

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**VILAS COUNTY COURTHOUSE EMPLOYEES,
LOCAL 474-A, AFSCME, AFL-CIO**

Involving Certain Employees of
VILAS COUNTY

Case 7
No. 55337
ME(u/c)-597

Decision No. 16764-B

Appearances:

Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 8033 Excelsior Drive, Suite B, Madison, Wisconsin 53717-1903, appearing on behalf of Vilas County Courthouse Employees, Local 474-A, AFSCME, AFL-CIO.

John Prentice and **Evan N. Claditis**, Prentice and Phillips, LLP, Attorneys at Law, 1110 North Old World Third Street, Suite 405, Milwaukee, Wisconsin 53203-1117, appearing on behalf of Vilas County.

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

Vilas County Courthouse Employees, Local 474-A, AFSCME, AFL-CIO filed a unit clarification petition on April 16, 2003, with the Wisconsin Employment Relations Commission seeking to include the Register in Probate, Financial Manager-Social Services, Mapping Surveyor Specialist and Advertising Director in an existing Vilas County non-professional employee bargaining unit represented by Local 474-A.

Hearing in the matter was held on July 17, 2003, in Eagle River, Wisconsin, before Examiner Lauri A. Millot, a member of the Commission's staff. In advance of the hearing, the parties resolved the status of the Mapping Surveyor Specialist and the Advertising Director. At hearing, Vilas County argued that the Register in Probate should continue to be excluded from the unit because she is a managerial and professional employee and that the Financial Manager should also continue to be so excluded because she is a supervisor and managerial employee.

Dec. No. 16764-B

The parties filed briefs and reply briefs, the last of which was received December 4, 2003.

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

FINDINGS OF FACT

1. Vilas County Courthouse Employees, Local 474-A, AFSCME, AFL-CIO, hereinafter Union, is a labor organization with its principal representative's office located at 5590 Lassig Road, Rhinelander, Wisconsin.

2. Vilas County, hereinafter County, is a municipal employer with its offices located at 330 Court Street, Eagle River, Wisconsin. The County provides governmental services to the citizens of Vilas County.

3. In VILAS COUNTY, DEC. NO. 16764 (WERC, 2/79), the Wisconsin Employment Relations Commission certified Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, as the exclusive bargaining representative of a bargaining unit defined as

. . . all regular full-time and part-time clerical and related employees of the Employer employed in the courthouse and the Department of Social Services, including maintenance personnel, but excluding elected officials, supervisory personnel, confidential employees, professional employees, law enforcement officers and highway department employees, . . .

4. The incumbent in the position of Register in Probate/Probate Registrar is Mary Lou Bloch. Bloch has held this position for 24 ½ years. Bloch regularly works a 40-hour workweek, Monday through Friday, from 8:00 a.m. to 4:00 p.m. in office space adjacent to the County court room and separate from the Clerk of Court's office. Bloch earns a salary of \$28,400. Bloch was a member of the Union bargaining unit until June 25, 2002, when the County removed her position from the unit.

5. Bloch's job description as revised in June, 2002, reads as follows:

Purpose of Position

The Register in Probate/Probate Registrar is responsible for administrative and managerial work in the operation of the probate department of the Vilas County Circuit Court. The Register in Probate/Probate Registrar performs various

duties requiring considerable knowledge of the procedures as outlined by Wisconsin laws governing probate, guardianship, mental and alcohol commitments and adoption proceedings and provides considerable services to the Probate Court and the public. All duties and responsibilities are performed under and subject to the review and guidance of the Vilas County Circuit Court Judge.

Register in Probate: Essential Duties and Responsibilities*

1. Responsible for management and supervision of all department employees, including the authority to effectively recommend hiring, promotion, transfer, discipline and discharge of employees in the department.
2. Keeps a court record of every proceeding held in court regarding probate, guardianships, mental health and adoptions; maintains an alphabetical index to each court record and file pertaining to the original documents.
3. Responds to inquiries regarding probate matters from the general public and attorneys; assists and directs attorneys by advising them as to what documents must be filed to meet the requirements of the law; screens each document received to ensure administrative accuracy; files all documents received.
4. Makes orders for hearings when an application is made to the Court in a proceeding under Chapters 851 and 880 of the Wisconsin Statutes requiring notice of hearing; schedules all required hearings on Court calendar; administers any oaths required by law.
5. Functions as Clerk for all probate, guardianships, mental and alcohol commitments, and adoptions proceedings.
6. Establishes and maintains a proper suspense system to assure that the required documents are filed within the time limits allowed for by law.
7. Prepares certified copies of documents when requested by the general public, attorneys or agencies.
8. Collects appropriate fees for filing, form or copy work and prepares reports, for the Treasurer's Office; prepares periodic and special statistical reports upon request.

9. Submits records and reports to the Director of State Courts Information Systems Office on a weekly basis as to the opening and closing of cases and hearings held regarding probate, guardianships, mental and alcohol commits, and adoption matters.
10. Prepares court records for transmittal to the Appellant Court when required.
11. Maintains and orders a supply of forms and office supplies.
12. Responsible to ensure confidentiality with regard to records and information that are confidential records according to law.
13. Responsible to ensure that all clerical duties for the Department are completed as required by the Judge, audits all annual accounts filed regarding guardianship cases.
14. Responsible to prepare and administer the Register in Probate budget.

Probate Registrar: Essential Duties and Responsibilities*

1. Exercises jurisdiction over informal administration.
2. Determines what facts are necessary to be shown on application for informal administration to ensure completeness, what standards are necessary to be applied in determining whether the necessary consents are complete, whether the decedent died testate or intestate, whether or not it is necessary for a guardian ad litem to be appointed, whether the person nominated for personal representative is suitable or not or is disqualified, whether the attorney fees are reasonable, and whether the estate has been fully administered.
3. Exercises considerable judgment and discretion without the continuous supervision by the Court.
4. Interviews individuals inquiring about probate procedures that may be accomplished without employing an attorney; advises individuals as to what type of probate procedure will be necessary to handle the estate of the deceased person.
5. Schedules and conducts hearings of informal administration; takes testimony on proof of heirship; makes determinations as to whether or not all requirements have been met through the informal administration, and if requirements have not been met, denies the application for informal administration.

6. Insures that the required documents are filed within the time limits established by law; issues Orders to Show Cause in the event documents are not filed within the time limits allowed by law.
7. Provides personal representative with advice and guidance on the preparation and submission of any and all documents required to be prepared and filed.

Register in Probate Designated as Court Commissioner: Essential Duties and Responsibilities*

1. Conducts hearings for each protective placement case to fulfill the required WATTS review under Wisconsin law, which includes taking testimony and reviewing the reports.
2. Administers oaths, takes testimony, certifies acknowledgments, allows accounts, and fixes the amount and approves the sufficiency of bonds.
3. Schedules and conducts non-contested probate proceedings taken by sworn testimony (Proof of Heirship and Proof of Final Account)
4. Signs any order of certificate required for those matters that have been authorized by the Vilas County Circuit Court Judge.
5. Admits uncontested Wills to probate; may enter the order admitting the Will.
6. Grants Domiciliary Letters to the Personal Representative and issues Letters of Trust if the will establishes a trust.

Knowledge and Skills Required

Must possess strong communication, organizational and management skills and must be able to exercise considerable judgment and discretion without the continuous supervision by the Vilas County Circuit Court.

Training and Experience

Graduation from high school or equivalent training and experience. Associates (sic) or other post-secondary degree preferred. Prior experience working in a court and/or legal setting is beneficial.

6. Bloch has primary responsibility for administrative processing of County probate matters including estates, guardianships, protective placements, mental and alcohol commitments and adoptions consistent with her statutory responsibilities as Register in Probate/Probate Registrar enumerated in Chapters 55 and 880 of the Wisconsin Statutes. Bloch has a caseload of approximately 100 cases.

Bloch expends approximately 10 percent of her time conducting hearings in probate matters and in uncontested matters for persons under guardianship and protective placement, consistent with *WATTS V. COMBINED COMMUNITY SERVICES*, 122 Wis.2d 65, 362 N.W. 2d 104 (1985), to determine if the person remains in need of protective care and custody and to determine whether the placement is the least restrictive. Bloch reviews the report of a guardian ad litem whom she has appointed, takes testimony from the attorney and makes a decision as to the continued placement of the person. Bloch does not conduct hearings for adoptions, mental health or non-WATTS review guardianships.

Bloch informally mediates contested probate matters prior to case presentation to the judge.

Bloch responds to questions from attorneys and the public regarding the probate process and filing requirements.

The elected Clerk of Court is responsible for preparation of the Circuit Court budget. The Register in Probate/Probate Registrar's expenses are part of the Court budget. To assist the Clerk in budget preparation, Bloch verbally informs the Clerk of large expenses and/or anticipated increases or decreases in the probate court caseload. Bloch does not meet or present the Register/Registrar portion of the budget to the County Finance Committee. Bloch periodically requests a printout of probate court costs from the County Clerk to monitor budget balances.

Bloch drafts and submits invoices for payment of court-ordered psychological evaluation, guardian ad litem fees, adversary counsel costs, office supplies and the leased photocopier. Bloch submits the invoices to the Clerk of Court for her signature. Bloch does not have the authority to transfer monies from one budget line item to another; these requests are submitted to the Finance Committee by the Clerk of Court.

Although Bloch has questioned the fees charged by physicians, psychologists and guardians ad litem, she does not have the authority to modify the charges.

Bloch has statutory authority to challenge the level of attorney's fees in probate matters. If Bloch believes an attorney's fees are excessive, she speaks with the attorney and if the fee is not adjusted, schedules an order to show cause hearing at which time the attorney and personal representative present evidence as to the reasonableness of the fees. Bloch has the authority to determine whether the fees are reasonable.

Bloch monitors the timeliness of probate filings. In the event an attorney is late in filing, a computer generated delinquent notice and 30-day extension of time is granted consistent with State statute. If the attorney fails to file within the 30-day extension, Bloch schedules a hearing to show cause before the Circuit Court Judge in formal probate matters and before herself in informal probate matters.

Bloch audits annual guardianship accounts and final probate accounts. When Bloch encounters an account with which she is uncomfortable, she and the Circuit Court Judge discuss her concerns and determine whether the attorney/representative will be expected to justify the account or whether the Judge believes the accounting to be acceptable. During 2002, Bloch was involved in reporting to the Sheriff's Department a guardian who was inappropriately spending the ward's money which resulted in the filing of a five count criminal complaint. Bloch signs the Final Judgment for estates in the absence of the Judge.

Bloch receives a reimbursement list from the County Social Services Department which identifies sources of reimbursement (medical assistance, social security) for guardian ad litem fees. Based on this list, Bloch either submits a bill to the Social Services medical assistance case worker for payment of guardian ad litem fees from the ward's income or to the State of Wisconsin if the ward does not receive medical assistance. Bloch and Social Services devised this method of reimbursement.

Bloch does not sufficiently participate in the formulation, determination and implementation of County policy or have sufficient authority to commit County resources to be a managerial employee.

7. Bloch is a high school graduate who has worked as a legal secretary and has completed multiple computer-related courses at Nicolet Area Technical College. Bloch regularly attends the Register in Probate Association annual meeting which is a two and one-half day conference where probate training is conducted. Bloch reviews law journals and guardianship newsletters.

Bloch's work does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

8. Deborah Varro has been the Financial Manager in the Department of Social Services since the position was created in the summer of 2000. Varro is supervised by Department Director Schiek who announced the creation and filling of the new position through the following memo to Department staff:

As many of you already know I have been working with the various boards to create a new position that will allow for Supervisory powers and expanded responsibilities. This position will replace our current Bookkeeper A position. It's been a long process to finally get this to the County Board level but

yesterday 6/20/00 the county board passed a resolution creating a Financial Manager position to replace the Bookkeeper A. The Financial Manager position will officially take effect on 7/10/00 when Debb Varro will be appointed to that position by our Social Services Board. The position is a non-union, hourly position which means Debb will be here until 4:30 P.M. (the same as the Social Workers). Debb's new job description includes direct supervisory authority over the support staff (Secretary A, Secretary B, Bookkeeper B, Social Worker Assistant) and supervisory authority over the department in the absence of the Director with the exception of Social Worker functions. As this is new to us all, there may be situations that need clarification but if we work together I don't foresee any problem.

I am personally excited about this change in the department. I had done research prior to making this recommendation that showed a glaring need. I view a change like this as being beneficial to the department for many years to come.

I know some of you may be skeptical or feel this is not needed, to that, I can only respond that I believe this is in the best interest of this department. I hope we are all willing to work together, and I congratulate Debb on her promotion.

9. Varro's position description states in pertinent part:

. . .

E. Supervision

1. Provide direct supervision of support staff to include Administrative Secretaries, Bookkeepers, and Social Services Aides.
2. Recommend hiring, firing and discipline of support Staff.
3. In the absence of the Director, supervisory responsibilities will include signing of documents and providing overall departmental supervision.

10. Varro is the only Department employee providing day-to-day supervision of the four clerical/administrative employees in the Department's Clerical Support unit and spends 20% of her work day doing so. She approves sick leave, vacation, compensatory time requests, can authorize overtime and will play a role in the adjustment of employee grievances. Varro is paid at least \$4.00 per hour more than the employees she supervises. She has the independent authority to issue verbal and written reprimands and can effectively recommend hiring of employees.

11. Varro has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSIONS OF LAW

1. The Register in Probate/Probate Registrar is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. The Register in Probate/Probate Registrar is not a professional employee within the meaning of Sec. 111.70(1)(L), Stats.

3. The Financial Manager is a supervisor within the meaning of Sec. 111.70(1)(o)1, 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 Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The bargaining unit described in Finding of Fact 3 above is hereby clarified by:

1. The inclusion of the Register in Probate/Probate Registrar.
2. The continued exclusion of the Financial Manager.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of June, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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

POSITIONS OF THE PARTIES

The Union

The Union contends the Probate/Probate Registrar and Financial Manager are both non-professional municipal employees who should be included in the bargaining unit.

Relying on *KEWAUNEE COUNTY v. WERC*, 141 Wis.2d 347, (Ct. App. 1985), the Union challenges the County's alleged managerial exclusion of the Register in Probate/Probate Registrar by asserting that she has no significant policy role because all her functions are statutorily required and that she does not have the authority to commit the County's resources. The Union argues that this Register in Probate/Probate Registrar has less managerial authority than the non-managerial Register in Probate in *KEWAUNEE COUNTY* because she does not have a separate budget, cannot make line item transfers, and does not have authority to enter into contracts. Therefore, the Union asserts the Register in Probate/Probate Register is not a managerial employee.

With regard to the County's assertion that the Register is a professional employee, the Union notes that she is a high school graduate with limited additional formal training. The Union argues that the knowledge needed to perform her work is typically acquired through experience and thus does not meet the statutory requirements of a "professional employee."

Turning to the Financial Manager, the Union contends she is neither a managerial employee nor a supervisor.

Regarding the contention that Varro is a managerial employee, the Union asserts that Varro acts only as a resource to the Director who has managerial responsibility for preparation of the Social Services Department budget. Thus, Varro does not meaningfully commit the County's resources.

As to the County's contention that Varro is a supervisor, the Union argues that she does not have a sufficient combination of supervisory duties and responsibilities to so qualify. The Director and Social Services Board hire employees. Varro's involvement with sick leave, vacation compensatory time, breaks and overtime approval is perfunctory. She does not prepare evaluations, is not significantly involved with filling bargaining unit vacancies by transfer, and does not adjust grievances. Although Varro claimed she was "watching employees all the time," the Union asserts that does not constitute supervision. Nor does the Financial Manager qualify as a supervisor based on the duties she performs in the absence of the Director.

Based on the record as a whole, the Union respectfully requests an order placing the Register in Probate/Probate Registrar and Financial Manager in the bargaining unit represented by Local 474-A.

The County

The County asserts that continued exclusion of these two employees from the unit is appropriate because the Register in Probate/Probate Registrar is a managerial and professional employee and the Financial Manager is a managerial employee and a supervisor.

The County contends the Register in Probate/Probate Registrar performs predominately intellectual work involving the consistent exercise of discretion requiring a body of knowledge she acquired through a prolonged course of specialized intellectual instruction and study. Although Bloch does not hold a college degree nor does her position require one, “the professional status of a position does not turn on the incumbent’s possession of an advanced degree or a stated requirement of an advanced degree.” CLARK COUNTY, DEC. NO. 19744-H (WERC, 10/99). Bloch possesses an intimate knowledge of probate law, remains current on law journals and periodicals, has attended seminars where she received intensive training, and previously worked in a law office. She fields telephone calls from attorneys on a daily basis and provides them guidance. Bloch exercises discretion when she conducts WATTS reviews, appoints guardians ad litem, reviews accounts, decides whether to grant time extensions to attorneys and she decides whether she or the Judge will preside over a particular hearing. Thus, the County contends that she is a professional employee.

In addition to meeting the statutory requirements of a professional employee, the County asserts the Register in Probate/Probate Registrar is also a managerial employee. Bloch establishes the budget for her office as did the managerial Register in Probate in EAU CLAIRE COUNTY V. WERC, 122 WIS.2D 363, 362 N.W. 2D 429 (CT. APP. 1984). Her managerial status is further established by her ability to challenge attorney’s fees and reduce guardian ad litem and physician costs when she determines the amounts are excessive. In addition, Bloch envisioned and implemented a guardian ad litem direct pay method from the ward’s income rather than from the County funds.

As to the Financial Manager, the County contends that she is a managerial employee because of her extensive involvement in the preparation and presentation of the Social Services Department budget and her ongoing efforts to improve cost efficiency in the workplace.

The County argues the Financial Manager is a supervisor because she provides direct day-to-day supervision of four employees over whom she has significant disciplinary authority. The County asserts that the Manager will have significant involvement in any hiring decisions as well as in the adjustment of employee grievances.

For the above reasons, the County asserts that the Register in Probate/Probate Registrar and Financial Manager should remain excluded from the bargaining unit.

DISCUSSION

Register in Probate/Probate Registrar

We look first at the question of whether the Register/Registrar is a managerial employee.

A “managerial” employee is specifically excluded from the definition of “municipal employee” found in Sec. 111.70(1)(i), Stats. However, because there is no statutory definition of a “managerial” employee, that term has been defined by the Commission through case law. With judicial approval, the Commission has defined a “managerial” employee by considering the extent to which the employee participates in the formulation, determination and implementation of management policy or possesses the authority to commit the employer’s resources. CITY OF MILWAUKEE V. WERC, 71 Wis.2d 709 (1976); VILLAGE OF WHITEFISH BAY, 103 Wis.2d 443 (Ct. App. 1981); EAU CLAIRE COUNTY V. WERC, 122 Wis.2d 363 (Ct. App. 1984); KEWAUNEE COUNTY V. WERC, 141 Wis.2d 347 (Ct. App. 1987); MANITOWOC COUNTY V. LOCAL 986A, 170 Wis.2d 692 (Ct. App. 1992). To confer managerial status, the employee’s policy role must be “at a relatively high level” MARINETTE COUNTY, DEC. NO. 26154-B (WERC, 3/92), or the employee’s authority to commit resources must involve allocation of resources in a manner which significantly affects the nature and direction of the municipal employer’s operations. VILLAGE OF JACKSON, DEC. NO. 25098 (WERC, 1/88).

The managerial employee status of a Register in Probate was addressed by the courts in EAU CLAIRE, SUPRA, KEWAUNEE, SUPRA, and MANITOWOC, SUPRA. The court’s decisions make it clear that the managerial status of the Register/Registrar is a case by case determination.

In EAU CLAIRE, the court affirmed the Commission’s determination that because the Register/Registrar reported to the circuit court and the court thereby had final approval over the Register/Registrar’s activities, the Register/Registrar was not a managerial employee by virtue of formulation, determination and implementation of management policy. However, because the Register/Registrar prepared a proposed budget and presented it to the county board, the court concluded that the Register/Registrar had sufficient authority to commit the employer’s resources to be a managerial employee.

In KEWAUNEE, the court affirmed the Commission’s determination that because the Register/Registrar’s duties are defined by statute, there was little, if any, opportunity for her to affect the formulation, determination or implementation of management policy. The court also clarified its EAU CLAIRE decision by holding that preparation of a proposed budget and submission to the county board does not in and of itself establish managerial status. Rather,

the critical inquiry is whether the budget preparation duties are ministerial (i.e. simply projecting the future cost of current operations) or instead reflect the power to determine the manner and method by which the office meets its responsibilities.

Lastly, in MANITOWOC COUNTY, the court concluded that the Register/Registrar was a managerial employee because she exercised more than ministerial budgetary authority and had been ordered by the circuit court to serve as a department head.

Applying EAU CLAIRE, KEWAUNEE and MANITOWOC to the facts in this record, we conclude that the Register/Registrar is not a managerial employee. As evidenced by KEWAUNEE COUNTY, acquiring managerial status through the formulation, determination and implementation of management policy is difficult where one's duties are statutorily established. Particularly where, as here and as in EAU CLAIRE, those responsibilities “. . . are performed under and subject to the review and guidance . . .” of the circuit court judge, we think it clear that the Register/Registrar is not a managerial employee by virtue of policy involvement.

With regard to alleged managerial status by virtue of the authority to commit the County's resources, the record establishes that although Bloch is consulted for the purpose of projecting probate income and expenses and identifying potential large future expenditure items, it is the Clerk of Court that prepares the proposed Circuit Court budget, including the component applicable to the Register/Registrar, and presents said budget to the Finance Committee. Furthermore, Bloch must obtain the signature of the Clerk of Court in order for an invoice to be processed and does not have the authority to enter into contracts or leases. Thus, we conclude that the Register does not have sufficient authority to commit the County's resources to be a managerial employee.

In reaching this conclusion, we have considered and rejected the County argument that Bloch is similar to the Register in Probate/Probate Registrar found to be managerial by the Commission in CRAWFORD COUNTY, DEC. NO. 27828-C (WERC, 8/95) TOROSIAN DISSENTING. In CRAWFORD COUNTY, unlike here, the Register in Probate/Probate Registrar prepared and was responsible for an independent budget and had independent purchasing discretion within that budget. Thus, it is clear that Bloch's authority to commit the County's resources is significantly less substantial than was the case in CRAWFORD COUNTY.

In determining whether Bloch is a professional employee, we apply Sec. 111.70(1)(L), Stats., which defines the term “professional employee” in pertinent part as follows:

1. Any employee engaged in work:
 - a. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
 - b. Involving the consistent exercise of discretion and judgment in its performance;

- c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
- d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or . . .

Section 111.70(1)(L)1.d., Stats., requires that we determine whether the work of the Register “requires” knowledge customarily acquired through a specialized four year college degree. Employer-established educational requirements for the work and the educational attainment of the incumbent performing the work are relevant considerations when making the Sec. 111.70(1)(L)1.d., Stats., determination. In this regard, the record establishes that the employer-established job requirement is a high school diploma or its equivalent, although an Associate degree or other post-secondary degree and experience in a court or legal setting is preferred or beneficial. Bloch is a high school graduate with some experience working in a law firm and some knowledge gained through attendance at relevant seminars. Based on our consideration of Bloch’s work, we are persuaded that the employer-established educational requirements and Bloch’s own educational background confirm that the Register’s work does not require knowledge customarily acquired through a specialized four year college degree. Thus, we conclude Bloch is not a professional employee.

The County argues that Bloch’s knowledge of “budgetary principles” is similar to those of the professional Data Processing Analyst in CITY OF CUDAHY, DEC. NO. 19507 (WERC, 3/82) and that her knowledge in the areas of estates, guardianships, mental and alcohol commitments and adoptions is similar to that of the professional Judicial Assistant in WALWORTH COUNTY, DEC. NO. 9394-E (WERC, 2/96). We disagree. As previously discussed above, Bloch does not have a budget to manage and further there is no evidence in the record to establish that her work requires knowledge of “budget principles.” Thus, CUDAHY is clearly distinguishable. As to WALWORTH, the record established that the Judicial Assistant researched and drafted decisions signed by the judge with little oversight. While Bloch’s probate work is important and valuable, it does not require knowledge customarily acquired through a law degree.

Given all of the foregoing, the Register in Probate/Probate Registrar shall be included in the Local 474-A bargaining unit.

Financial Manager

We look first at the question of whether the Financial Manager is a supervisor.

Section 111.70(1)(o)1, Stats., defines a supervisor as:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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, 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 primarily supervising an activity or is primarily supervising employees;
6. 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.

MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 6595-C (WERC, 5/96).

We have consistently held that not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an individual to be a supervisor. CITY OF TWO RIVERS (POLICE DEPT.), DEC. NO. 21959-A (WERC, 2/91).

Looking first at Factor 1, the record establishes that Varro has significant disciplinary and hiring authority. She has independent authority to issue verbal and written reprimands. Director Shiek credibly testified that she will be an active participant in any Clerical Support employee hiring and will have veto power over all selections. In reaching this conclusion we have considered but rejected the Union's contention that the Financial Manager's involvement

in hiring decisions will not rise to the level of an “effective” recommendation but is more akin to “some weight given” standard that is insufficient to confer supervisory status, cf. CITY OF MANITOWOC, DEC. NO. 12403 (WERC, 1/74). We are persuaded that the Financial Manager's veto power is indeed the functional equivalent of an “effective” recommendation.

As to Factors 2, 3, 5 and 7, Varro directs the work of four employees on a daily basis and is the only Department employee to do so. She monitors employee job performance, adjusts employees’ workloads and assignments as needed, will play a role in the adjustment of employee grievances, and exercises or will exercise independent judgment when doing so. She is primarily supervising employees rather than an activity.

Regarding Factors 4 and 6, Varro is paid more than \$4.00 per hour more than the employees she supervises and we are satisfied that her level of compensation at least partially reflects her supervisory duties. While Varro spends only 20% of her time supervising employees, the remaining 80% is not spent performing the same work as the employees she supervises, but rather on her many fiscal and budgetary duties.

Considering all of the foregoing, we are persuaded that Varro is a supervisor. She has substantial disciplinary authority and hiring authority and her level of compensation is consistent with her independent day-to-day supervision of four employees. Should our finding as to Varro's veto power over hiring decisions prove unfounded by future events, the Union should ask us to revisit Varro's supervisory status.

Given our conclusion that Varro is a supervisor, Varro shall continue to be excluded from the bargaining unit and we need not determine whether Varro is also a managerial employee.

Dated at Madison, Wisconsin, this 18th day of June, 2004.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

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