

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

MADISON AREA TECHNICAL COLLEGE
SUPPORT STAFF UNION LOCAL 3872

Involving Certain Employees of

MADISON AREA VOCATIONAL,
TECHNICAL AND ADULT EDUCATION,
DISTRICT NO. 4

Case 13
No. 35359 ME-36
Decision No. 16456-E

Appearances:

Mr. William Kalin, Staff Representative, Wisconsin Federation of Teachers,
1703 Logan Avenue, Superior, WI 54880, appearing on behalf of the
Union.

Lee, Johnson, Kilkelly & Nichol, S.C., by Mr. Donald D. Johnson, P. O.
Box 2189, One West Main Street, Madison, WI 53701, appearing on behalf
of the District.

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

Madison Area Technical College Support Staff Union, Local 3872, Wisconsin Federation of Teachers, AFT, AFL-CIO having, on July 12, 1985, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing collective bargaining unit by including in it certain positions; and Madison Area Vocational, Technical and Adult Education District No. 4 having responded, in part, by seeking a unit clarification by which certain positions previously included in the same unit would henceforth be excluded therefrom; and the parties having mutually requested that hearing be delayed pending attempts to resolve the matter; and hearing having been held in Madison, Wisconsin, on October 7, 1986 and March 25, 1987, before Examiner Christopher Honeyman, a member of the Commission's staff; and a stenographic transcript having been prepared; and the parties having filed briefs by July 21, 1987; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Madison Area Vocational, Technical and Adult Education District No. 4, hereinafter referred to as the District or the Employer, is a municipal employer maintaining its principal offices at 3550 Anderson Street, Madison, Wisconsin, 53704.

2. That Madison Area Technical College Support Staff Union, Local 3872, Wisconsin Federation of Teachers, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its principal offices at 1703 Logan Avenue, Superior, Wisconsin, 54880.

3. That the Union is the certified bargaining representative of all office, clerical, custodial, maintenance, and related employees employed by the Board, but excluding supervisory, confidential, and managerial employees; and that the District and the Union have been parties to a series of collective bargaining agreements, of which the most recent is effective from January 1, 1986 to December 31, 1987.

4. That the Union, on July 12, 1985, filed a unit clarification petition with the Commission wherein it sought the inclusion of approximately 50 positions previously excluded from the unit identified above; that the District responded, in part, by indicating that it would seek the exclusion from the unit of approximately 30 positions previously included; that protracted negotiations between the parties ensued; that, as of the second day of hearing, the following positions remained at issue: Confidential Information Systems Technician 6, Information Systems Manager 3, Confidential Clerk Typist II, Food Service Manager, Administrative Secretary to the Operations Administrator, Administrative Secretary

to the Truax Campus Administrator, Administrative Secretary to the Assistant Director/Student Services, and Administrative Secretary to the Assistant Director/Instructional Services, all of which the Union seeks to include in the unit, and Payroll Accountant, Information Systems Manager 1, and Information Systems Manager 2, all of which the District seeks to exclude on the grounds that they are supervisory, confidential or managerial employees.

5. That the District consists of seven campuses serving a 12-county region; that there are approximately 330 full-time and 500 part-time teachers, 240 support staff and 270 work-study students on staff; and that there are approximately 50,390 students; that Norman Mitby has been the District Director since the creation of said position in 1967; that Mitby has two confidential administrative secretaries, one of whom devotes practically all her time to serving the District's Board; that since 1967, and continuing to the present, the Assistant Directors for Student Services and Instructional Services have each had one confidential administrative secretary; that there formerly was a position of Business Manager, which had the services of one confidential administrative secretary; that the duties of Business Manager have largely been absorbed into the newly-created position of Personnel Director; and that the Personnel Director has one confidential administrative secretary, and one clerk-typist who is currently excluded from the unit as confidential.

X 6. That the process which the District follows to hire for permanent positions in the support staff has several well-defined stages; that following the requisition and approval for a hire, the position is posted; that the entire group of applications is given preliminary review by a screening committee consisting of supervisors and a member of the support staff bargaining unit; that the screening committee reduces the number of applicants to a maximum of nine; that the Affirmative Action Officer can then add up to an additional three qualified minority candidates; that the Personnel Director then appoints an interview committee, consisting of no more than three members, plus an additional member at the discretion of the Affirmative Action Officer; that the interview committee further reduces the number of applicants to two, who are then interviewed by the Personnel Director and the top administrator in the applicable division or department; that the Personnel Director and the top administrator then recommend one final candidate to the District Director, who then recommends that candidate to the Area Board for formal hire; that this procedure is not followed in the hiring of temporary work-study student employees; that such temporary employees are instead hired directly by the person who has requested that the position be filled, provided that approval to fill the vacancy has been granted; that the authority to request and hire work-study students is held by a large number of District employees, both within and without the bargaining unit; and that the hiring of such work-study students is a routine matter involving little exercise of independent judgment.

7. That Nadine Cordio, the incumbent administrative secretary to the Truax Campus Administrator, is not currently in the bargaining unit; that Jerry Keiser is, and has been since August 18, 1986, the Administrator of the Truax Airpark Main District Campus, a newly-created position; that Keiser reports to the District Director; that Keiser has on his campus approximately 750 full and part-time teachers, 17 secretaries and 140 other support staff; that the Truax Campus is the most complex campus in the District; that the Truax Campus is the campus located closest to the Main Administrative Offices; that the administrative secretaries to the Administrators of the six other campuses within the District are included in the bargaining unit; that when the District's Carroll Street facility was the District's main campus, its Administrator's secretary was likewise included in the unit; that Keiser devotes less than 25 percent of his time to personnel matters; that he has not been involved in preparing proposals for collective bargaining; that Keiser has not been involved in any grievances of support staff; that the Truax Campus was, at the time of this proceeding, in its first full year of operation; that Keiser has been involved in a minimal number of grievances; that Keiser has been involved in a significant number of complaints other than grievances, perhaps numbering as many as 100, concerning the physical plant at the Truax facility; that Cordio has typed Keiser's responses at Step 1 grievance reviews; that campus personnel, such as deans and chairpersons, have their confidential correspondence prepared by Personnel Department administrative secretaries rather than by Cordio; that the District asserts it intends to make Cordio available to such campus administrators for such confidential work in the future; and that Cordio does not have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

