

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
  
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WISCONSIN COUNCIL 40, AFSCME, AFL-CIO : Case 19
  
: No. 48123 ME-602
  
Involving Certain Employes of : Decision No. 19744-E
  
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CLARK COUNTY :
  
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Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, for the Union.  
Weld, Riley, Prenn & Ricci, by Ms. Kathryn J. Prenn, Attorney at Law,

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

On October 2, 1992, Wisconsin Council 40, AFSCME, AFL-CIO ("the Union") filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of the County of Clark ("the County") by including therein the position of Forestry Technician. Hearing in the matter was held on March 16, 1993, before Hearing Examiner Stuart Levitan, a member of the Commission's staff. A stenographic transcript was prepared by March 30, 1993. The County submitted written arguments on April 27 and May 26, 1993; the Union filed a brief on May 5, 1993, and waived its right to submit a reply. The Commission, being fully advised in the premises, hereby issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, "the Union," is a labor organization with offices at 5 Odana Court, Madison, Wisconsin.
2. Clark County, "the County," is a municipal employer with offices at 517 Court Street, Neillsville, Wisconsin.

No. 19744-E

3. For calendar years 1992-1993, the County and Union were parties to a collective bargaining agreement which established the Union as the exclusive collective bargaining agent for the Clark County Courthouse Employees Local 546-B, AFSCME, AFL-CIO, a unit defined as follows:

All regular full-time and regular part-time, non-professional employees of Clark County excluding sworn law enforcement, blue collar highway, social service, health care center, professional, managerial, confidential and supervisory employees as well as the elected officials.

4. For calendar years 1992-1993, the County and Union were parties to a collective bargaining agreement which established the Union as the exclusive bargaining agent for the Clark County Professional Courthouse Employees Local 546-C, a unit defined in that agreement as follows:

All regular full-time and regular part-time professional employees of Clark County excluding sworn law enforcement, blue collar highway, social service, health care center, professional, managerial, confidential and supervisory employees as well as the elected officials.

5. On August 30, 1982, the Wisconsin Employment Relations Commission certified the Union as the exclusive bargaining representative of a unit defined as follows:

All regular full-time and regular part-time professional employees in the employ of Clark County, in its Courthouse, excluding professional employees employed in the Department of Social Services and in the Health Care Center, as well as elected officials, managerial, supervisory and confidential employees(.

6. The County, under applicable state and federal laws and contracts, administers the Clark County Forest, with policy and administrative direction coming from its Forest and Parks Committee. To perform skilled construction, maintenance, forestry, mechanic and horticulture work, the County employs one Forest and Park Worker III. To perform semi-skilled and limited skilled work, the County employs four Forest and Park Worker II's and no Forest and Park Worker I's. All of these positions are in the bargaining unit described in Finding of Fact 3, based in a shop on Highway 10. After 18 months, a III is paid \$11.84 per hour; a II is paid \$11.51, and a I is paid \$9.56. The County also employs a Forest and Parks Administrator, Forestry Assistant, Forest and Parks Foreman, and Forestry Technician, all unrepresented positions. The County also employs seasonal workers and a college-age student intern or two, and utilizes work crews from the Jackson County Correctional Facility.

7. Since March, 1991, Mark Heil has been the Forest and Parks Administrator, with the following position description:

**Position Summary:**

Under administrative direction of the Forest and Parks Committee, responsible for and supervises maintenance, construction and overall operations in the forestry and park programs of the County.

**Duties/Responsibilities:**

**The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.**

- .Plans, organizes, assigns and supervises the work of the Forest and Parks Department.
- .Prepares reports and recommendations regarding the operation of department programs.
- .Confers with the Forest and Parks Committee on problems and projects relating to Forest and Parks activities.
- .Requisitions supplies and materials, and supervises the storing, dispensing and inventory of such supplies.
- .Develops snowmobile trails, including applications for funds, cost estimates and trail layout.
- .Performs periodic inspections and sign maintenance.
- .Supervises the repair and maintenance of departmental buildings, vehicles and equipment.
- .Oversees timber cutting activities by industries and loggers.
- .Makes recommendations regarding park design and construction, and major equipment purchases.
- .Prepares plans for construction projects and assists with surveying, as needed.
- .Supervises winter recreation area, including design, construction and maintenance of ski tow equipment and slopes.
- .Supervises timber sale, administering logging pulpwood operations, tree planting, timber stand improvement and land acquisition.
- .Manages and administers the County Fair grounds, which may include developing recommendations, and supervision of all maintenance and repairs at the fairgrounds.

**Work Direction Received:**

Works under the administrative direction of the Forest and Parks Committee, setting own standards and working within overall policies, goals and budget limits, with direct accountability for final results. Virtually self-supervising.

**Supervision Exercised:**

Supervises two full-time employees directly, and five employees indirectly. Fifteen employees are supervised indirectly on a part-time basis.

**Decision Making:**

Decisions affecting the administration and supervision of the Forest and Parks Department are made independently.

**Interaction:**

There is significant interaction with other County departments, the public, local community clubs and organizations, the State Department of Industry, Labor and Human Relations, and the Department of Natural Resources, at the state level.

**Desirable Knowledge and Abilities:**

Knowledge of the application of skills used in park construction, maintenance, forestry and horticulture. Knowledge of the maintenance and repair of park vehicles and equipment. Working knowledge of the application hazards involved in the use of chemicals such as fertilizers, sterilants, fungicides, insecticides, inoculants, preservatives, paints and coatings, and the appropriate techniques for their safe storage and application. Ability to supervise the work of others, and priority scheduling of projects. Ability to supervise personnel. Ability to establish and maintain effective working relationships between the public, public agencies, public utilities employees and tree harvesters. Ability to plan construction and maintenance work, as well as coordinate personnel, equipment and materials to implement the plan.

**Training and Experience:**

Bachelor's degree in Forestry Recreation Resources, and one year of experience in Forest and Parks administration.

Prior to assuming his current position, Heil served as Forestry Assistant for approximately 18 months. Heil has the primary responsibility for preparing a proposed departmental budget, which is reviewed by the Forest and Parks Committee, then the Finance Committee, and finally the Clark County Board of Supervisors. After an annual budget has been adopted, Heil must obtain both committees' approval to transfer funds between lines in his budget. Based on a consultant's study, the Administrator's position is a Pay Range 9, with a range from \$14.73 (start) to \$18.87 (78 months).

8. Rick Dailey is the Forestry Assistant, with the following position description:

**Position Summary:**

Under the general direction of the Forest and Parks Administrator, Responsible for administration of all forestry related activities involving the Clark County Forest.

**Duties/Responsibilities:**

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- Administration of County Forest timber sales. Enforces contract terms. Issues warnings and monetary penalties for contract violations. Makes recommendation to the Administrator regarding violations which warrant contract suspension or excessive monetary penalty.
- Prepares timber sale prospectus, lets bids and prepares contracts for timber harvests.
- Receives and accounts for timber revenues.
- Conducts forest inventories. Performs timber cruising and scaling by utilizing trade tools and equipment.
- Administers tree removal and planting on forest land. Establishes planting goals, lets bids and prepares contracts for site preparation, tree order and planting.
- Secures and administers State and Federal grant monies for tree planting, timber stand improvement and other resource related projects.
- Cooperates with DNR staff in establishing annual harvest goals and coordinating other wildlife and forest management work plans and goals.
- Plans and conducts forest cultural activities for multiple use benefits of forest lands; i.e. Timber stand improvement, wildlife cuttings and opening maintenance.
- Presents proposals and reports to the Forestry and Parks Committee regarding monthly/annual goals and accomplishments.
- Assists with planning and implementing various forest recreation programs such as snowmobiling, all-terrain vehicles, cross-country skiing, equestrian, mountain hiking and hunting.
- Assists with coordinating snowmobile and all-terrain vehicle activities throughout the county; Enforces agreements with organized clubs, including trail inspection, processing claims and payments and maintaining good relations.
- Cooperates and maintains good relations with wood-using industries, agencies, groups and individuals which function in or have an interest related to forestry or use of public lands.
- Responsible for recreational trail signage.
- Assists with promotion of public awareness and education regarding forest management and forest recreation.
- Trains, supervises and evaluates full time and seasonal forestry related employees. Participates in evaluating candidates for employment.

- Assists State and County law enforcement personnel in enforcement of County ordinances and natural resource laws.
- Develops forest logging road design and layouts. Processes DNR and Army Corp of Engineers permits for the same. Directs construction by County staff.
- Works with private land owners to determine county property lines. Documents line establishment and rectifies encroachment and timber theft occurrences.
- Issues firewood and camping permits on County Forest lands and enforces permit compliance.
- Advisory participation in revisions to County Ordinances and County Forest Ten Year Plan.

**Work Direction Received:**

Receives general direction from the Forestry and Parks Administrator. Performs day-to-day duties independently with direct accountability for results.

**Supervision Exercised:**

Directly supervises one regular employee and 8 to 20 seasonal employees. Directly or indirectly supervises 1 to 4 regular employees and 7 to 20 seasonal employees or personnel from other organizations for projects such as trail maintenance, road construction and forest cultural activities as needed. Makes preliminary recommendations regarding hiring and firing and final recommendations for discipline, performance evaluation and assignment of employees.

**Decision Making:**

Decisions affecting resource management and protection are made independently, but within the parameters of the law and established policies.

**Interaction:**

There is significant interaction with other county departments, the Department of Natural Resources (Forestry, Water Management, Game Management, Law Enforcement), Army Corp of Engineers, bank representatives, timber buyers, tree harvesters, mill owners, lawyers, snow trail clubs, landowners, vendors and the general public on a daily basis.

**Desirable Knowledge and Abilities:**

Knowledge of the principles of forest management; Effective administrative and record keeping skills; Knowledge of laws governing the use of public lands; Knowledge of multiple use concepts in public land management; Ability to acquire information efficiently by research of statutes and rules, etc. and by personal contact;

Knowledge of timber harvesting methods and procedures; Ability to communicate effectively both orally and in writing; Ability to establish and maintain effective relationships with federal, state and local agencies, with business and with the general public; Ability to exercise sound judgement in the enforcement of contracts, ordinances and laws; Ability to read and interpret aerial photos and use other tools and instruments commonly used for forest inventory and management planning; Ability to plan, assign and direct the work of others.

**Training and Experience:**

Bachelor's degree in forestry or related area, with two years of experience in forest management, administration or silviculture.

In evaluating candidates for this position, the County may consider a combination of education, training and experience which provides the necessary knowledge, skills and abilities to perform the duties of the position.

The Forestry Assistant, excluded from the bargaining unit, is a Pay Range 5, with a range from \$10.93 (start) to \$14.01 (78 months). The Forestry Assistant was previously a Pay Range 4 but was reclassified up, based in part on the position's new duties directly supervising the newly created position of Forestry Technician.

9. The County employs a Forest and Parks Foreman, or Supervisor, with the following position description:

**Position Summary:**

Under the general direction of the Forest and Parks Administrator, supervises employees in the maintenance of parks.

**Duties/Responsibilities:**

**The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.**

- .Plans, organizes and supervises the activities of crews engaged in construction maintenance and horticulture work in the Parks Department.
- .Supervises the layout, construction and maintenance of buildings, grounds and equipment.
- .Supervises the propagation, planting, transplanting, trimming and care of plants.
- .Supervises the preparation of plans and diagrams for landscape designs.
- .Responsible for obtaining and returning necessary equipment, tools and supplies to complete work assignments.
- .Maintains safe work practices.

- .May assist the Forest and Parks Administrator in the performance of special administrative tasks.
- .Assigns work to staff employees.
- .Gathers all necessary equipment to perform the work.  
Assures that equipment is serviced on a timely basis.
- .Maintains project cost records.

**Work Direction Received:**

Works under general direction, working from established policies and general objectives, questioning policy only for clarification and interpretation. Independently performs supervision work in park activities.

**Supervision Exercised:**

Supervises the work of five full-time employees, such as: mechanics, equipment operators; building maintenance persons; forestry workers; as well as several seasonal part-time workers. The incumbent makes preliminary recommendations regarding hiring and firing, and final recommendations for discipline, performance evaluation and assignment of employees.

**Decision Making:**

Decisions affecting the park, maintenance and supervision are made independently.

**Interaction:**

Work with other County departments and outside lumber and maintenance supply persons.

**Desirable Knowledge and Abilities:**

Must have knowledge of supervisory and communications skills, and electrical and plumbing capability. Must have knowledge of heavy equipment operations, carpentry skills and mechanical ability. Must be able to work in all types of weather.

**Training and Experience:**

Four years of high school, with two to three post-high school work experience in supervision and skilled trades.

In evaluating candidates for this position, the County may consider a combination of education, training and experience which provides the necessary knowledge, skills and abilities to perform the duties of the position.

The Forest and Parks Foreman, excluded from the bargaining unit, is a Pay Range 4, with a range of \$9.99 (start) to \$12.80 (78 months).



10. John P. Gagnon is the incumbent Forestry Technician, having started work as the first incumbent in that position on October 26, 1992, with the following position description:

**Position Summary:**

Under the general direction of the Forestry Assistant, responsible for assisting with all aspects of forest management and administration of the county forest.

**Duties/Responsibilities:**

**The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.**

- Assists with the administration and supervision of timber sales on the county forest. Enforces contract terms. Makes recommendations to the Forestry Assistant regarding contract violations and damage assessments.
- Receives payment for timber stumpage and accounts for the same.
- Conducts forest inventories. Performs timber cruising and scaling by utilizing trade tools and equipment.
- Inspects tree removal and planting on forestry land.
- Assists with planning and conducting cultural activities for achieving multiple use benefits of forestry lands; i.e., timber stand improvement, wildlife cuttings, opening maintenance.
- Cooperates and maintains good relations with wood-using industries, agencies, groups and individuals which function in or have an interest related to forestry or use of public lands.
- Assists with promotion of public awareness and education regarding county forest and timber management programs.
- Trains, supervises and evaluates seasonal/temporary employees and interns.
- Assists State and County law enforcement personnel to enforce county ordinances and natural resource laws.
- Develops forest logging road design and layouts.
- Works with private land owners to determine county property lines.
- Assists with county parks and trail maintenance and planning as needed.
- Normal work hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. However, days of the week and starting and finishing times may be adjusted with little

notice to include weekends, early mornings and late evenings.

**Work Direction Received:**

Receives general direction from the Forestry Assistant.  
Performs day-to-day duties independently.

**Supervision Exercised:**

Supervises temporary work crews of 5 to 10 people and supervises approximately a total of 2 seasonal interns and employees in forestry settings. Provides evaluation input to Forestry Assistant and recommends promotions, discipline and termination. Reassigns work as given to him/her by the Forestry Assistant.

**Decision Making:**

Problem solving requires judgement based upon established practices.

**Interaction:**

Works with bank representatives regarding performance bonds on a weekly basis; DNR Foresters, DNR Wardens, timber buyers, tree harvesters, mill owners and private land owners on a daily basis.

**Desirable Knowledge and Abilities:**

Must have knowledge of forestry management; must be able to keep accurate records; must have knowledge of timber harvesting methods and procedures; must be able to effectively communicate, orally and in writing; must be able to work effectively with government officials and the general public; must be able to work under adverse weather conditions.

**Training and Experience:**

Associate degree in forestry, with experience in forest management, forest administration or logging practices of Central Wisconsin. Bachelor's degree in forestry preferred.

In evaluating candidates for this position, the County may consider a combination of education, training and experience which provides the necessary knowledge, skills and abilities to perform the duties of the position.

Gagnon's position was created as a three-year project position, subject to elimination, modification or renewal at the end of that period. Heil expects the position to be continued. Gagnon's typical work activities include paperwork at his Courthouse office (adding scale sheets, closing out timber sales contracts, etc.); servicing loggers (delivering tickets, verifying loads, inspecting roads and sites, etc.); and attending meetings of the County Forest and Parks Committee. Providing direct service to loggers can account for about two-thirds of Gagnon's time during peak seasons, as the County maintains about 250 timber sales contracts (closing about half that each year). Gagnon generally has daily contact with the Forestry Assistant, either in person or by

radio. Gagnon is responsible for enforcing the terms of contracts between the County and private loggers, in which capacity he has the authority, which he has exercised independently, to search private vehicles in investigating possible contract violations. Gagnon has the independent authority, which he has exercised, to shut down a logging project if he determines such action to be in the best interest of the County forest. Gagnon has the authority to determine the placement and size of logging roads within the County forest, and the responsibility for making recommendations on future road and trail development. The County Forest and Parks Committee and Forest and Parks Administrator have used Gagnon's recommendations in reviewing bids and negotiating with contractors. As of the date of the hearing, there had not been any interns employed during Gagnon's tenure. Gagnon does not have the authority to formally discipline or effectively recommend the discipline of any County employes, either permanent or seasonal, although he does have the authority to direct their activities and provide corrective advice. Gagnon does not have the authority to prepare an initial budget or to transfer funds within an adopted budget. Timber sale bids are initially developed by staff of the Wisconsin Department of Natural Resources; the Forestry Technician and Forestry Assistant review these preliminary plans, making recommendations to the Administrator and Committee. The Forestry Technician provides basically technical, administrative services in the opening of timber sales bids. The Technician will be participating in the formulation of the County's ten-year forest management plan. The Technician has the authority, along with the Administrator and Assistant, to communicate with financial institutions regarding the release of lines of credit. As of the hearing, the Technician had not participated in the development or letting of contracts for site preparation or tree planting. The Technician is responsible for overseeing the planning, approvals, construction and administration of logging roads, with the discretion to place roads in a manner most advantageous to the county and the contractors. The Technician has the authority to reach final resolution with property owners on disputes over property lines. Although Gagnon's published work hours are 8:00 a.m. to 4:40 p.m., he has the authority to vary those hours based on need. The Forestry Technician position, excluded from the bargaining unit, is a Pay Range 3, with a range of \$9.04 to \$11.58; Gagnon was hired at the 18-month rate (\$9.77), and will, assuming satisfactory evaluations, go to \$10.13 after one year, \$10.49 after two years and \$10.85 after three years. Gagnon has a bachelor's degree in forestry.

11. John Gagnon, the incumbent Forestry Technician, does not exercise sufficient control over the resources of the employer or have sufficient involvement at a relatively high level of responsibility in the formulation, determination and implementation of management policy so as to be deemed a managerial employe.

12. John Gagnon, the incumbent Forestry Technician, does not exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

13. John Gagnon, the incumbent Forestry Technician, performs work which is predominantly intellectual and varied in character; which involves the consistent exercise of discretion and judgment in its performance; which is of such character that its output cannot be standardized in relation to a given period of time; but which does not require knowledge of an advanced type in a field of learning customarily acquired by a prolonged course of study in an institution of higher education.

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

#### CONCLUSIONS OF LAW

1. The incumbent of the position of Forestry Technician is neither a

supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., nor a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., but is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The incumbent of the position of Forestry Technician is not a professional employe within the meaning of Sec. 111.70(1)(L), 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/

The position of Forestry Technician is hereby included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 23rd day of August,  
1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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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.

(Footnote 1/ continues on the next page.)

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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.

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.

(Footnote 1/ continues on the next page.)

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(Footnote 1/ continues from the previous page.)

(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.

CLARK COUNTY

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

In support of its position that the Forestry Technician is a municipal, non-professional employe, the Union asserts the subject position is not managerial. The incumbent has no significant involvement in the budgetary

process or in the allocation of the employer's funds or resources. The incumbent lacks the authority to determine: the kind and level of services; the kind and number of capital improvements to be made; or the systems by which the services will be provided.

Nor is the position supervisory. The employer has both exaggerated the managerial authority and embellished the degree of supervisory authority. The record does not support a finding that the incumbent has the authority, or the authority to effectively recommend, discipline, hire, layoff, recall, promote, adjust grievances, or issue meaningful evaluations.

With eight regular full-time employees, the County already has three full-time supervisors. As the volunteers which the subject incumbent may supervise are not County employees, such supervision has no impact on this proceeding. Further, the supervision of the seasonals which the subject incumbent may perform is supervision of work activities and not supervision of employees, per se.

The subject position is not a professional position. The County advertised for a nonprofessional position and was lucky to hire a college graduate to perform work dealing primarily with timber sales, inventory, inspection and enforcement of timber contracts. Such duties do not meet the statutory standard for determining professional status.

As a municipal, non-professional employee, the Forestry Technician should be accreted to the 546-B bargaining unit.

In support of its position that the Forestry Technician is supervisory, managerial and professional, the County asserts the incumbent's direction and supervision of summer interns, a summer conservation crew, road construction crew, inmate crew seasonal workers and the permanent forestry workers establishes him as a supervisory employee. Because the incumbent is new to the position, he has not yet had occasion to hire, train, supervise and evaluate the seasonal workers and interns; however, he is new to the position, and it is expected that he will exercise such supervisory responsibilities in the future. The Commission has previously held that an employer should be permitted to put in place its well-defined plans for assigning a new position supervisory duties. The incumbent has been assigned such supervisory duties.

The subject position is also involved in the formulation, determination and implementation of managerial policy, with effective authority to commit the employer's resources. As such, the position is also managerial.

The incumbent has exclusive authority to ensure contract compliance by loggers and other contractors; has authority to shut down a project if the work is not in compliance; manages the sprint tree planting project; will be authorized to negotiate and finalize contract extensions; is involved in developing bids and contract specifications; plans and conducts forestry management programs; has complete discretion, in compliance with applicable statutes, to map out logging roads; has full discretion to establish property lines and resolve border disputes, and will provide input into the budget. Based on the foregoing, and based on his performance of duties indicative of interests different from those of bargaining unit personnel, the subject position should be excluded from representation as being a managerial employee.

In the event the position is found to be a municipal employee, the County further believes the position is professional, and should not be included in either the B or C unit. The B unit is of non-professionals. The C unit recognizes and excludes professionals; given this ambiguity, there is insufficient evidence to establish the position's eligibility for the C unit. Moreover, even on the record, the position lacks a community of interest with the positions in the C unit.

The Union waived its right to file a reply brief. In its reply brief, the County posits that, contrary to the Union's claim, the County has neither exaggerated the subject position's managerial authority nor embellished its degree of supervisory authority.

The incumbent's job duties, encompassing assisting with all aspects of forest management, do manifest significant indicia of managerial responsibility. Along with the Forest Assistant, the subject position is involved in the formulation, determination and implementation of managerial policy concerning the management of the County forest and has been delegated effective authority to commit the employer's resources.

The incumbent will also be assuming significant supervisory authority, including the screening, hiring, direction, supervision, evaluation and discipline of seasonal/temporary employes and interns. The subject position will also have responsibility for supervising full-time employes, including Forest and Park Workers I, II and III. These duties, especially in combination with the managerial responsibilities, manifest significant indicia of supervisory authority.

Further, the position is professional, as the incumbent performs numerous intellectual duties involving the consistent exercise of discretion and judgment. The County specifically advertised for a college graduate. The incumbent's work varies daily, and cannot be standardized. The position is professional.

However, even if the position is found to be neither supervisory nor managerial, it should still not be included in the professional, "C" unit. In addition to the ambiguities in the recognition clause, there is the consideration that the subject position lacks any community of interest with the existing "C" unit members. The Commission must give primary consideration to this individual fact situation and not apply the anti-fragmentation policy in the haphazard manner the Union suggests.

#### DISCUSSION

The County contends that the position of Forestry Technician is supervisory and/or managerial; the Union contends it is neither. The County further asserts that the position is professional but should be excluded from the 546-C professional unit due to a variety of factors including lack of community of interest; the Union asserts the position is not professional, but that, if found by the Commission to be so, it should be included in the 546-C unit.

We find the position to be municipal and non-professional, and have ordered its inclusion into the 546-B unit.

When evaluating a claim of supervisory status, we consider the following factors:

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 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/her skills or for his/her supervision of employes;
5. Whether the supervisor is 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 judgement exercised in the supervision of employes. 2/

The subject position is the fourth-ranking position (after the Administrator, Assistant, and Supervisor/Foreman) in a Department with only six other permanent County positions. While the incumbent does have authority to direct and assign the work force, other indicia of supervisory status are largely lacking. The record establishes a lack of independent authority to discipline either permanent or seasonal County employes. Gagnon's testimony and Heil's testimony on direct examination persuade us Gagnon has no significant authority to effectively recommend discipline. If his prospective role in hiring interns materializes, it is not sufficient to establish supervisory status when all criteria are considered. Measured at relevant benchmarks, the incumbent's salary is less than Department members of the non-professional bargaining unit. While the incumbent does exercise a good deal of independent judgment in the discharge of his duties, it is apparent that a significant amount of this work involves dealing directly with contractors, private citizens, and other non-employes. Accordingly, on balance, we find the position to lack sufficient indicia of supervisory authority to be deemed a supervisory position.

The Legislature has excluded "managerial employes" from the definition of "municipal employes," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats. Instead, it has left to the Commission the case-by-case development of a precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employes.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources, either by exercising significant authority in the establishment of an original budget or by allocating funds for different program purposes within an original budget. 3/

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." 4/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be

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2/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89)

3/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (Ct.App. 1984).

4/ Village of Jackson, Dec. No. 25098 (WERC, 1/88); Portage County, Dec. No. 6478-C (WERC, 10/87); Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88).

provided, or the kind and number of employees to be used in providing services.  
5/

The testimony of Heil and Gagnon establishes that Gagnon does not have significant authority in establishing an original budget or to allocate funds for different program purposes within an original budget. Thus, if Gagnon is to be found a managerial employe, he must be found to have a relatively high level of responsibility in forming and administering management policy. We do not find that to be the case. A review of some prior cases concerning alleged managerial status may highlight why we have reached this conclusion.

In City of Rice Lake, Dec. No. 20791 (WERC, 8/83), we rejected the employer's contention that the Superintendent of Parks was a managerial employe, but found that the Building Inspector/Health Officer was a managerial employe. Although the Superintendent had some input into the determination of policy as to parks operation, that input was insufficient to establish managerial status because the parks board retained and exercised direct policy control.

By contrast, the Building Inspector/Health Officer, a salaried official, reporting directly to the Mayor, worked a flexible schedule enforcing the state construction and city building codes. He submitted an annual budget, including funds for new programs of his initiative, directly to the Council's Board of Estimates. He drafted the City Building Code for approval by the Planning Commission, which we found to entail great reliance on the Inspector by the Commission based on the technical nature of the code. We found the development and enforcement of the code itself to give the Inspector "intimat(e) involvement" in the formulation, determination and implementation "of public policy." Ultimately, we found the combination of code development, code enforcement, and budget generation sufficient to align the position more closely with the interests of management than of the work force.

We do not agree with the County that the Rice Lake case supports managerial status for the Forestry Technician. The duties and powers of the Rice Lake Inspector far surpass those of the Clark County Forestry Technician, both in terms of providing expertise and advice to the policy makers on technical matters, and in the preparation of an annual budget. It was a combination of factors which caused us to find the Rice Lake Inspector to be managerial. Such factors are not present in Clark County.

Similarly, the duties which we found to establish managerial status for the Grant Coordinator/Curriculum Coordinator/Computer Coordinator in Northland Pines School District, Dec. No. 27154 (WERC, 2/92) are beyond those of the Forestry Technician. There, the subject position assessed curriculum needs, devised a plan and implemented programs to meet those needs, developed textbook adoption procedures, effectively recommended computer purchases and service contracts, and sought, monitored and administered grants. In that same district, we found to be non-managerial the Coordinator of the Student Assistance Program, whose duties included effectively recommending the purchase of, and evaluating the presentation of, the school's curriculum on Alcohol and Other Drug Abuse; making presentations for the Board and at outside meetings; facilitating student support groups; selecting co-facilitators from among volunteers; performing drug and alcohol assessments of students, which can include referrals to outside agencies for treatment; chairing the District's Student Assistance Steering Committee, which entailed providing input into the formulation of the SAP policy and the responsibility for its implementation; submitting a budget for the SAP, and exercising discretion in spending a \$3,000

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5/ Village of Jackson, supra; Forest County, Dec. No. 17528-B (WERC, 6/85); Jackson County, Dec. No. 17828-B (WERC, 10/86); City of Whitewater, Dec. No. 24354 (WERC, 3/87).

operational budget. The Forestry Technician does not have managerial responsibilities equivalent to that of the SAP Coordinator whom we found to be non-managerial.

In City of Milwaukee, Dec. No. 6960-J (WERC, 5/89), we found a Civil Engineer IV to be non-managerial. That position was responsible for preparing guarantee reports determining whether contractors had to make corrections before being released from their performance bonds; for performing research and development, including evaluating new products; developing and authorizing specialty contracts for work for outside contractors; deciding, as a member of the Pavement Type Committee, what type of pavement to install, and training new field inspection personnel. We found that these duties were "highly responsible and professionally demanding," that they all entailed "considerable independent judgment," and that the employer unquestionably benefitted financially when the incumbent made sound choices. Nevertheless, the evidence did not persuade us that the incumbent, himself, made policy choices regarding the level of services; rather, we found that the incumbent provided advice "to assist others in reaching policy decisions." This conclusion was in accord with our finding in City of Kaukauna, Dec. No. 25580 (WERC, 7/88), that Utility Systems Operators, although exercising considerable judgment, did not exercise managerial authority.

The Forestry Technician for Clark County does exercise considerable independent judgment in performing his highly responsible and demanding duties. Clearly, he has the authority and responsibility for ensuring the wise stewardship of a precious resource of the employer, namely its forests. However, in so doing, he is not significantly affecting the nature or direction of the employer's operation, such as level of service. Nor is he serving "at a relatively high level of responsibility" to determine program and policy; those determinations (that the County will operate a forest, and will seek to do so in a manner that balances ecological with financial concerns) have already been made.

If we decline to find the position either supervisory or managerial, the County urges us to rely on City of Mauston, Dec. No. 21424-B (McLaughlin, 10/86), where an Examiner found it was "not necessary to artificially separate" supervisory and managerial aspects of a position to determine whether a position was that of a municipal employe. Whether or not that case is a binding precedent, we do not find the combination of the supervisory and managerial aspects of this position to be sufficient to align it with management rather than with the bargaining unit.

We turn now to the question of whether the position is professional.

Section 111.70(1)(L), Stats., defines the term "professional employee" 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 must be present in order to find that a particular employe is professional. 6/ The above definition of "professional" employe is not limited to employes' personally possessing college degrees. 7/

In deciding whether a position is professional within the meaning of Sec. 111.70(1)(L), Stats., we not only look to written job descriptions, if they exist, but also any other evidence of the actual duties and responsibilities and knowledge and skills required for the position.

Measuring the subject position in light of the foregoing, we find that it does not meet all of the standards established by Sec. 111.70(1)(L), Stats.

We have no doubt that the incumbent performs work (e.g., evaluating where roads should be sited, making recommendations on bids and contracts) which is predominantly intellectual and varied in character. His work, especially enforcing the terms of contracts with loggers and others, definitely involves the consistent exercise of discretion and judgment. Further, the varied nature and the disparate tasks means that his duties are of such a character that his output cannot really be standardized in relation to a given period of time.

The first three tests of professionalism are thus satisfied. We turn now to the question of whether the Forestry Technician is engaged in work which requires knowledge of an advanced type, as that customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher education. The County says that he is. We find that he is not.

To evaluate whether Gagnon's position meets the requirements of Sec. 111.70(1)(L)1.d. Stats., it is helpful to review previous Commission determinations dealing with this topic.

In Rock County, Dec. No. 13670-A (WERC, 10/75), we held non-professional

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6/ Dane County, Dec. No. 10492-D (4/85); Milwaukee County, Dec. No. 14786-B (WERC, 4/80). See generally, City of Wauwatosa, Dec. Nos. 12032-C, 17241-17244 (WERC, 8/79); City of Cudahy, Dec. No. 19507 (WERC, 3/82); Blackhawk VTAE, Dec. No. 13460-A (WERC, 9/75) and Dane County, Dec. No. 21397 (WERC, 2/84), aff'd, Dane County v. WERC, Dec. No. 84 CV 1409 (CirCt Dane, 1/85).

7/ Dane Co., supra; Milwaukee County, Dec. Nos. 8765-E, 14786 (WERC, 7/76).

a Radiological Technician who was required to have successfully completed formal radiologic technology training in an AMA-approved school, successfully pass the National X-Ray Technician Examination, be eligible or possess a license from the State of Wisconsin, and have the ability to meet the requirements for registry by the American Registry of Radiologic Technologists, obtainable through a two-year course of study in a school affiliated with a general hospital or through a vocation school. Such requirements, we held, did not satisfy the criteria for a "prolonged course of study as envisioned by the statutory definition" of professional employe.

In Dane County, Dec. No. 10492-D (WERC, 4/85), we held non-professional the position of Specification Coordinator, Purchasing Division, the posted requirements for which included, "any combination equivalent to graduation from college with a degree in business or public administration or a related field, and two years experience in the purchasing of services and supplies for a government agency." Therein, while not giving great weight to the fact that the incumbent did not himself possess a college degree, and to testimony establishing that the County's actual requirement was for the described degree or its equivalent in experience and training, we also held that the stated educational demand "refer(red) only to. . .rather broad and general fields," rather than the statutory "course of specialized intellectual instruction."

In City of Sun Prairie, Dec. No. 20841-B (WERC, 10/86), we held as professional a Senior Engineering Technician who did not hold a bachelor's degree and who occupied a position for which the City's hiring criterion was two years towards a specialized associate degree rather than four years or more generally associated with a college degree in engineering. Noting that we had previously held that the statutory definition does not limit professional status only to those possessing specialized bachelor's degrees, we were persuaded that the responsibilities of the position -- the review and approval of various design drawings, coordination of field services, inspections, surveys, administration and enforcement of various rules and regulations, etc. -- were the type which required knowledge of the sort customarily acquired in an engineering degree program.

In City of Cudahy, Dec. No. 19507 (WERC, 3/82), we held as professional two positions occupied by incumbents who did not possess college degrees. We found professional a Data Processing Analyst who spent the majority of her time performing the following duties: (a) implementing and operating an IBM System 34 computer; (b) writing programs utilizing RPG program language; (c) insuring that the computer system's software and hardware are operating properly; (d) performing basic accounting work, journal and ledger entries, and (e) training employes in the use of equipment and in program operation. We noted that the City preferred that the Analyst have a college degree, with two or more years of modern accounting theory and practice; that the incumbent was scheduled to receive a degree in Management shortly after the hearing, and that the incumbent had taken courses in data processing as well as having received training from IBM in the use and operation of the City's computer. The "skills and knowledge necessary to perform the problem solving duties. . .in addition to the actual training and experience possessed by the incumbent," we concluded, were sufficient for us to conclude that the position was professional.

In that same case, we also held to be professional an Engineering Technician II who had one year of college training in civil engineering. We found that the position -- which functioned almost exclusively as a land surveyor, a post for which practitioners "typically possess an engineering degree" -- was one which required "knowledge of an advanced type customarily acquired through formal higher education" (emphasis in original).

As noted above, the County's position description requires an associate degree in forestry, plus experience in forest management, and states that a

bachelor's degree is "preferred." Gagnon has a bachelor's degree in forestry. The County also held out its right to evaluate candidates based on a combination of factors.

At the time of its announcement, the Technician job was a three-year project position. Heil testified that the County would have preferred to require the advanced degree, but that it felt the lack of permanence for the position could likely discourage qualified candidates from applying under those terms. However, Heil also testified that the knowledge necessary would be possessed by applicants with an associate degree and substantial experience. Thus, Heil's testimony does not definitively establish the need for the type of knowledge defined in Sec. 111.70(1)(L)1.d., Stats.

Even acknowledging the import of Heil's testimony, we do not find that the primary functions of Gagnon's position customarily require the educational attainments noted above. Some of his duties -- assisting with, even administering, timber sales, conducting inventories, enforcing ordinances, cooperating with private landowners and contractors, aiding public awareness, reviewing and making recommendations on bids and contracts -- are bereft of any such aspects. As to other duties -- assisting with planning and conducting of cultural activities, developing forest logging roads designs and layouts -- we are not persuaded the knowledge required is of an advanced type customarily acquired through a prolonged course of specialized study. Accordingly, we have found the position to be non-professional.

As the position is a non-professional municipal employe, we have ordered its accretion into unit 546-B.

Dated at Madison, Wisconsin this 23rd day of August, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner