

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
FOREST COUNTY	:	
	:	
Involving Certain Employees of	:	Case 9
	:	No. 24625 ME-1677
	:	Decision No. 17528-B
FOREST COUNTY	:	
	:	

Appearances:

- Mr. Lawrence Heath, Attorney, 114 North Oneida Avenue, Rhinelander, Wisconsin, appearing on behalf of Forest County.
- Ms. Georgia Johnson, Staff Representative, P.O. Box 692, Marinette, Wisconsin, appearing on behalf of Forest County Courthouse and Social Services Employees, Local 1057-A.

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

Forest County having, on September 24, 1984, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit consisting of all non-professional employes of the Forest County Courthouse and Annexes, Social Services Department and Highway Department and represented by Forest County Courthouse and Social Service Employees, Local 1057-A, AFSCME, AFL-CIO to exclude the position of Administrative Assistant I, Social Services Department, as either confidential, supervisory, managerial or professional; and a hearing in the matter having been conducted in Crandon, Wisconsin, on November 19, 1984, by Examiner Deborah A. Ford, a member of the Commission's staff; and a stenographic transcript of the proceeding having been received by December 19, 1984; and the parties having filed briefs by March 5, 1985; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Forest County, hereinafter referred to as the County, is a municipal employer, which maintains and operates, among other departments, the Department of Social Services and has its offices at the Forest County Courthouse, Crandon, Wisconsin.
2. That Forest County Courthouse and the Social Services Employees, Local 1057-A, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having offices at P.O. Box 692, Marinette, Wisconsin.
3. That on January 29, 1980, the Commission certified the Union as the exclusive collective bargaining representative of the following employes of the County: 1/

All regular full-time and regular part-time employees of the Courthouse and Annexes, Highway and Social Services Departments excluding all professional, confidential, supervisory and managerial employees, non-clerical employees of the Highway Department, employees of the Sheriff's Department, elected officials and temporary employees.
4. That on September 24, 1984, the County filed a Petition to Clarify Bargaining Unit requesting that the position of Administrative Assistant I, Department of Social Services, which previously had been included in the

1/ Forest County, Dec. No. 17528 (WERC, 1/80).

above-described unit, be excluded on the grounds that it is professional, confidential, managerial and supervisory; and that the Union contends that position should remain included in the bargaining unit.

5. That there are 10 employees in the Social Services Department including the positions of Administrative Assistant I and the Director; that James C. Koller has been Director of the Social Services Department since July 1983; that seven employees, including the Administrative Assistant report directly to the Director while two clerical employees report to the Administrative Assistant I; that the Administrative Assistant I position is currently occupied by Judy Wolff; that Wolff has held that position since 1978; and that Wolff is responsible for preparing and updating the Department's financial reports and records including monthly reports detailing administrative expenditures of the Department, semi-annual financial status reports, traveling and other administrative billings, payrolls, AFDC statistical reports, claim sheets, as well as medical assistance reports, burial rolls and she prepares the Department's proposed annual budget in the first instance.

6. That the County's Social Services Department has 41 different standard program categories to which monies received from the State and the County Board are allocated; that the Director and the Social Services Board determine the programs and services to be provided by the Department as well as their priority for funding; that Wolff initially determines how much money should be allocated for each program category taking into account past expenditures, costs of inflation and other projected fiscal needs; that Wolff's proposed budget is reviewed by the Director who then presents the proposed budget to the Social Services Board for its approval; that in the case of any short fall in direct service program categories, the Director seeks Wolff's input with respect to which line items monies may be transferred from to cover the short fall but that the Director then determines where the monies should be reallocated; that Wolff has discretion to allocate funds from different line items with respect to administrative services; and that Wolff and any other affected employee is consulted by the Director on proposed changes in administrative or operating procedures.

7. That during the six months prior to the hearing in this matter the Director was absent 36 days; and that Wolff acts on behalf of the Director during his absences making most day-to-day decisions except with respect to request for major expenditures which are left for the Director to decide upon his return.

8. That Wolff spends about 20% of her time answering questions and assigning work to two clerical employees, 2-to-3% typing and the rest of her time purchasing and maintaining the inventory of office supplies and equipment and preparing and updating various financial reports and records; and that Wolff maintains and updates personnel files for the Department but does not participate in grievances or other labor relations matters.

9. That with respect to the two clerical employees, Wolff is authorized to hire, discharge, discipline, promote and transfer said employees although she has not had occasion to do so; that requests for time off from these employees are made to the Director if he is available and if he is unavailable presumably Wolff makes the decision; that the Social Services Board approved Wolff's recommendation that the Director hire two individuals to fill vacancies in the Income Maintenance Assistant and Income Maintenance Worker positions; that with respect to these positions, Wolff's role consisted in the first instance of ranking applicants, developing the questions for interviews, interviewing candidates along with the Director and the Social Services Board and making recommendations as to which of the candidates should be hired; and that for the latter position, Wolff ranked the candidates, participated in the interviews and recommended which of the candidates should be hired.

10. That at the time of the hearing, Wolff had a high school diploma and was about 8 credits short of obtaining her Associate degree in accounting having taken accounting courses at Nicolet College and Technical Institute at Rhinelander and currently attending the University of Wisconsin, Oshkosh; that Wolff's pursuit of higher education is by choice and not required by her employer although a new proposed job description for her position would require an Associate degree in accounting or its equivalent in experience.

11. That as Administrative Assistant to the Director of the Social Services Department, Wolff does not have access to, knowledge of, or participate in confidential matters related to labor relations so as to be considered a confidential employee; that Wolff does not participate to a significant degree in the formulation, determination and implementation of the Department's policy relative to social services nor does she possess the authority to commit the Department's resources to an extent sufficient to be deemed a managerial employee; that Wolff's duties are not predominately intellectual or varied in character, do involve a measure of discretion but can be standardized over a given period of time, and her position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education; and that Wolff does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

CONCLUSIONS OF LAW

1. That the position of Administrative Assistant I, Department of Social Services, currently occupied by Judy Wolff, is neither supervisory, confidential, managerial nor professional.

2. That the occupant of the position of Administrative Assistant I is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

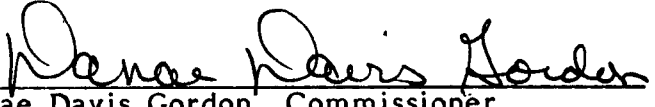
ORDER 2/

That the position of Administrative Assistant I, Social Services Department, be and the same hereby continues to remain, included in the above-described bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin this 28th day of June, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

 _____
Danae Davis Gordon, Commissioner

I Dissent

 _____
Marshall L. Gratz, Commissioner

2/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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

(Footnote 2 continued on Page 4)

(Footnote 2 Continued)

order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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. 227.20 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.

FOREST COUNTY

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

BACKGROUND

This proceeding was initiated by a petition filed by the County to exclude the position now titled Administrative Assistant I from the bargaining unit described in Finding of Fact 3. The County contends that the position should be excluded because it is confidential, managerial, supervisory and professional, a contention disputed by the Union. Underlying this dispute is the parties' disagreement over whether the current or the proposed job description should be viewed as accurately describing the incumbent's duties and responsibilities. The current job description, signed by the incumbent on February 5, 1981, lists duties for an Administrative Assistant I position. The proposed one describes duties for a Social Services Administrator position reflecting the County's intent to change the position's title and to include responsibilities not found in the current job description.

Because we find ample evidence in the record as to the actual duties performed by Wolff, we conclude that the question of which job description should be considered is irrelevant. We address each of the County's alleged bases for excluding the position below.

POSITIONS OF THE PARTIES

The County

In seeking to exclude the Administrative Assistant I from the bargaining unit the County contends that the duties and responsibilities of the position have significantly changed under the leadership of the current Director and that the position is now not only professional but also possesses responsibilities of a confidential, supervisory and managerial nature. Wolff's position is confidential, the County argues because she maintains and updates personnel files which contain "information concerning any disciplinary action that might have occurred in the past or might occur in the future." The position is supervisory since Wolff currently supervises two clerical employes and she has authority to promote, transfer, discipline, discharge, approve sick leave and compensatory time requests, assign work, including overtime, and that Wolff "would have the authority and responsibility to consider grievances at the initial stage under the contract" for those employes. 3/ The fact that Wolff has not had occasion to exercise any of this authority is not dispositive, the County argues, citing Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83). Nor is the fact that she only has such authority for two positions fatal. Citing, Jeferson Water and Electric Department, supra; Lakeland Union High School District, Dec. No. 17677 (WERC, 4/80); Jackson County, Dec. No. 17828 (WERC, 5/80) and City of Manitowoc, Dec. No. 18950 (WERC, 4/81). As further evidence of Wolff's supervisory status the County notes that Wolff effectively participated in the most recent hiring of an Income Maintenance Worker and an Income Maintenance Assistant.

Furthermore, the County asserts that Wolff's position is managerial in nature based on Wolff's role in preparing the Social Services Department's budget, preparing various financial reports, reallocating funds and acting in the Director's stead in his absence. The County also argues that the position's duties require the utilization of professional skills and judgment by Wolff and that the Director defers to her judgment and expertise, especially with respect to preparation of the budget.

3/ The most recent collective bargaining agreement between the County and the Union provides that grievances are to be submitted to the department head and that the department head shall, within five working days, give an answer to the Union.

In conclusion, the County contends that there is sufficient evidence for excluding Wolff's position on the separate basis of either managerial or supervisory status. However, in the alternative, the indicia for managerial status combined with that of supervisory status sufficiently aligns the position with management such that it should be excluded from the bargaining unit.

The Union

The Union argues that the instant petition is premature since it is arguably based upon proposed changes in the position's job description. In the alternative, the Union argues that Wolff's current duties and responsibilities are neither confidential, professional, managerial nor supervisory. Wolff is not a confidential employe because she does not have access to, knowledge of, nor does she participate in confidential labor relations matters. The Union notes in this regard that both Wolff and Koller acknowledged that neither is involved in collective bargaining. The Union also contends that although Wolff maintains departmental personnel files, nothing in those files, including disciplinary actions, is unknown to the employes involved.

The Union argues Wolff is not a professional employe within the meaning of Sec. 111.70(1)(L), Stats. Although Wolff is a very competent and capable employe, her duties are "routine and largely clerical in nature," and do not require a prolonged course of specialized intellectual instruction. The Union notes that Wolff's advanced college course work has been attained on her own initiative and was not requested or required by the County.

The Union asserts that Wolff is not a managerial employe because (1) the ultimate responsibility for formulation, determination and implementation of management policy lies with the Director, not Wolff, (2) Koller not only consults with Wolff regarding changes in policy, but also other affected employes, (3) Koller, "subject to external constraints," maintains ultimate authority to commit the employer's resources, (4) "the authority to make expenditures from certain accounts, to achieve program purposes is, despite Wolff's technical knowledge of the regulations . . . ministerial in nature . . .", and (5) Wolff's authority to act for the Director in his absence, is severely restricted.

Finally, the Union asserts that Wolff is a "working leadperson" not a supervisor. The Union argues that although Wolff was advised by Koller in 1984 that she has authority to promote, transfer, discipline and discharge employes, she has not had occasion to do so since Koller was hired as Director in 1983. Moreover, with respect to the hiring of two Income Maintenance employes, the Union suggests that Koller, rather than Wolff, was "the voice of effective recommendation" to the Board with respect to the hiring of these non-professional employes.

The Union asserts that the two clerical employes assigned to Wolff require minimal supervision and that "Koller and the Social Services Board would appear, based on testimony, to exercise greater authority over the same employes." In sum, the Union contends that Wolff spends the bulk of her time on her own job duties and "only a de minimus amount of time spent supervising an activity undertaken and described within the job descriptions of the other two primarily clerical employes in the Department."

DISCUSSION

Professional Status

Section 111.70(1)(L), Stats., defines the term "professional employe" as follows:

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

c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;

d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or 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

2. Any employe who:

a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d;

b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

All the criteria found either in subsection 1 or subsection 2 above must be present in order to find that a particular position is professional. 4/

The County made no argument at hearing or in its brief in support of its contention that Wolff is a professional employe. We note, however, that neither the current nor the proposed job description requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education. In fact, Wolff currently possesses a high school diploma, although she is only eight credits short of receiving an Associate degree in accounting. Furthermore, Wolff's duties are not predominately intellectual or varied in character. The financial reports she prepares are routinely due at the same time of month and year. The fiscal records she prepares and maintains are routine in content. Thus, her work can be standardized over a given period of time.

We acknowledge that Wolff exercises some discretion with respect to determining from which line items certain administrative expenditures should come. However, because all the criteria in either subsections 1 or 2 above have not been met, we conclude that Wolff is not a professional employe.

Confidential Status

The Commission has long held that an employe is confidential if that employe has access to, knowledge of or participates in confidential matters relating to labor relations. In order for information to be considered confidential for such purposes it must be of the type that: (1) deals with the employer's strategy or position in collective bargaining, contract administration, litigation or other matters pertaining to labor relations and (2) is not available to the bargaining representative or its agents. 5/ Although Wolff maintains and updates personnel files we have consistently held that accessibility to personnel files is not in and of itself a sufficient basis for excluding an individual as a confidential employe. 6/ There is no indication in the record that Wolff is involved in labor negotiations or grievances or that the information in personnel files is not generally available to affected employes. Moreover, the parties' most recent collective bargaining agreement states that the department head, which is Koller rather than Wolff, provides the first step response to all grievances filed in the Department. Accordingly, we have concluded that Wolff is not a confidential employe.

4/ Dane County, Dec. No. 10492-D (WERC, 4/85).

5/ Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83).

6/ Kenosha County, Dec. No. 21909 (WERC, 8/84); City of Menasha, Dec. No. 14523 (WERC, 4/76); Juneau County, Dec. No. 12814 (WERC, 5/74); and Menomonee Falls Joint School District #1, Dec. No. 11669 (WERC, 7/73).

Managerial Status

The County also contends that the Administrative Assistant I position is managerial in nature. In order for Wolff to be found to be a managerial employe, she must participate in the formulation, determination, and implementation of management policy or have the effective authority to commit the employer's resources. The effective authority to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing purposes from such a budget. 7/ Finally, the authority must not be merely ministerial such as the authority to spend money from a certain account for a specified purpose. 8/

The record reveals that with respect to policy formulation, determination and implementation, Wolff's input is restricted to administrative or procedural matters having to do with day-to-day fiscal operations rather than determining policy regarding services to be provided by the agency. Moreover, Wolff's input is not significantly greater than the input of other affected employes.

With respect to the effective authority to commit the employer's resources, the evidence indicates that Wolff's involvement with the budget consists of allocating monies received from the State to 41 program categories previously designated by the Director and the Social Services Board. The amount allocated to each program is based on past expenditures and projections of future increases. Wolff does not decide for example, which items or programs remain in the budget. In fact, the Board and Director decide which services will be provided by the Department. Once completed, Wolff forwards her budget to the Director of Social Services for approval, who in turn presents it to the Forest County Social Services Board for its approval. As the preparer and custodian of the Department's fiscal records, Wolff is oftentimes called upon to answer questions about the budget and other fiscal reports. In the event of funding shortages in a particular program, Wolff would be called upon to recommend other areas in the budget from which additional funds could be taken. However, we find that Wolff's role is essentially ministerial and as such falls short of being one in which she has significant impact on management policy. 9/ Therefore we conclude she is not a managerial employe.

Supervisory Status

The County also contends the Administrative Assistant I position should be excluded from the bargaining unit on the basis of supervisory status. Sec. 111.70(1)(o)1, Stats., defines "supervisory" as follows:

As to other than municipal and county firefighters, 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 employes, or to adjust their grievance or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

In determining whether a position is supervisory, the Commission applies the following criteria:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;

2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 10/

The record reveals that Wolff is authorized by the Director to hire, discharge, discipline, promote and transfer the Clerk III and Terminal Operator employes in the department but that she has not had occasion to do so. Koller, not Wolff, possesses such authority with respect to the remaining six employes. While it is true that Wolff, at the Director's request, effectively participated in the hiring of two Income Maintenance employes, Koller and the Social Services Board actually hired the individuals and Koller is their only supervisor.

Although Wolff estimated that she spends about 20% of her work time answering questions and assigning work to two clerical employes, these employes have worked in the department for many years and require minimal day-to-day supervision. Moreover, Wolff testified that Koller, not she, approves all requests for time off submitted by these employes. The County is correct that the Commission has held the number of employes supervised is not itself determinative of supervisory status. However, the fact that the Director exercises some supervisory authority over these same employes in addition to directly supervising the majority of employes in the department reduces the impact of Wolff's role in this regard. Jefferson Water and Electric Department, supra, and City of Manitowoc, Dec. No. 18590 (WERC, 4/81), cases cited by the County in support of its position, are distinguishable from the instant case. The office manager in the former case had supervisory authority over the only two employes in her office. In City of Manitowoc, the assistant to the director hired, evaluated, and scheduled work for three employes and effectively recommended the suspension of one of those employes.

Wolff spends the majority of her work time performing her own assigned duties. We have held that the frequency or infrequency with which an employe exercises supervisory authority is not itself determinative of the question of supervisory status. 11/ However, in this instance, there is little indication in the record that Wolff has exercised supervisory authority over any employes. It appears that Wolff functions as a lead person in this small department, while Koller is the actual supervisor. Therefore, we conclude that Wolff does not possess sufficient indicia of supervisory status to warrant exclusion from the bargaining unit on that basis.

The County correctly points out that the Commission has previously held that indicia of supervisory and managerial status may be considered together to determine whether a position is sufficiently aligned with management so as to

10/ Madison Metropolitan School District, Dec. No. 20836-A, 21200 (WERC, 11/83).

11/ Lakeland Union High School District, Dec. No. 17677 (WERC, 4/80).

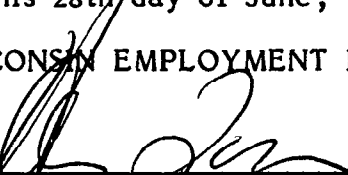
warrant exclusion from a bargaining unit. 12/ However, we conclude, having considered all evidence of both supervisory and managerial authority, that Wolff does not possess, in sufficient combination and degree, the requisite amount of indicia of supervisory/managerial status to justify excluding the position from the bargaining unit.

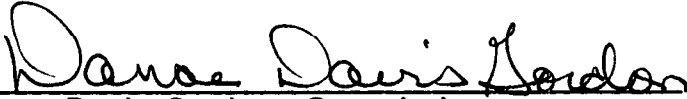
Accordingly, we conclude that the Administrative Assistant I position shall remain in the bargaining unit.

Dated at Madison, Wisconsin this 28th day of June, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Danae Davis Gordon, Commissioner

12/ See Lakeland Union High School District, supra, and Milwaukee Board of School Directors, Dec. No. 17009-C (WERC, 7/82).

DISSENTING OPINION OF COMMISSIONER GRATZ

In my opinion, my colleagues' Findings of Fact warrant the conclusion that the position at issue is a supervisory one, and I would have excluded the position from the unit on that basis.

My colleagues have aptly acknowledged that Wolff is authorized to hire, discharge, discipline, promote and transfer the two clerical employees. Her role in the hiring of the Income Maintenance Assistant and Income Maintenance Workers warrants the further conclusions that she possesses the authority to effectively recommend hiring for a broader range of positions than just the clericals, and that her role in the hiring process involves the exercise of independent judgment.

While the limited number of positions in the Department might reasonably imply that the department head must be exercising much of the supervisory independent judgment himself, several factors cut against drawing that interference here. The department head involved here is away from the office a significant portion of the time, creating more opportunities for Wolff's sole exercise of independent supervisory authority. Wolff is more experienced in the operations of the Department than is the current department head. And finally, the role Wolff has been delegated in the hiring process reveals that the department head is, in fact, deferring to Wolff's judgment in important areas of supervisory authority and that Wolff is in fact using independent judgment in the exercise of that authority.

For those reasons, I respectfully dissent from my colleagues' conclusion that Wolff is not a supervisor.

Dated at Madison, Wisconsin this 28th day of June, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Marshall L. Gratz
Marshall L. Gratz, Commissioner