8. That June Weger is the incumbent Administrative Secretary to the Assistant Director/Student Services, and is not currently a member of the bargaining unit; that she and the incumbent Assistant Director have held their respective positions since January, 1987; that prior to January, 1987, Weger held a similar position for the Deputy District Director; that she performs routine secretarial duties for the Student Services Division, such as the preparation and handling of correspondence, reports, forms, and related matters; that in the Student Services Division there are 27 members of the Support Staff Unit and seven members of the Teachers' Unit; that Weger is physically located in the same area as the confidential administrative secretaries to the District Director and the Personnel Director; that, on occasion, she has provided secretarial services directly to the Director, at his direction, when both of his confidential secretaries were not available; that such secretarial services have included taking and typing minutes of grievance hearings and typing the Director's response thereto; that she has on occasion typed proposals relating to the calendar for submission to the teachers' unit; that she has no real involvement with or knowledge of bargaining relating to the calendar; that her involvement in grievance meetings is infrequent; that, on an annual basis, Weger devotes approximately 10 to 15 percent of her time to labor relations matters, with a higher percentage during the fall bargaining period; and that Weger does have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

9. That Patricia Kovalaske, the incumbent Administrative Secretary to the Assistant Director/Instructional Services, is currently not a member of the bargaining unit; that she has held that position for approximately 20 years; that she reports directly to the Assistant Director/Instructional Services, Fred Mitchell; that she is Mitchell's only administrative secretary; that she is located in close proximity to the other administrative secretaries, including the confidential administrative secretaries for the District Director and the Personnel Director; that her responsibilities include routine secretarial duties such as the preparation and handling of correspondence, reports, forms, etc.; that she has prepared material for Mitchell to present at pre-bargaining meetings of District Administration; that she had prepared material for, and taken minutes at, one or more meetings concerning changes in the class schedule, which changes would impact on matters subject to bargaining with the teacher unit; that Mitchell serves as the District's representative at Step 2 grievance hearings relating to teachers; that Kovalaske and Mitchell have discussed the substance and merits of grievances and collective bargaining proposals; that Kovalaske has in the past attended meetings relating to contract negotiations and/or grievances; that her attendance at such meetings was primarily for the purpose of her implementing decisions reached therein, rather than to have her participate as a policy-maker; that she types supporting data relating to contract proposals affecting teachers for Mitchell to utilize when he serves as a member of the District's bargaining team; that Mitchell does not serve on the bargaining team for contracts affecting the support staff; that Kovalaske has not been involved in preparing material for use at bargaining sessions relating to the support staff; that, except when directed to as a special assignment, Kovalaske does not type actual contract proposals; that she devotes approximately 10 percent of her time to overall labor relations matters, with a greater percentage when contract negotiations are taking place; and that Kovalaske does have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

10. That Sandy Middleton, the incumbent Administrative Secretary to the Operations Administrator, is currently not in the bargaining unit; that she had held this position for approximately six months at the time of the hearing; that the operations function at the District encompasses such matters as purchasing, travel vouchers, parking and the hiring of temporary personnel; that, since the creation of the Personnel Department in early 1986, Middleton has had no dealings with, nor access to, contract negotiations, grievances, or other labor relations matters affecting permanent District personnel; and that Middleton does not have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

11. That Patty Pilsner, the incumbent payroll accountant, is currently a member of the bargaining unit; that she has worked for the District since 1974; that she was reclassified into her current position in about 1978 or 1979; that she reports to the Controller; that reporting to Pilsner are a full-time payroll clerk, a part-time clerk/typist and varying numbers of work-study students; that a

newly-created position of receptionist will also report to Pilsner; that Pilsner occasionally performs the clerk/typist's duties in the latter's absence; that the delegation of tasks within the work area is largely routine; that Pilsner has the authority to assign tasks when prioritization is necessary; that she has not formally disciplined any of her subordinates; that she shares with numerous other District employees the ability to choose which work-study students to hire; that, prior to the employment of the current Personnel Director, Pilsner was involved in the final interview for the hiring of the payroll clerk; that she was not involved in the more recent process of hiring the clerk/typist; that Pilsner has not been involved in the promotion, reclassification, transfer, layoff or grievance of any employee; that she does not have the authority to approve the vacation schedules or overtime for permanent employees; that she does not sign time sheets; that she can get paid for overtime if she requests such; that she has never substituted for, or performed the duties of, the Controller; that she has a continuing working involvement with payroll-related personnel forms; that she, along with a payroll clerk who is in the bargaining unit, assists in the preparation of financial projections and other statistical data used by the administration for budgeting and collective bargaining purposes; that, other than computing such financial calculations and projections, which occupy approximately five percent of her time, Pilsner has no duties related to labor relations; that her only involvement in grievances is when a settlement requires that funds be disbursed through the payroll system; that Pilsner does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee; and that Pilsner does not have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

12. That Michael DiLorio, the incumbent Information Systems Manager 3 (ISM-3) in the Technical Support Section of the Data Center Bureau of the Information Systems Department (ISD), is currently excluded from the bargaining unit; that the rest of the section consists of the two Information Systems Specialist - 5's and one Information Systems Specialist - 1; that DiLorio devotes approximately 30 to 40 percent of his time assigning tasks to, and evaluating the performance of, the three positions which report to him; that he devotes the remainder of his time to performing tasks similar to those performed by said three employees; that he reports to the Administrator and Deputy Administrator of the ISD; that the position description for the ISM - 3 indicates that DeLorio is responsible for the supervision of all section personnel and the direct management of all section activities; that his position description also requires him to assist in the hiring of new section personnel; that his position description also requires him to assist in the training of new section personnel and to make recommendations to the Administrator regarding the evaluation, assignment and discipline of existing section personnel, and the establishment and maintenance of appropriate organizational structures within the section; that DiLorio participated in the final interview to fill a vacancy in the section; that he reviews and approves the weekly project plan for the section personnel; that he has authority to assign section staff to perform limited-duration tasks on authorized projects for other bureaus; that DiLorio does not have the authority to assign staff to work on major projects without formal approval by the Information Systems Steering Committee; and that DeLorio does possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

13. That Joseph Nagle, the incumbent Information Systems Manager 2 (ISM-2) in the Instructional Services Bureau (ISB), of the Information Systems Department (ISD), is currently a member of the bargaining unit; that he has been so employed for about five years; that he works under the general direction of the Information Systems Administrator, Al Larson; that the ISB/ISM-2 plans and implements the development, maintenance and improvement of the District's instructional computing systems; that in addition to Nagle, the ISB consists of one Information Systems Specialist - 1 (ISS-1) and one Information Systems Technician - 4 (IST-4); that the IST-4 works primarily with hardware and other physical aspects of microcomputers; that the ISS-1 works primarily with programming and software; that Nagle devotes slightly less than half his time to performing the same work as the IST-4 and an equal percentage of time performing the same work as the ISS-1; that the remaining time, amounting to no more than ten percent, is devoted to supervising the other two employees; that Nagle assigns tasks to the IST-4 on a daily basis, and to the ISS-1 on a more occasional basis; that Nagle assisted in the initial screening of applicants to fill the IST-4 position and in the preliminary interview to fill the ISS-1 position; that he did not participate in the final interview or the final hiring decision for either position; that he has had, and has exercised, the authority to hire as labor assistants approximately

eight to fifteen work-study students each semester; that numerous other District employees also have similar authority to hire work-study students; that Nagle has never formally disciplined any permanent or limited term employee; that Nagle conducted the standard three month evaluation of the ISS-1; that Nagle's recommendation to extend the probation period of the IST-4 was followed by Larson; that the final determination to grant the IST-4 permanent status was made by Larson; that Nagle has, and has exercised, the authority to allow minor deviations in the daily work schedule of the ISB employees, but that he does not have the authority to approve the scheduling of vacations or to approve overtime assignments, which authority rests with Larson; that Nagle has not been involved in the promotion, reclassification, transfer, layoff or grievance of ISB employees; that Nagle attends the ISD's biweekly managers' meeting; that Nagle is involved in the assignment of tasks to the ISB employees, but that he does not review or approve their formal weekly project plans; that Nagle is salaried; that he has never substituted for Larson or performed Larson's duties; that he signs ISB time sheets; that Nagle has no authority to establish a budget to allocate funds or to otherwise commit the District's resources without the review and approval of his superiors; that Nagle does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee; and that Nagle does not have sufficient authority to commit the District's resources so as to make him a managerial employee.

14. That Nathaniel Ellis, the incumbent Information Systems Manager - 1 (ISM-1) of the Operating Section (OS) of the Data Center Bureau (DCB) of the ISD is currently a member of the bargaining unit; that he has held this position for about 15 years; that there are eight other members of the OS, all Information Systems Technicians (IST); that they are evenly divided between data entry operations and computer operations; that Ellis devotes approximately 10 percent of his time to performing computer operations work, and none of his time to performing data entry operations work; that Ellis reports to the Administrator and Deputy Administrator of the ISD; that he devotes most of his time to organizational and scheduling matters; that his experience in disciplining permanent OS employees has consisted of issuing an informal verbal reprimand concerning drinking on the job, and later a letter, written at the request of the Administrator; that he hires and oversees approximately 14 work-study students; that Ellis has never been involved in the layoff, reclassification, promotion, or transfer of a permanent OS employee; that he has effectively terminated the employment of a work-study student; that he has conducted the standard three and six month evaluations of permanent OS employees; that Ellis has, and has exercised the authority to approve requests for time off and overtime; that Ellis signs time sheets; that he can work, and be paid for, overtime; that during his tenure no employee has failed probation; and that Ellis does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

15. That Jayme Kerr, the incumbent Confidential Information Systems Technician 6 (IST-6) in the ISD is currently not a member of the bargaining unit; that she reports directly to the Administrator, Larson; that she has held this position since about 1982; that her duties consist of general secretarial work, and overseeing the telephone and security systems; that on one or two occasions each year, she types grievance correspondence which is sent to the Union; that Larson is not involved in labor contract negotiations; that Larson has personnel-related duties pertaining only to ISD employees; that on one occasion she typed a communication from Larson to Personnel Director Niemeyer regarding a letter of reprimand to be issued to an employee; that Kerr is located in a reception area; that she devotes between 20 and 30 percent of her time supervising the clerical duties of the only other employee working directly underneath her, an IST-4; that the IST-4 position is currently vacant; that Kerr, who was the previous IST-4 prior to being promoted to the newly-created position of IST-6, served on the intermediate, but not final, interview panel, and was asked for a verbal recommendation, regarding the hiring of a new IST-4; that Kerr, both as an IST-4 and IST-6, has had, and has exercised, the authority to hire temporary part-time work-study students, a power she shares with numerous other District employees; that Kerr shares with other departmental personnel the authority to assign work and set priorities for the work-study students; that Kerr has on occasion spoken to such students about matters such as tardiness, but she had never formally disciplined any of them; that Kerr has, and has exercised, the authority to arrange the schedules and grant time off for the students, but cannot authorize schedules for the IST-4; that the issue of authorizing overtime has not yet arisen; that Kerr is a salaried employee who has not been paid overtime or

compensatory time; that she has access to, and occasionally types, correspondence relating to certain departmental personnel matters such as evaluations; that Kerr devotes approximately 25 per cent of her time to the same general clerical work as the IST-4; that she devotes about half her time to overseeing the telephone system and control system for the restricted access areas; that Kerr does not make any independent decisions as to which employees have access to which restricted areas, but instead implements the decisions made by the Administrator; that she has not acted as a substitute for Larson; that she serves as a general resource person when problems arise in the computer or telephone systems; that she primarily supervises an activity rather than supervising employees; that Kerr does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee; and that Kerr does not have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

16. That Julie Pahl Washa, the incumbent confidential clerk/typist II in the Personnel Department, is currently not a member of the bargaining unit; that she works in the vicinity of, and reports to, the Department's Administrative Secretary, who is also currently excluded from the unit as a confidential employee; that in addition to general clerical work, she establishes, copies and generally manages the files for grievances, evaluations and negotiation materials; that there have not been any collective bargaining negotiations since she began work on March 16, 1986; that she was responsible for preparing a list, for submission to the WERC and the Union, of part-time employees eligible to vote in a representation election; that she types, sends and files disciplinary letters affecting members of the teacher and support staff unit; that all of the formal correspondence regarding grievances which she prepares is sent to the person to whom it pertains; and that Pahl Washa does have sufficient access to or involvement in confidential matters relating to labor relations to be deemed a confidential employee.

17. That Jean Hammond, the incumbent Food Service Manager, is currently not a member of the bargaining unit; that the Food Service Manager is responsible for managing the daily operations concerning the sale of food consumed at the Truax Campus; that Hammond reports directly to the Chairperson of the Industrial Food Department; that she supervises two full-time cashiers, one full-time warewasher, two regular part-time employees and approximately fifteen work-study students; that Hammond shares with numerous other employees, in and out of the unit, the authority to decide which work-study students to hire as temporary part-time employees; that in addition to Hammond, there are 14 positions supervised by the Chairperson, including seven full-time teachers, six part-time teachers and one food service technician; that Hammond had held her position for one month at the time of the hearing; that the position itself was less than six months old at the time of the hearing; that neither Hammond nor her predecessor was involved in the hiring decisions for the three full-time positions; that Hammond's position description extends to her the authority to recommend hires to fill future vacancies in the three full-time positions, to train all full and part-time employees and to recommend employee transfer, promotions and discipline; that Hammond is not responsible for the preparation of menus or the ordering of food from purveyors; that Hammond is located in an office adjacent to the cafeteria, near to the Chairperson; that there are no other positions within the Food Service Department with supervisory status; and that Hammond does possess supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

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

CONCLUSIONS OF LAW

1. That the occupants of the positions of Administrative Secretary to the Assistant Director/ Instructional Services, Administrative Secretary to the Assistant Director/ Student Services, and Confidential Clerk Typist II are confidential employees and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

2. That the occupants of the positions of Food Service Manager and Information Systems Manager 3, (Technical Support Section) are supervisory employees within the meaning of Sec. 111.70(1)(o), Stats., and therefore are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

3. That the occupants of the positions of Administrative Secretary to the Operations Administrator and Administrative Secretary to the Truax Campus Administrator are not confidential employees and therefore are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

4. That the occupant of the position of Information Systems Manager 1 is not a supervisory employee within the meaning of Sec. 111.70(1)(o), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

5. That the occupant of the position of Information Systems Manager 2 is neither a supervisory employee within the meaning of Sec. 111.70(1)(o), Stats., nor a managerial employee, and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

6. That the occupants of the positions of Payroll Accountant and Confidential Information Systems Technician-6 are not supervisory employees within the meaning of Sec. 111.70(1)(o), Stats., and therefore are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the positions of Administrative Secretary to the Assistant Director/Instructional Services, Administrative Secretary to the Assistant Director/Student Services, Confidential Clerk Typist II, Food Service Manager and Information Systems Manager 3 (Technical Support Section) are excluded from the bargaining unit described in Finding of Fact 3.

2. That the positions of Administrative Secretary to the Truax Campus Administrator, Administrative Secretary to the Operations Administrator, Information Systems Manager 1, Information Systems Manager 2, Confidential Information Systems Technician 6 and Payroll Accountant are included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 17th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

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.

(Footnote 1 continued on Page 8.)

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 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,
CONCLUSIONS OF LAW AND ORDER

POSITIONS OF THE PARTIES

The Union contends that the occupants of the four Administrative Secretary positions and the Confidential Clerk-Typist II, currently excluded from the bargaining unit, should be included therein because they do not have significant involvement with confidential material, and thus are not confidential employees. The Union contends further that, in the Information Systems Department, the two Information Systems Managers (ISM) currently in the unit should remain therein, because they do not meet the statutory criteria of supervisor; that the Information Systems Manager 3, currently excluded from the unit, should be included therein because the incumbent functions essentially as a lead worker rather than as a supervisor; and that an Information Systems Technician 6, also currently excluded from the unit, functions neither as a supervisor nor in a confidential capacity, and thus should also be brought into the unit. The Union contends further that the occupant of the position of Payroll Accountant should remain in the unit because, she, too, fails to satisfy the established criteria for exclusion as a supervisory or confidential employee. Finally, the Union seeks the inclusion of the Food Service Manager, contending that this currently-excluded position does not possess the necessary authority to make or effectively recommend personnel decisions, and thus is not supervisory.

The District contends that the four Administrative Secretaries have access to information concerning labor relations which is not available to the Union and/or other employees, and thus should remain excluded from the unit as confidential employees. In support of the exclusion from the unit of all four contested Information Systems Department employees, the District contends that the three ISM's and the IST-6 all have sufficient authority in personnel decisions and scheduling so as to make them supervisors; that the ISM-2 can commit the employer's resources, and is therefore managerial; and that the IST-6, having access to information regarding labor relations and grievances, is confidential as well as supervisory. The District contends that the Payroll Accountant can effectively recommend personnel actions and has access to data used in collective bargaining, and thus should properly be removed from the unit as both supervisory and confidential. The District contends that the Confidential Clerk Typist II, having access to information relating to grievances, should be kept from the unit as a confidential employee. Finally, the District seeks to maintain the exclusion from the unit of the Food Service Manager, on the grounds that her authority to hire, fire, discipline and evaluate other employees makes her a supervisor.

DISCUSSION

I. Employees Claimed to be Confidential

The Commission has consistently held that in order for an employee to be considered a confidential employee, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purposes it must be the type of information which (a), deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer; and, (b), is not information which is available to the bargaining representative or its agents. 2/ Of the seven positions which the Employer contends are confidential, we find that three, the Administrative Secretaries to the Assistant Directors for Instructional Services and Student Services, respectively, and the confidential Clerk-Typist II, satisfy this standard.

2/ Wonewoc-Union Center School District, Dec. No. 22684 (WERC 5/85).

A. Administrative Secretaries

There are four administrative secretary positions at issue, all currently excluded from the bargaining unit. While each position has some unique features, they share certain broad parameters in that they all provide general secretarial/clerical services to high-ranking District administrators, and they all prepare or otherwise have access to correspondence, memoranda and other documents of varying degrees of sensitivity and confidentiality.

1. Administrative Secretary to the Truax Campus Administrator

The incumbent of this position, Nadine Cordio, has access to internal memoranda, correspondence and other documents relating to the administration of the largest campus in the District. Of the seventeen secretaries serving on the Truax campus, this is the only one which the District contends is confidential. Likewise, of the seven administrative secretaries reporting to the various campus administrators District-wide, this is the only one which the District contends is confidential. In that regard, it is noteworthy both that this is the campus closest to the District's main administrative offices and the confidential personnel there located, and that the campus's functional predecessor, the Carroll Street campus in downtown Madison, did not have a confidential administrative secretary for its administrator.

Campus Administrator Jerry Keiser, who had held this post for barely seven months at the time he testified, has complex responsibilities in the operations of a large college campus. It is questionable, though, whether he has significant responsibilities in confidential labor relations matters.

Keiser testified that he had not been involved in preparing proposals for collective bargaining. The District correctly notes that, since the Administrator's position was created concurrent with the recent establishment of the Truax Campus, Keiser's lack of past activity is to be expected. The District has not, however, argued persuasively that future contract negotiations will find Keiser playing an active role. And, while the Administrator's position description does charge the Administrator with 14 specific responsibilities including the "cost-effective management of all resources under his/her supervision," specifically including teachers and support staff, the position description does not contain a single specific reference to participation in collective bargaining.

Keiser also testified that he had responded to approximately 100 grievances at Step 1 of the Grievance procedure. That is certainly a significant number, and, if accurate, could well be a material factor in determining Cordio's status. In assessing its relevance, though, we must first examine the nature of the District's grievance process.

That nature is a dual one, with teachers and the support staff operating under different terms and methods. Most important is what is covered by the grievance procedure. For the support staff, a grievance is defined as "any difference or dispute regarding the interpretation, application, or enforcement" of the terms of the collective bargaining agreement. For teachers, however, grievances are defined as "teachers' complaints . . . including those based upon the interpretation and application of the contract . . ." That is, any complaint voiced by a teacher, whether or not it relates to contract administration, can fall within the grievance procedure. Each contract provides for informal dispute resolution; while their terms are disparate (the teachers' contract is more explicit), their essential impact is the same. Both contracts provide that the employee may at his/her discretion, discuss the dispute with a supervisor. Given the informal nature of this level, the supervisor has the option, but not the obligation, of responding in writing. A written response is required, however, at the first formal step under both contracts. At this step -- numbered Step 2 in the support staff contract, Step 1 in the teachers' contract -- a written grievance has been submitted, either to the Personnel Officer (for support staff) or to the Division Chairperson or Area Coordinator (for teachers).

With that background, we understand Keiser's testimony to mean that he had received about 100 informal, oral complaints from teachers; that the vast majority related to the operations of the new Truax physical plant rather than actual

contract administration; that only one complaint was a grievance protesting contract administration; that Keiser attempts to respond to such complaints in writing, whenever possible; and that such responses as were written were typed by Cordio. Regarding support staff grievances, Keiser is neither the immediate supervisor nor "Personnel Officer," as defined in the collective bargaining agreement, and thus has no involvement in what the support staff contract terms a Step 2 grievance. Keiser testified he discusses complaints and grievances with Cordio, because he regards her as a colleague and respects her judgment or usefulness in this regard.

The correspondence which Cordio types is sent to the Union, and is therefore not confidential. On the record evidence, we are not convinced that such typing, even coupled with the discussions which Keiser elects to have with Cordio, makes Cordio privy to confidential labor relations matters.

Keiser also testified that the campus deans and chairpersons who report to him have their own confidential work, which is currently being performed by the confidential secretaries in the Personnel Department (who are not here at issue), but which Keiser would like to make Cordio available to perform. Such desire, however, does not, of itself, justify a finding that Cordio's position is itself confidential. First, the record does not indicate that the work itself is indeed confidential; second, the record does indicate that Keiser is not now making Cordio available in this capacity, even though she is currently treated as confidential; finally, Keiser's desire is more a speculative prediction than an actual proposal ready for implementation.

Based on Keiser's own responsibilities, and his testimony regarding Cordio, we conclude that the Administrative Secretary to the Truax Campus Administrator does not have access to or participation in confidential matters relating to labor relations in more than a de minimus degree, and thus is properly included in the bargaining unit.

2. Administrative Secretary to the Operations Administrator

The operations function covers administrative services such as purchasing, travel vouchers, and parking. It does not, however, entail any labor relations matters affecting District personnel. The incumbent in this position, Sandy Middleton, therefore has no involvement with, nor access to, contract negotiations, grievances, or other confidential matters. Accordingly, we conclude that it is proper to include this position in the bargaining unit.

3. Administrative Secretary to the Assistant Director/Student Services

The incumbent in this position, June Weger, has access to internal memoranda, correspondence and other documents relating to the operation of the Division of Student Services. On occasion, she has typed proposals for submission to the teachers' unit as part of the collective bargaining process. It is unclear whether the union eventually receives all of the material which Weger types, or whether some of the material is for internal administration discussion only. While it is also unclear precisely how much time Weger devotes to such matters; it appears that, over the course of a year, she devotes about 10 to 15 percent of her time to labor relations matters, with a much higher percentage, perhaps approaching half her time, during peak negotiating periods or the consideration of grievances. Thus, her involvement is somewhat more than de minimis.

The several administrative secretaries to the district administrators work in the same general area; the administrators have private offices, while the secretaries are separated only by modular cubicles. We also note the record evidence that Mitby regards the several administrative secretaries as somewhat interchangeable, so that he will utilize the staff of another administrator when his own two secretaries are unavailable. Thus, while Weger's involvement in grievance responses has been technically outside her published job description, it does not appear that the District is conniving to create an exigency merely to keep a position out of the unit.

Accordingly, because we conclude that the administrative secretary to the assistant director/student services has more than a de minimus involvement in confidential labor relations matters, it is appropriate that this position remain as confidential and therefore excluded from the bargaining unit.

4. Administrative Secretary to the Assistant Director/Instructional Services.

The incumbent of this position, Patricia Kovalaske, prepares and otherwise has access to, internal memoranda, correspondence and other documents involving the entire range of the District's instructional services; e.g., what courses are to be offered, what calendar is to be used, how teachers are assigned and evaluated, and so on. Kovalaske, who has been excluded from the unit as a confidential employee for the 20 years she has held this position, is the sole secretary for the Assistant Director/Instructional Services, Fred Mitchell.

It appears that Kovalaske has varying levels of responsibility and involvement in collective bargaining. First, she routinely types supporting data relating to contract proposals affecting teachers, which Mitchell utilizes as a member of the District's bargaining team. Second, she prepares material for Mitchell to present at preliminary, pre-bargaining meetings of District administrators. Third, she has been involved in the preparation for, and follow-through of, meetings to consider changes in the class schedule, which changes would impact on a matter subject to bargaining with the teachers' unit. Finally, she has, when so directed by the District Director, typed actual contract proposals for bargaining.

Mitchell frequently serves as the District's representative at Step 2 grievance hearings relating to teachers, and Kovalaske testified that she has participated in management discussions regarding the substance and merits of such grievances. Thus, Kovalaske not only types the District's response to teacher grievances, but she has knowledge of how and why such responses were reached, knowledge not otherwise available to the grievant and/or the grievant's representative.

The Union has accurately emphasized that the labor relations work which Kovalaske and Mitchell engage relates to the teachers and not the support staff. But since the essence of confidentiality is measured by the relationship of the contested position to the employer rather than by the relationship to various collective bargaining units, such emphasis is misplaced. 3/

Accordingly, because the record demonstrates that Kovalaske does have significant access to, knowledge of, and participation in confidential matters relating to collective bargaining and contract administration, we conclude that she is a confidential employee, and properly excluded from the bargaining unit.

B. Confidential Clerk Typist II

The incumbent of this position, Julie Pahl Washa, works in the District's Personnel office at close quarters with another clerical employee who is classified as confidential. Washa has a close and continuing working involvement with sensitive personnel matters, including the processing of teacher evaluations and the typing of disciplinary letters. But because the Commission has held that the mere access to personnel files, even if such files contain intimate personal data, is of itself not a significant indication of confidential status, further evidence is necessary to establish that this position is confidential. 4/

The record shows, however, that Pahl Washa is the principal custodian of the District's large grievance file. As manager of the grievance file, Pahl Washa has an ongoing working access -- access shared only by the District Director, the

3/ City of Madison, Dec. No. 23183 (WERC, 1/86).

4/ Kenosha County, Dec. No. 21909 (WERC, 8/84).

District's attorney, the Personnel Director and the Personnel Director's confidential administrative secretary -- to the background information which the District generates in preparing its responses. Thus, she has access to information far greater than that which ever becomes known to the grievant and the grievant's representative; information which the District can rightfully limit to employees with confidential status.

Accordingly, we conclude that the Confidential Clerk Typist II is a confidential employee, and is properly excluded from the bargaining unit.

II. Employees Claimed to be Supervisors

Guided by the statutory standard, Sec. 111.70(o)1, Stats., the Commission considers the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, or similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 5/

Not all of these factors need to be present; if a sufficient number appear to a significant degree, we will find an employee to be a supervisor.

Of the four positions which the District contends are supervisory, we find that two satisfy this standard.

A. Information Systems Manager 1

The incumbent of this position, Nathaniel Ellis, functions as chief of a section composed of two units with four permanent positions each, plus about 14 temporary work-study student employees. The two sections comprise data entry, in which a lead worker makes most work assignments, and computer operations, a round-the-clock function in which only one employee works the same shift as Ellis. In that capacity, he devotes the vast majority of his time to organizational and work scheduling matters, with only about ten percent of his time being spent or devoted to hands-on work similar to that performed by other section personnel. This balance is not dispositive, however, of the issue of his claimed supervisory status.

The matter of temporary student employees arises frequently in the consideration of positions the District claims to be supervisory. Unlike permanent employees, whose hiring is through a carefully delineated, highly centralized process, temporary student employees are hired through an ad hoc, highly decentralized process, in which the students are hired directly by the person who has requested position authorization. Unlike permanent employees, these temporary student employees, by definition, must be students and have no expectation of continuing employment. Further, the record evidence indicates that the ability to hire temporary student employees is held by a considerable number of District

5/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83).

employees, both within and without the bargaining unit, thus indicating that these decisions are routinely entrusted to persons who do not exercise the independent judgment customarily associated with supervisory status. 6/

Ellis has had varying degrees of involvement in specific personnel decisions. Like numerous other department personnel, both within and without the bargaining unit, he has the authority to hire temporary work-study student employees. On at least one occasion, he has exercised the authority to terminate one such temporary employee. He has not, however, been involved in the layoff, promotion, or transfer of any permanent section employee, and it appears that his one experience in issuing a formal letter of discipline to a permanent employee was with the review and prior approval of the department administrator. Ellis has also completed the rough drafts for the standard three and six month evaluations, which evaluations were then submitted to the administrator for his final review and approval.

In assessing Ellis's authority to direct and assign the work force, we have already noted that Ellis devotes most his time to organizational matters; such activity includes scheduling what projects are to be run, troubleshooting problems which arise, and generally ensuring that the section carries out its duties. But the lead worker in data entry makes most work assignments there, while the computer operators have considerable independence. Thus, while Ellis has exercised the authority to authorize time off and overtime, the record indicates that he is primarily supervising an activity rather than supervising employees.

Finally, the organizational chart indicates that only two persons -- the Administrator and Deputy -- exercise greater line control over the employees in Ellis's section. However, since those two individuals are routinely available for consultation and authority back-up, this factor carries slight weight in balancing the District's claim.

Weighing all these factors, we conclude that Ellis' authority better resembles that of a technical expert than that of a supervisor within the statute's meaning, and that he makes few decisions of a specifically personnel or labor relations nature. Accordingly, we conclude that the Information Systems Manager 1, Operations Section, Data Center Bureau, Information Systems Department, is not a supervisor, and is properly included in the bargaining unit.

B. Information Systems Manager 2

The incumbent of this position, Joseph Nagle, functions as the head of a bureau with only two permanent employees and from eight to fifteen temporary work-study student employees. Unlike Ellis, Nagle spends the vast majority of his time performing the same work tasks as the other bureau personnel, with only about ten percent of his time devoted to supervisory activities.

Like Ellis, Nagle has also had varying degrees of involvement in specific personnel decisions. Most significantly, he recommended to the Administrator the extension of the probationary period for one of the two permanent employees, which recommendation was adopted. But the record shows that it was the Administrator, not Nagle, who eventually determined that the employee had passed probation. Like many others both within and without the unit, he has exercised the authority to hire and choose which temporary work-study student employees to hire. But while he did participate in one initial screening and one preliminary interview to fill the two permanent positions, Nagle did not participate in the final interview for

6/ Unlike the hiring process for permanent employees, the hiring process for temporary student employees is not marked by the exercise of independent judgment by the appointing authority. Cf., Madison Metropolitan School District, Dec. No. 13735-D, (WERC, 8/79), in which we found that the routinized hiring of temporary employees could be a partial indication of supervisory status, provided there were added qualifying factors clearly in the record. In that case, Program Leaders were found to be supervisors because they hired and supervised a vast number of volunteers and part-time employees (about 1,800), they were empowered to grant mid-year raises, they enjoyed apparent autonomy in work assignment, and they did virtually no work similar to that performed by those they oversaw. In contrast, Ellis utilizes only about 14 student employees, he cannot alter the pay schedule, and he has relatively little autonomy in work assignment.

either, or significantly influence the hiring for those posts. Nagle has not been involved in the transfer, layoff or grievance of any employee. Nagle has some, but limited, discretion in scheduling employees, in that he can authorize certain flex-time arrangements, but he cannot schedule vacations or approve overtime.

The District has also argued, in its brief, that Nagle's position is also properly classified as managerial. In determining whether an employee is managerial, the Commission has consistently held that the employee must participate in the formulation, determination and implementation of policy to a significant degree or possess effective authority to commit the employer's resources. 7/ We have interpreted "commitment of resources" to mean the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 8/

Nagle's position description charges him with the responsibility to make recommendations, "as appropriate, to improve operations and procedures." Nagle also has exercised the authority to allow modest flexibility in individual work schedules, within his general responsibility of ensuring that the work of his bureau is performed. Given the direct line supervision under which he operates, however, and the overall policy oversight which his own supervisors operate under, this level of authority falls far short of being the effective authority to commit the District's resources. Meanwhile, there is no evidence that Nagle has any authority over the department's budget.

Accordingly, we conclude that the Information Systems Manager 2, Instructional Services Bureau, ISD, is neither a supervisory nor a managerial employee, and is thus properly retained in the bargaining unit.

C. Information Systems Manager 3

The incumbent of this position, Michael DiLorio, functions as the head of a section with three permanent employees, and one temporary work-study student, and reports to the Deputy Administrator and Administrator.

DeLorio's position description calls for DeLorio to recommend to the Administrator the suspension, discharge, assignment, evaluation and discipline of section staff and to adjust grievances throughout the department. The record indicates that DiLorio has been involved in assignment and evaluation. The position description also calls for DiLorio to "assist" in the hiring of new section personnel.

The division of DiLorio's time between working and supervising is not as extreme as either Ellis's or Nagle's, and averages about 30 to 40 percent supervising and advising other employees and 60 to 70 percent working in a capacity similar to the three permanent positions he oversees. Such supervisory work includes reviewing and approving the weekly project plans; assisting in project implementation; and conducting the standard three and six month performance evaluations. In directing and assigning the work force, DiLorio cannot commit section personnel to working on major projects prior to their approval by the policy-making Steering Committee, but he does have the authority to exercise independent judgment in assigning special tasks of a more modest nature.

DiLorio is one of two ISM 3's in the department. The other such position which was just being filled at the time of the hearing, oversees 11 positions; by joint agreement, that position has been excluded from the unit as supervisory. We do not, however, regard as dispositive such agreement, but instead measure DiLorio independently.

In summary, the record evidence is that DiLorio has been given sufficient stated authority to be found a supervisor and we have no basis in the record for concluding otherwise. Accordingly, we conclude that the Information Systems Manager 3, Technical Support Section, ISD, is a supervisory employee, and is properly excluded from the bargaining unit.

7/ Waushara County, Dec. No. 21422 (WERC, 2/84).

8/ Manitowoc County, Dec. No. 20847 (WERC, 7/83).

D. Food Service Manager

The position of Truax Campus Food Service Manager is a new one, dating back less than four months at the time of hearing; the tenure of the current incumbent, Jean Hammond, has been of even shorter duration, barely one month at the time of hearing.

Given this limited experience, we look for guidance to the published position description, presented by the District without challenge by the Union. That evidence indicates several supervisory responsibilities assigned to the position. For example, the manager is to recommend the hiring, promotion, transfer, suspension, layoff, assignment, discipline, suspension and discharge of employees and to plan, train, organize, schedule and supervise them. Significantly, the manager does not perform tasks similar to those performed by the employees she oversees, and those employees do not perform tasks similar to hers.

It is also noteworthy that the published qualifications for the position call for, inter alia, at least one year's experience "in the supervision of food service employees," plus either an associate degree in a food service program or a bachelor's degree and four years experience in the field. While the requirement for such training of itself does not establish supervisory status, it is indicative of the difference in responsibilities between Hammond and the employees under her.

We note that the total roster of food service employees consists of 5 permanent employees and up to 15 student employees; and that other than the Manager and Chairperson of the Food Service Industrial Foods Department, there are no other supervisors for this area. This ratio, together with the fact that Hammond has her own office and that all of her work is of an overseeing nature rather than direct food preparation and serving, adds to the several indicia of supervisory status indicated in her job description. 9/ We conclude that the Food Service Manager is a supervisor, and is properly excluded from the unit.

III. Employees Claimed to Be Both Confidential and Supervisory

There are two positions which the District contends should be excluded from the unit because they are both confidential and supervisory. One, the Payroll Accountant, is currently in the unit, while the other, the Confidential Information Systems Technician 6, is not.

A. Payroll Accountant

The incumbent of this position, Patty Pilsner, has a continuing working relationship with payroll-related personnel files containing information concerning salary, benefits, leave time, and so on, which files and information are available to the individual employees. The Commission has previously held that such access, of itself, does not confer confidential status. 10/

At the direction of the Finance Administrator, Pilsner also does the preliminary computations on the cost of various salary proposals, projecting how the salary schedule would be affected by changes in varying percentages. Such work does pertain to labor relations. And, depending on the level of detail and the nature of the variables which Pilsner was told to factor, such information could well make her privy to confidential collective bargaining strategy. On the basis of the record, however, we believe that Pilsner's preliminary computations are basically routine, and we note that the payroll clerk, a bargaining unit employee, assists in this function. We also note that the Controller and the Finance Administrator, to whom Pilsner reports, have the services of their own confidential secretary, whose exclusion from the unit is not being challenged.

9/ See Dane County, Dec. No. 22976-B (WERC, 1/87).

10/ Appleton Area School District, Dec. No. 22338 (WERC, 7/87).

Pilsner oversees two full-time and one part-time permanent positions, plus varying numbers of temporary work-study students. Pilsner's involvement in hiring decisions has fluctuated widely. She was not involved at all in the hiring of the clerk-typist, a part-time position. In the hiring of the full-time payroll clerk, though, she was one of two members in the final interview panel, and her recommendation was followed by her superior. However, the hiring of the payroll clerk was prior to the employment of the current Personnel Director, and her involvement was not replicated in the hiring process for the new receptionist, who will report to Pilsner. Thus, it seems reasonable to conclude that, whatever authority Pilsner may have had to effectively recommend the hiring of the payroll clerk, she no longer has regarding the hiring of permanent employees. Of course, like many others, both within and without the unit, Pilsner does still have the authority to hire and direct temporary work-study student employees. In supervising the activity of her area, Pilsner does have some authority to direct and assign the work force. However, the record evidence is that such assignments are largely routine, and that they do not involve the exercise of independent judgment.

Pilsner has not been involved in any decisions to promote, reclassify, transfer, discipline or discharge any employee, and she does not have the authority to approve vacation schedules or overtime.

For these reasons, we conclude that the Payroll Accountant does not demonstrate the indicia of either confidential or supervisory status in sufficient degree to warrant either designation, and thus is properly included within the bargaining unit.

B. Confidential Information Systems Technician 6

The incumbent of this position, Jayme Kerr, functions essentially as an administrative assistant to the Administrator, Information Systems Department. She has three main areas of responsibility, with about half her time devoted to overseeing the telephone and security systems, and the remaining time split between directing the work of one clerical employee and performing clerical work herself.

Kerr reports to the Administrator of the Information Systems Department, Al Larson. Since Larson's involvement in labor relations is limited to the personnel of his department, Kerr is likewise limited. Such involvement is further limited by the fact that Larson does not have direct participation in collective bargaining negotiations; therefore, neither does Kerr.

Kerr's only participation in labor relations is her assistance in the preparation and processing of correspondence related to evaluations, grievances, discipline, and so on. Because such activity regarding the discipline and grievances has been extremely infrequent, and because Kerr in the course of such duty does not become privy to information not otherwise made available to the party affected thereby, this is not enough to confer confidential status.

In also claiming supervisory status for Kerr, the District asserts that Kerr ranks "second in command" behind the Administrator and Deputy. However, since Kerr surpasses in rank and pay only one of the Department's 30-odd positions, this assertion is dubious. According to her testimony, Kerr spends about one-quarter of her time directing the only permanent employee working directly underneath her, an IST-4, and an equal amount of time performing the same general clerical tasks as that post. Although Kerr was the former incumbent in the IST-4 position, she served only on the intermediate, and not the final interview panel when the District filled that position; she did, however, provide a verbal recommendation. And, as noted, numerous employees, both within and without the unit, have the authority to hire and assign work-study students, which authority Kerr shares.

In assigning the work force and exercising independent judgment, it is important that Kerr cannot arrange the schedule of the IST 4, although she can for the temporary work-study employees. Finally, Kerr's experience in discipline is limited to discussing with some of the students their problems with tardiness.

Accordingly, for essentially the same reasons as with Pilsner, above, we conclude that the Confidential Information Systems Technician 6 is neither confidential nor supervisory, and thus is properly included in the bargaining unit.

Dated at Madison, Wisconsin this 17th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner