Worker position reclassified to Mental Health Program Specialist is a professional position that exercises professional discretion and judgment in a “systems maintenance” position. The Union asserts that the incumbent in the position is not a decision-maker, is not at a “high level” in the chain of command, does not meet the “sufficient degree” standard, does not have a formal role in the budget or reallocation of funds, and therefore is not a managerial employee and thus should be included in the professional bargaining unit.

The Union argues that the Wisconsin statutes determine the kind and level of services that the County will provide through the County Board and Mental Health Services Board. The Union argues that as a result of these statutory guidelines, Celusta does not have the authority to establish policy or programs.

The Union argues that Celusta’s testimony supports the conclusion that the Mental Health Program Specialist does not have managerial authority. It contends that the majority of Celusta’s time is spent as a “gatekeeper” and as such his primary function is to “expedite the ‘flow’ of clients through the system.” The Union argues that this function is “system maintenance” rather than management. The Union asserts that Celusta is a problem solver and urges that this role does not rise to the level of policymaker, citing PORTAGE COUNTY, DEC. NO. 6478-D (WERC, 1/90). The Union argues that although Celusta makes decisions with regard to waiting lists and “coveted vacan[cies],” this responsibility is similar to that of the nursing supervisors in BROWN COUNTY (MENTAL HEALTH CENTER), DEC. NO. 17858-A (WERC, 9/93) that the Commission found were not managerial employees.

The Union asserts that Celusta does not have independent authority to make decisions as required in order to be considered a managerial employee because LeCount remains well informed of Celusta’s work activities and closely directs and evaluates those activities. The Union points out that Celusta and LeCount interact daily and “as needed wherever and whenever.” The Union argues that LeCount’s interaction with Celusta is supervisory.

The Union argues that Celusta’s involvement in countywide committees does not mandate a finding that the Mental Health Program Specialist position is managerial. The Union argues that the record establishes that the Service Coordinating Committee does not establish policy or commit County resources, and further, that Celusta consults with LeCount



both pre and post meetings and LeCount attends these meetings on an as-needed basis. It asserts that the Criminal Justice Mental Health Interface Committee does not have the authority to make decisions and that the Fifth Standard of Commitment Committee did nothing more than discuss issues and fact-find.

The Union further asserts that Celusta's duties and responsibilities with the PASARR program and the PATH grant are, relying on MARQUETTE COUNTY, DEC. NO. 17681-A and 17682-A (WERC, 9/81) and JUNEAU COUNTY, DEC. NO. 18728-A (WERC, 1/86), not managerial. The Union describes Celusta's authorization responsibility with the ROLO program as "one of quality control or watchdog of county funds" similar to the DRG Coordinator in RUSK COUNTY (MEMORIAL HOSPITAL AND NURSING HOME), DEC. NO. 14713-D (WERC, 9/86) where the Commission found the position was not managerial.

The Union argues that this position lacks the authority to create either an original budget or to reallocate funds from an existing budget. The Union notes that Celusta's supervisor, LeCount, establishes the original budget for the Mental Health Adult Services Division subject to review by the Division Manager and review and approval by the County Board and LeCount reallocates funds within that budget. The Union asserts that the record is clear that Celusta's authority relates to making expenditures from certain accounts to achieve program purposes and characterizes this authority as ministerial.

Based upon the record as a whole, the Union requests that the Commission clarify the bargaining unit to include the position of Mental Health Program Specialist.

### **The County**

The County asserts that the incumbent in the position of Mental Health Program Specialist is a managerial employee and thus should remain excluded from the bargaining unit. The County argues that position is integral to the management of the mental health system of the County and that Celusta's managerial responsibility is to oversee the contracts and the progress of the mental health system.

The County argues Celusta has the ability to effectively commit the employer's resources and to make policy decisions concerning the delivery of services to clients that the County serves. The County argues that Celusta commits resources by the decisions he makes.

The County asserts that Celusta "looks for new approaches and ways to make limited dollars go further." The County argues that in arranging services, monitoring fiscal performance and engaging the services of consultants, Celusta performs essential managerial functions. The County cites Celusta's contract administration, determination of optional

courses of action, policy and procedure development and functioning as a point-person for a number of committees as further evidence of Celusta's managerial status. The County believes that in Celusta's case "problem solving" is a managerial function, for it determines which patients receive services and the type of services to be received.

The County asserts that Celusta's responsibility with the PATH grant also fulfills the fiscal component to managerial status, and also points to Celusta's monitoring of the \$57,000 grant and his effective authority to make recommendations relating to the grant.

The County argues that Celusta has primary responsibility over the ROLO program and in this capacity, approves plans of service and related funding. The County notes that Celusta reviews the service plans and underscores the fact that his approval is a prerequisite to service. The County argues that the provision or denial of a service triggers the expenditure or withholding of funds, as the case may be, and reasons that since Celusta makes these decisions, clearly he is allocating resources.

The County stresses that Celusta is the only individual with the authority to determine which clients will receive services and thus, is the only individual to determine whether funds will be expended. The County asserts that this responsibility is similar to that of the Plan of Care Coordinator the Commission found to be managerial in KENOSHA COUNTY, DEC. NO. 19435, (WERC, 3/82).

The County further points to Celusta's authority to approve nursing home admissions for mentally ill individuals who are County residents as being another example of a managerial employee allocating resources. The County notes that lacking Celusta's authorization, the Division of Health will not approve a patient admission and the nursing homes would not get paid. The County believes this watchdog or gatekeeper function is "management decision making of the highest order."

With regard to the Service Coordinating Committee, the County points out that Celusta chairs the Committee and is the County representative. The County asserts that since Celusta exercises independent discretion and decision-making authority regarding waiting lists and admissions in between Committee meetings and without consulting with his supervisor, it is clear that he is a managerial employee. The County further notes that Celusta serves on various other committees that focus on making the mental health system more efficient and effective.

The County argues that Celusta has established County policy. It asserts that several years ago Celusta established an operational policy to implement a new standard as created by state statute with regard to civil commitments. The County asserts that Celusta's leadership on the committee in the role of chair and the process developed are clear indications of Celusta's managerial authority. The County further argues Celusta established another County policy when he created a process to ensure competency evaluations were completed on an outpatient basis as dictated by the State.

The County contends that Celusta's gate keeping functions over the \$1.5 million inpatient admissions budget and emergency services unit admissions significantly affect the employer's resources and policies and make him a managerial employee.

### DISCUSSION

The issue of this case is whether Roger Celusta is a municipal or managerial employee. The Union argues he is a municipal employee and should be included in the bargaining unit. The County contends he should be excluded from the bargaining unit because he is a managerial employee.

Section 111.70(1)(i), Stats., specifically excludes a "managerial employee" from its definition of "municipal employee." Since the statute contains no definition of a managerial employee, through its case law the Commission has crafted a definition of the term that has received repeated judicial endorsement. See, e.g., *MILWAUKEE V. WERC*, 71 WIS. 2D 709, 716, 717 (1976); *VILLAGE OF WHITEFISH BAY V. WERC*, 103 WIS. 2D 443, 448 (1981); *KEWAUNEE COUNTY V. WERC*, 141 WIS. 2D 347, 355 (CT. APP. 1987).

The Commission definition consists of two alternate analytical paths: "(i)n determining whether a position is managerial, the Commission considers the degree to which the incumbent of the position actually participates in the formulation, determination and implementation of managerial policy or possesses the authority to commit the employer's resources." *MENOMINEE COUNTY*, DEC. NO. 26983-B (WERC, 4/95), *CITING MILWAUKEE VTAE*, DEC. NO. 8736-B (WERC, 6/79), *NORTHWOOD SCHOOL DISTRICT*, DEC. NO. 20022 (WERC, 10/82), *MARINETTE COUNTY (PINEVIEW HEALTH CARE CENTER)*, DEC. NO. 26154-B (WERC, 3/92).

As to the first analytical path, the Commission has found that the employee's participation in the formulation, determination, and implementation of management policy must be at a "relatively high level." *MARINETTE COUNTY*, SUPRA, *CITED WITH APPROVAL IN SAUK COUNTY*, DEC. NO. 17343-C (WERC, 11/02).

As to the second analytical path, the Commission further explained:

"To confer managerial status, an individual's authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, *inter alia*, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capitol improvements to be made; and the systems by which the services will be provided, including the use of outside contractors." (Footnotes omitted.) *MARINETTE COUNTY*, SUPRA, *CITED WITH APPROVAL IN CHIPPEWA COUNTY*, DEC. NO. 10497-E (WERC, 6/01); *TREMPEALEAU COUNTY*, DEC. NO. 18380-D (WERC, 4/01).

Since 1977, the Commission has interpreted the authority to commit the employer's resources as including the power to establish an original budget or to allocate funds for differing program purposes under such a budget. See, e.g., CITY OF CUDAHY, DEC. NO. 26680 WERC, 11/90).

Budgetary duties that are merely ministerial do not confer managerial status. KEWAUNEE COUNTY V. WERC, SUPRA AT 357.

Whenever possible, MERA (Municipal Employment Relations Act) must be harmonized with other provisions of the law. KEWAUNEE COUNTY, SUPRA AT 358, CITING GLENDALE PROFESSIONAL POLICEMAN'S ASSOCIATION V. CITY OF GLENDALE, 83 WIS. 2D 90, 103-04 (1978) and MUSKEGO-NORWAY CONSOLIDATED SCHOOLS, 35 WIS.2D. 540, 556 (1967). For example, consideration of an employee's authority to allocate funds for purposes that differ from those set forth in the original budget adopted by the appropriate local legislative authority must necessarily include consideration of the budget revision requirements for municipalities contained in Sec. 65.90(5), Stats. While that statutory section does not provide unilateral authority for even a municipal chief executive officer to reallocate budget lines for purposes that differ from those originally adopted by the appropriate local legislative body, managerial status may be inferred by a demonstrated authority, *de jure* or *de facto* to make budget alteration recommendations for consideration by the local legislative body.

Finally, there is no bright-line test for managerial status. MANITOWOC COUNTY V. LOCAL 986A, 170 WIS.2D 692 (1992). Each case turns on its individual facts and involves a case-by-case examination of the duties, responsibilities, and powers of the employee involved. KEWAUNEE COUNTY, SUPRA AT 353.

We turn to an examination of the duties, responsibilities, and powers of Mental Health Specialist Roger Celusta.

Dane County has employed Celusta for 34 years. Originally hired as a Social Worker, then reclassified as a Senior Social Worker, Celusta currently is a member of the 3-person team that administers the Mental Health section of the Adult Community Services Division. The other two team members are Section Coordinator David LeCount (Celusta's supervisor) and an accountant. 1/

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1/ Presumably, the team also has access to clerical and/or secretarial assistance.

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The Mental Health section is one of seven sections in the Adult Community Services Division of the Dane County Department of Human Services. It provides comprehensive, ongoing support to approximately 1,500 adults with serious and persistent mental health illness, as well as less intense support for many other persons with mental health disabilities.

At the time of hearing (April 2002), this section, though small in size, nonetheless administered an annual budget of \$15-million. The money, which comes from a variety of sources that include county tax revenues and federal grants, is principally used to purchase mental health services from two dozen community agencies that together operate some 40 programs. The purchased services ultimately benefit over 5,000 patients.

While Section Coordinator LeCount has the principal responsibility for creating an annual budget that requires approval by the County Board, Celusta is the principal administrator of this budget. Celusta's duties include purchasing mental health services from various providers, assessing the effectiveness of the providers of these services, and making recommendations to LeCount for changes in the system. In the past, changes that have been implemented as a result of Celusta's recommendation have included changing health care providers. It is Celusta that is responsible for negotiating compensation rates for the providers.

The parties stipulated that Celusta is a qualified professional (social worker). This is accurate. Despite the fact that he has neither a bachelor's nor advanced degree in social work, 2/ Celusta has been able to obtain State professional certification at the lowest rung of the statutory social worker certification series. 3/

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*2/ Celusta has a bachelor's degree in journalism.*

*3/ There are three other social worker certification categories above the one held by Celusta: advanced practice social worker, independent social worker, and independent clinical social worker. Unlike the lower certification level of "social worker," the more advanced certification categories require, inter alia, a master's or doctorate degree in social work. See Secs. 457.08(2), (3) & (4), Stats.*

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Notwithstanding his State certification, it is clear that Celusta has no individual client or patient caseload, and does not directly work with any individual patient. Indeed, social workers at his certification level are prohibited from engaging in the psychotherapeutic activities allowed social workers with higher professional certifications. 4/

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*4/ MPSW 6.01, Wisconsin Administrative Code.*

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Yet Celusta's administrative duties include making important decisions that directly impact patients' treatment in the mental health system. For example, Celusta's approval is required for all contracted plans of service and funding for any client that is being granted a conditional release (ROLO Program). Celusta is not responsible for drawing up the original

service plan. That is the task of the social worker to whom the client has been individually assigned. But if the recommendation is problematic (e.g., too expensive, professionally assessed low probability of success, presents potential County liability or other legal problems, conflicting professional recommendations) Celusta must resolve the issue.

Celusta is the only person that signs off on a ROLO plan of service. His work in this area is not routinely reviewed by any authority over him, and he is not aware of any appeals that have been taken from his decisions. Each plan he approves has a direct budget implication, e.g., hours of service, number of times services will be provided, costs, housing needs, medication needs and the need for psychotherapy. Thus each plan he approves necessarily involves an allocation of County resources.

The Union describes Celusta's ROLO approvals as an "on-going oversight function performed by Celusta/LeCount/Accountant. [It] is one of quality control or watchdog of county funds to insure that the County is not spending levy dollars that the state might otherwise be required to fund under ROLO." The Union argues this is "not dissimilar to a question of managerial status confronting the Commission in RUSK COUNTY (MEMORIAL HOSPITAL AND NURSING HOME), DEC. NO. 14713-D (WERC, 9/86)." In that case, the Commission denied managerial status to the "Quality Assurance Coordinator" and the "DRG Coordinator" on the basis that the former had no authority to act on her own and did not spend significant time in making her recommendations, and the latter merely implemented existing policy but did not formulate or determine it and, further, did not effectively commit the Employer's resources.

We find the facts of RUSK COUNTY clearly distinguishable from the instant matter. Unlike the mere recommendations of the Quality Assurance and DRG Coordinators in that case, Celusta actually resolves issues himself -- indeed, is permitted to substantially modify or cancel service plans proposed by other social workers, even though the proposing social workers may hold a higher professional certification than Celusta.

For, while his prior experience as a social worker is undoubtedly helpful to him in the performance of his current responsibilities, Celusta's decisions are not based primarily on his past social worker experiences. Certainly, he solicits advice from qualified professionals such as social workers, psychiatrists, and lawyers -- a practice not unlike that of many successful managers or executives in other fields that seek and rely on advice from appropriate qualified professionals to whom they have access.

In contrast to professional treatment recommendations for individual clients by their respective social workers, Celusta's final decisions as to plans of service include fiscal, legal and political considerations. He has discretionary authority to implement one or more of a broad variety of alternatives, including individual psychiatric counseling, group counseling, and immediate (or delayed) admittance to a bed at the County's Badger Prairie facility. Ultimately, Celusta needs to make sure that the proposed plan of service is appropriate for the needs of the client *from a system perspective*.

In fact, Celusta's admissions authority for the Badger Prairie facility is another example of the discretionary management judgments required of him.

The Union finds a similarity between Celusta's Badger Prairie admissions authority and the hospital admissions authority of certain supervising nurses that the Commission determined were neither supervisory nor managerial in BROWN COUNTY, DEC. NO. 17585 (WERC, 9/93). In our opinion, however, the *differences* between the two authorities are considerably more compelling than the superficial similarity cited by the Union.

For whatever admissions authority is held by the BROWN COUNTY supervising nurses is tightly circumscribed by multiple, written County policies in the formulation of which the nurses played no role. Admissions are based on clinical examinations performed by the nurses in their professional, nursing capacity, not a managerial one, and the BROWN COUNTY nurses lack authority to implement any clinical alternative to hospital admission.

Celusta, on the other hand, has no personal interaction with an individual client. His admissions decisions are not based on any clinical examination he has personally performed, and include consideration of non-clinical factors (e.g., fiscal, legal, political). He has discretionary authority to implement alternative clinical options that are short of admission.

We note an additional dissimilarity between the supervising nurses' role in BROWN COUNTY and that of Celusta in the instant matter, namely, Celusta's responsibilities with the PASARR (Pre-Admission Screen and Release) Program. Celusta is the sole approving authority before any person suffering from any mental illness can be authorized for a subsidized admission to a nursing home. In this role he is far more than an admitting clerk, for admissions can occur without Celusta's signature. What Celusta's signature provides is appropriate funding for the admission. BROWN COUNTY supervising nurses had no role that corresponded to this.

In summary, it is clear that neither ROLO nor PASARR program determinations made by Celusta are *pro forma* decisions. They are based, instead, on an overview of the entire system. As Celusta credibly testified, if he denies a service to Patient A, his decision may free sufficient dollars to provide a service to Patient B.

We also note Celusta's responsibilities arising from his management of the PATH grant of approximately \$57,000. The money is intended to assist homeless persons find other lifestyles of greater benefit to them. Celusta is not a grant application writer, and he did not write the PATH grant application. He is, however, responsible for assessing the effectiveness of how the PATH grant monies are being spent, and has effective authority to recommend changes. For example, following Celusta's finding and recommendation that the fragmented services being purchased by PATH grant monies could be offered with greater efficiency and effectiveness if only one provider were involved, the grant was rewritten to comply with this recommendation.

But the Union is not persuaded that Celusta's responsibilities arising from his management of the PATH grant rise to the level of managerial duties, citing MARQUETTE COUNTY, DEC. NO. 17681-A AND 17682-A (WERC, 9/81) and JUNEAU COUNTY, DEC. NO. 728-A (WERC, 1/86). (The Union takes the same view and offers the same case citations with respect to Celusta's PASARR duties).

We disagree. In MARQUETTE COUNTY, SUPRA, we declined to grant managerial status to the Program Director of the County's Unified Services Board on the grounds that not only did the Board retain tight control over actual policy decisions and expenditures of resources, but the Program Director's role during Board policy sessions primarily consisted of providing options and information as opposed to participating in the decision-making process. In JUNEAU COUNTY, SUPRA, we denied managerial status to the Director of the Department of Aging and Nutrition on the grounds that the incumbent's input into the budget process was merely to put it together in physical form and forward it to various boards and committees. In the same case, we also concluded that the Landfill Site Manager spent a good percentage of his time in doing the same work as other employees at the landfill, and exercised little independent discretion and authority in determining budgets or establishing management policy.

We perceive the facts of each of these cases clearly distinguishable and thus inapposite to those of the instant matter.

Celusta and his supervisor, David LeCount, both describe their professional relationship as "collegial." For example, while Celusta plays no formal role in the preparation of the section's annual budget, he and LeCount did consult with each other informally as the 2002 budget was prepared. Both men agree that they meet frequently to consult with each other on matters of professional interest. These matters have included Celusta's effective recommendations to LeCount to move money from one part of the budget to another or even that budget money not be spent. Either man can initiate a meeting with the other, and each does so on an "as needed" basis. When LeCount is not in the office, Celusta is in charge.

Celusta's chairmanship of the System Service Coordination Committee also suggests his managerial role within the section. This committee meets monthly at the call of Celusta. Its members include representatives of key players in the mental health system, such as mental health care providers, District Attorney's Office, Public Defender's Office, jail mental health staff and jail administrators, and Probation and Parole officials. The Committee's purpose is to discuss and resolve problems with the County mental health system or how to deal with new developments. Attempting to develop guidelines to deal with a new fifth standard for involuntary civil mental commitments that the State Legislature had created is an example of one type of item on the Committee's agenda. Obtaining a 30-day supply of medications for patients returning to Dane County following release from State institutions along with adequate notice of the proposed release date was a Committee triumph. It is clear that Celusta exercises effective leadership in chairing Committee activities and that these activities have resulted in the formulation of policy guidelines that impact the County's mental health system.



Celusta also describes his duties as including “watchdog” functions. He notes emergency detentions at, say, the Mendota facility or the Veteran’s Hospital as to County dollar implications. He watches whether funding is more appropriately obtained from the Veteran’s Administration, Medicaid or Medical Assistance. In Celusta’s words, “I watchdog how these things happen so we’re not putting people in situations where we’re needlessly spending County dollars for care when we could be doing otherwise.” Actually, that describes Celusta’s duties only partially, for he has the correlative authority to act on the perceptions produced by his “watchdog” functions.

Celusta (and LeCount) both work with the accountant assigned to the section. The accountant provides them regular feedback on funding issues. If corrections seem indicated, Celusta makes them.

As the Union points out, Celusta uses the term “fire-fighting” to describe some of his duties. The Union appears to identify “fire-fighting” with “problem-solving,” and cites PORTAGE COUNTY, DEC. NO. 6478-D (WERC, 1/90) as authority for its conclusion that “(t)he role of problem-solver cannot be equated with the broader, high level of policy making.”

Actually, neither term is necessarily incompatible with legitimate managerial responsibilities, and the Union’s conclusion to the contrary is broader than that stated by the Commission in PORTAGE COUNTY. Our statement was made in the context of the specific facts of that case:

As to Carlson’s alleged policy involvement, the record establishes that his role is primarily one of attempting to develop solutions to specific problems which arise between the Child Support Agency and other involved departments. In our view, *this* role as “problem solver” cannot be equated with the broader high level role of policymaker and thus does not provide a basis for finding Carlson to be a managerial employee. (emphasis added)

In the instant matter, we perceive Celusta’s “fire-fighting” or “problem-solving” as extending far beyond the interdepartmental “problem-solving” to which we were responding in PORTAGE COUNTY.

In summary, based on the record, we perceive Celusta as a key managerial figure in the Mental Health Section. Although the Section is small, its budget is substantial. In a very real sense, the Section appears to operate largely as a managerial entity in which essential managerial responsibilities are split between Section Coordinator LeCount and Celusta. The decisions they both make in carrying out those responsibilities have an obvious and significant impact on the kind and level of services provided, the kind and number of employees to be utilized in providing services, and the systems by which the services will be provided,

including the use of outside contractors. In his day-to-day administration and distribution of the budget and the discretionary decisions necessarily required of him, Celusta must continuously allocate County resources based on his best judgment of priorities. In doing so, he necessarily establishes precedents that undoubtedly evolve into Division and Department policies.

Celusta describes his position as following the flow of people into treatment and trying to make sure the flow out of treatment is as quick as it can be and still be effective. He says, "I social work the system." He later describes his job as "system maintenance." Celusta's supervisor, David LeCount, refers to Celusta's duties as "system management."

Based on the record in this case we find those terms both accurate and largely synonymous. Even the Union concedes that Celusta ". . . has a job that is high in responsibility." In our opinion, those responsibilities are of a sufficiently high degree to place Celusta in a managerial status, and thus exclude him from the professional bargaining unit.

Dated at Madison, Wisconsin, this 10<sup>th</sup> day of February, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner