

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of :  
LOCAL 60, AFSCME, AFL-CIO : Case 9  
Involving Certain Employes of : No. 36768 ME-84  
CITY OF SUN PRAIRIE : Decision No. 20841-B  
-----

Appearances:

Mr. Richard Finn, City Administrator, City of Sun Prairie, 124 Columbus Street, Sun Prairie, Wisconsin 53590, appearing on behalf of the City of Sun Prairie  
Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of Local 60, AFSCME, AFL-CIO.

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

Local 60, AFSCME, AFL-CIO, filed a petition on April 1, 1986, with the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit represented by the Union so as to include the position of Senior Engineering Technician within said unit. A hearing was held on May 29, 1986 in Sun Prairie, Wisconsin, before Hearing Examiner Andrew Roberts. A stenographic transcript was made of the hearing and mailed to the parties on June 13, 1986. The parties argued orally at hearing in lieu of briefs. The Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the City of Sun Prairie, hereinafter the City, is a municipal employer with offices at 124 Columbus Street, Sun Prairie, Wisconsin; that the City operates various departments, among which is the Department of Public Works; and that Richard Finn is the City Administrator.

2. That Local 60, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization with its offices at 5 Odana Court, Madison, Wisconsin, and is the certified representative of:

All regular full-time and regular part-time employes, including pages, of the City of Sun Prairie, excluding supervisory, confidential, professional and craft employes, law enforcement employes with the power of arrest, and employes of the Water and Light Department.

3. That in the latter part of 1985 the City began plans to create an engineering division within the Department of Public Works; that as part of those plans the position of Senior Engineering Technician was created; that the City, contrary to the Union, contends that the Senior Engineering Technician position is supervisory and professional; that two Engineering Aide positions were also created in the latter part of 1985; that the City determined that it would hire college students as Engineering Aides through a cooperative education program; that Engineering Aides receive college credits through the program and are paid \$5.50 per hour by the City; that one Engineering Aide began working in January, 1986 and is scheduled to work through August, 1986, while the second Engineering Aide began working in May, 1986 and is scheduled to work through December, 1986; that thereafter the City intends to continue filling the Engineering Aide positions for the same periods with college students through the cooperative education program; and that Director of Public Works/City Engineer David Kaul hired the first Engineering Aide in January, 1986 after colleges sent resumes of interested students.

4. That the Senior Engineering Technician job description states the following requirements for the position:

MINIMUM QUALIFICATIONS

Training and Experience: Completion of two (2) years of College level course work for an Associate Degree in Civil Technology, Land Surveying or related field or four years of experience in municipal engineering operations including one (1) year in a supervisory role, or an equivalent amount of training and education.

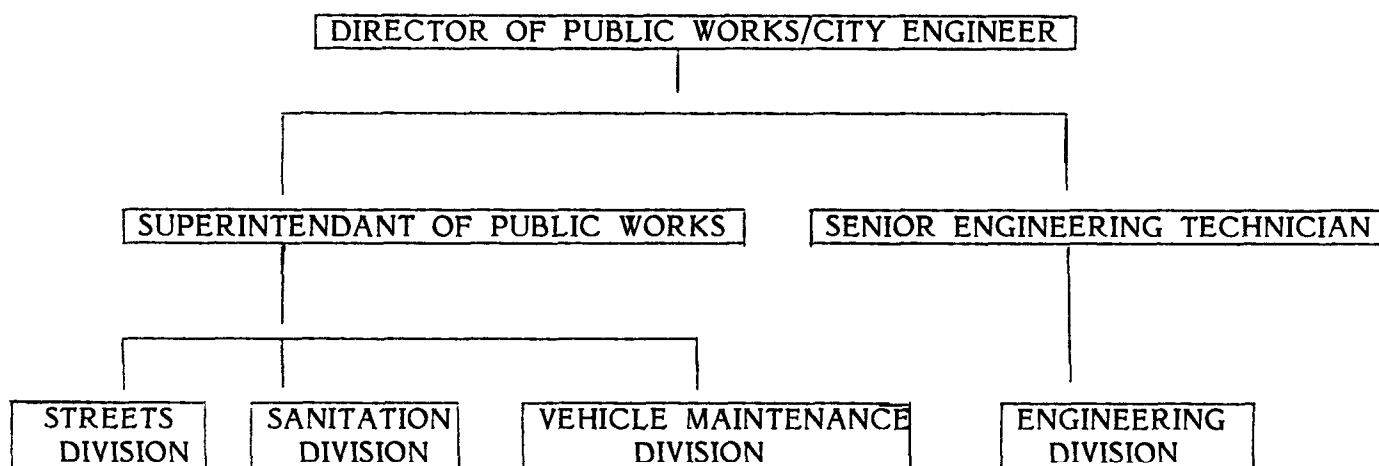
Knowledge and Skills: Good knowledge of the methods and practices of map drafting; good knowledge of engineering drawing and practices; some knowledge of survey techniques and practices, as well as mathematics, geometry and trigonometry; good knowledge of State of Local codes and ordinances pertaining to improvements on public properties; good knowledge of the techniques and materials used in general construction, good knowledge of the principles and practices of effective supervision.

Considerable skill in working from engineer's blueprints; good skill in the use of drawing and drafting instruments; good skill in preparing maps from public records data; good skill in making arithmetic calculations accurately and rapidly; working skill in application of drafting theory and practice to map drafting and related problems; good skill in dealing with the public courteously and tactfully; good written communication skills for report writing and documentation; considerable skill in establishing and maintaining effective relations with supervisor, subordinates and the public.

License Requirement: Valid Wisconsin Driver's License.

that in early 1986 Kaul hired Daryl Severson as Senior Engineering Technician, and he began work on March 5, 1986; that Severson has a two-year associate degree in Civil Highway Technology from Madison Area Technical College; that he has one year of experience with the Wisconsin Department of Transportation as a material inspector, tester, and member of construction survey crews; and that he has ten (10) years of experience with a consulting engineering firm in surveying and drafting and inspecting the construction of streets, water mains, and storm and sanitary sewers.

5. That the Department of Public Works is now organized as follows:



that the Superintendent of Public Works receives \$28,520 for 1986; that Severson is the head of the Engineering Division of the Department of Public Works, and he receives \$21,840 for 1986 based on an hourly wage rate of \$10.50; that Severson directs and assigns the activities of the two Engineering Aides; that Engineering Aides are not in the bargaining unit, and they receive \$5.50 per hour but no benefits; that Severson spends approximately 75 to 80 percent of his time in the field working with the Engineering Aides or working by himself; that he spends his remaining time in the office performing planning and written tasks; and that a

normal workweek for the Senior Engineering Technician and the Engineering Aides is 8 a.m. - 4:30 p.m., Monday-Friday.

7. That Severson's normal duties stem from directives or work orders from Kaul; and that the Senior Engineering Technician job description states the job responsibilities as follows:

#### NATURE AND SCOPE

The position is under the direction of the Director of Public Works/City Engineer. Reporting to the position are two (2) Engineering Aides. The Engineering Division is one of four divisions of the Public Works Department. The Division is primarily responsible for the review and approval of design drawings for streets, watermains, sanitary sewers and storm sewer systems. This includes inspection and approval of all new public improvements. The Engineering Technician is expected to function in the field approximately 80% of the time.

The Engineering Technician supervises the division field inspections and coordinates the field operation with the office operation. This includes supervising the Engineering Aides in surveying and engineering field work. The supervisory duties of the position include preparing daily work schedules for the division personnel and reviewing and approving employees time sheets. The Engineering Technician also inspects the work performed by the division personnel and/or contracted work. This includes inspecting work in progress to insure that established standards are being fulfilled. Supervisory duties of the position also include evaluating the job performance of the personnel assigned to the division. The position also participates in the selection process when filling the Engineering Aide positions. The position recommends the hiring, transferring, promotion and disciplinary action, including dismissal of division personnel.

Supervisory duties of the Engineering Technician also includes administering and enforcing the City and departmental rules and regulations. The job function involves the communication and instruction of the appropriate rules, regulations, procedures and policies to the division personnel.

The position supervises and participates in field inspections of public improvements constructed by both private contractors and/or City residents. The field inspections require review of permits and approved plans, prior to an inspection, to ensure that the site improvements are constructed in accordance with the approved engineering permit plan and that they comply with all applicable city policies, codes, and local government standards. The roadways, curbs and sidewalks, streets, sanitary sewers, street lights, storm sewers and ditches, watermains, private improvements, utility company conduits and cable T.V. communication cables.

The Engineering Technician reviews both the materials and construction methods being used for the installation of the site improvements to insure compliance with all City, State and Federal requirements.

The position performs topographic surveys as well as field staking and laying out of City construction projects. The Engineering Technician also generates and maintains records of horizontal and vertical survey control points.

The Engineer Technician makes recommendations for approval/denial of Bond Refunds and Final acceptance of public improvements. This position also performs service inspections and investigates complaints made by the public. This position compiles performance and maintenance punch lists

identifying specific aspects of the public improvements which must be corrected prior to acceptance by the City, including seeking and coordinating input from the other City Departments (Sewer, Streets, Water & Light, Parks and Recreation, etc.) divisions).

The position provides information to contractors, engineers, builders, other governmental officials and residents pertaining to City procedures and standards, code and ordinance requirements. In addition, the position provides information to the other department officials and City workers regarding the location of existing utilities and engineering departmental plans and records.

The Engineering Technician conducts traffic counts and surveys and prepares written reports on the results. The position also conducts title searches for assessment rolls.

The position performs general drafting including: preparing and updating City maps and drawings; updating the City zoning map; revising and updating the watermain, sanitary and storm sewer atlases; performing survey duties and preparing plans based on survey results; and preparing tracings and blueprints.

The Engineer Technician may also perform additional job duties that fall within the scope of this position description.

The Engineering Technician is challenged by the need to gain compliance from all construction projects performed on City property by drafting, reviewing and/or inspecting the public improvements in accordance with City requirements and engineering standards.

The position has contact with the general public, contractors, architects, utility company representatives and civil engineers. The position also has contact with the Building Department, and the Public Works Department, as well as, all the members of the Engineering Division.

The position's effectiveness can be measured by its ability to obtain compliance form (sic) contractors constructing public improvements on City property, by reviewing and inspecting these improvements.

8. That Kaul had Severson review the resumes of student applicants for the second Engineering Aide position; that Severson recommended one such applicant and an interview was scheduled for that candidate which Severson would have attended but for a scheduling conflict; that Kaul ultimately hired that candidate; that it is anticipated that in the future Engineering Aides would be hired for similar terms and be hired as cooperative students and that Severson would sit in on the interviews for future Engineering Aides applicants and would make recommendations as to who to hire; that Severson has the authority to issue written warnings to Engineering Aides, though he has not had occasion to do so; that Severson could recommend to Kaul whether an Engineering Aide should be suspended, though he has not had occasion to do so; that the City Administrator's office would terminate any employee; that Severson can attempt to resolve oral grievances; that Severson could request overtime for the Engineering Aides and Kaul would then decide whether to approve it; that if it were necessary to layoff an Engineering Aide, Severson would recommend which Engineering Aide to layoff, Kaul would review the recommendation, and Kaul would in turn make a recommendation to Finn; that Engineering Aides do not pass through an initial probationary period; that Severson evaluates Engineering Aides pursuant to the request of the colleges that the Engineering Aides attend, but such evaluations would not generally be used by the City; that Severson approves the time sheets of Engineering Aides; that if additional employees were needed for temporary assignments in the Engineering Division, Kaul would contact the Superintendent of Public Works to determine whether a Public Works employee could be so reassigned; and that if an Engineering Aide requested time off, Kaul would decide whether to approve it.

9. That Severson does not possess supervisory authority in sufficient degree or combination to be a supervisor; and that the job responsibilities of Severson are predominately intellectual and varied in nature, cannot be placed on a standardized basis, require the use of independent judgment and require knowledge of an advanced type customarily acquired through formal higher education.

CONCLUSIONS OF LAW

1. That the occupant of the position of Senior Engineering Technician is not a supervisory employe and is therefore a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. That the occupant of the position of Senior Engineering Technician is a professional employe within the meaning of Sec. 111.70(1)(1), Stats.

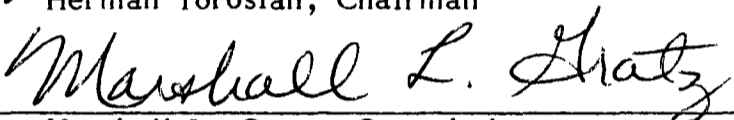
ORDER CLARIFYING BARGAINING UNIT 1/

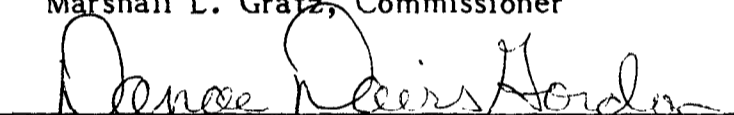
That, because the position of Senior Engineering Technician is a non-supervisory professional position and because the bargaining unit described in Finding of Fact 2 excludes professional employes, said position shall remain excluded from the unit involved.

Given under our hands and seal at the City of  
Madison, Wisconsin this 13th day of October, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

---

1/ 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 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.

(Footnote 1 continued on Page 6)

(Footnote 1 continued)

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.

CITY OF SUN PRAIRIE

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

POSITION OF THE PARTIES

The City

The City contends that the position of Senior Engineering Technician is supervisory as reflected in his responsibilities and salary range. In addition, the City maintains that, based upon such responsibilities as well as the position's qualifications, it is also a professional position. The City argues that it did not unequivocally require a college degree because to do so might have violated Equal Employment Opportunity Act requirements.

The Union

The Union responds that Severson has no supervisory authority. He cannot discipline or discharge employees, transfer employees, or hire employees. Moreover, he only directs two employees, as compared to the Superintendent of Public Works who supervises fourteen (14) employees. The Union points out that the Superintendent of Public Works receives approximately \$3,000 more than the Senior Engineering Technician, even though the City contends they have comparable supervisory authority. At most, Severson directs activities, not employees. Severson is also not a professional employee, for there was no demonstration that he exercised independent judgment. In that regard, the Union notes the City does not require the incumbent to hold a degree.

DISCUSSION

Supervisory Status

The Commission considers the following factors in determining if a position is supervisory in nature:

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

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appears in any given case the Commission will find an employee to be a supervisor. 3/

---

2/ See, e.g., Village of Ashwaubenon, Dec. No. 23746 (WERC, 6/86).

3/ See e.g., Ozaukee County, Dec. No. 23464 (WERC, 3/86).

With respect to Severson's disciplinary authority, the record reflects that at most he may have the authority to independently issue a written warning and he may be able to recommend suspension, but he has not had occasion to do either. He does not schedule employes, except when he asks Director of Public Works/City Engineer Kaul to allow overtime for the Engineering Aides. If an Engineering Aide is to be laid off, Severson might suggest which employe should be laid off, but such recommendation is subject to Kaul's and then City Administrator Finn's review. The only evaluations he performs are at the request of the schools that the Engineering Aides attend. Kaul approves all requests for time off made by the Engineering Aides, not Severson. If any additional personnel were needed for temporary assignment in the Engineering Division, Kaul and the Superintendent of Public Works would make the determination, not Severson. While Severson holds a certain amount of authority in recommending Engineering Aide applicants to fill vacancies and while he can attempt to resolve oral grievances, on balance Severson functions more as a lead worker than as a supervisor. In that regard, he spends approximately 75 to 80 percent of his time in the field working alone or with the Engineering Aides, assigning them tasks rather than carrying out supervisory responsibilities. The differences in wage levels (\$10.50/hour for Severson v. \$5.50/hour for the Engineering Aides) is not controlling, particularly when a large part of the difference is apparently attributed to the fact that the Engineering Aides are cooperative students who are not in the bargaining unit. Accordingly, we find that Severson does not have supervisory authority in sufficient combination and degree to render his position supervisory.

#### PROFESSIONAL STATUS

Turning to the City's claim that the Senior Engineering Technician is a professional position, Sec. 111.70(1)(L), Stats., defines a professional employe as:

1. Any employe engaged in work:
  - a. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or
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 employe to qualify himself to become a professional employe as defined in subd. 1.

All of the criteria in Subsection 1 or 2 must be met for a position to be deemed professional. 4/ We are satisfied that the position of Senior Engineering Technican meets each of the requirements set forth in Subsection 1, above. As mentioned, Severson spends approximately 75 to 80 percent of his time out in the field, generally performing his job responsibilities independently. The preponderance of those tasks are not routine, manual, mechanical or physical work and are not standardized. Rather, they are predominately intellectual and varied in character. For example, he: (1) reviews and approves design drawings for streets, watermains and storm and sanitary sewer systems; (2) supervises field inspections and coordinates the field operation with the office operation; (3) inspects work that is in progress and that is completed by the division staff

---

4/ Milwaukee County, Dec. No. 14786-B (WERC, 4/80).



and outside contractors to ensure compliance with various standards; (4) administers and enforces City rules and regulations; (5) inspects and approves public improvements; (6) reviews permits and plans to ensure compliance with the plan, City policies, codes and Local government standards; (7) reviews materials and construction methods used for the installation of site improvements to ensure compliance with city, state and federal requirements; (8) performs topographical surveys; (9) recommends the approval or denial of bond refunds and final acceptance of public improvements; (10) performs service inspections and investigates public complaints; and, (11) identifies aspects of public improvements which must be corrected prior to acceptance by the City.

We have considered the facts that the incumbent Senior Engineering Technician does not hold a bachelor's degree in engineering or in any other field and that the City's hiring criteria seek two years toward a specialized associate degree rather than the four years or more generally associated with a college degree in engineering. While an incumbent's actual credentials and the employer's actual hiring criteria are relevant in determining whether a position falls within the meaning of Sec. 111.70(1)(L)l.d., above, they are not necessarily determinative. Rather, that issue ultimately depends upon the nature of the work and the means by which the knowledge required to perform that work is customarily acquired. Thus, we have previously held that the statutory definition does not limit professional status only to those possessing specialized bachelor's degrees, nor is it essential that the incumbent possess (or that the employer seek candidates with) state certification or licensing as a professional. 5/ What is essential under l.d. is that the knowledge required for the incumbent's job duties must be of a type customarily acquired through the means specified in l.d.

We are persuaded, on balance, that the responsibilities enumerated in the preceding paragraph require knowledge of the sort customarily acquired in an engineering degree program, and hence require knowledge of the sort described in l.d. 6/

In a somewhat similar situation in Milwaukee County, 7/ the Commission found the position of Assistant Construction Superintendent to be professional, even though a college degree was not required or possessed. That position had several responsibilities similar to those of the Senior Engineering Technician herein, such as overseeing construction projects by checking for code compliance, reviewing construction methods, reviewing and approving design plans, and approving completed projects. While the Commission has found some engineering technicians to be non-professional, the instant position is distinguishable because its responsibilities are far more extensive and varied than those technicians that have been found not to be professional. 8/

Accordingly, the varied nature of duties, the regular exercise of judgment and discretion, the non-standardized output of work, and the skills and knowledge necessary to perform the problem solving duties of the Senior Engineering

---

5/ City of Cudahy, Dec. No. 19507 (WERC, 3/82); and Milwaukee County, Dec. Nos. 8765-E and 14786 (WERC, 7/76).

6/ It can also be noted that while the incumbent does not possess such a degree, he does have a two-year Associate degree in Civil Highway Technology and nearly eleven years of experience performing duties which are preparatory for or supportive of his current range of assignments.

7/ Milwaukee County *supra*, Note 5.

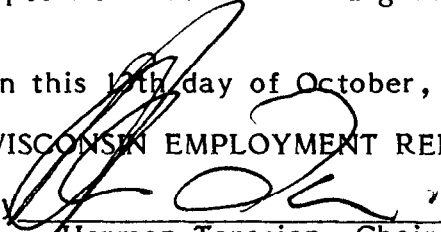
8/ Compare, City of LaCrosse, Dec. No. 7833 (WERC, 12/66), where a Civil Engineer I position with responsibilities similar to those of the instant position was found to be professional, with, Milwaukee County, Dec. No. 14786-B (WERC, 4/80), where a variety of engineering technician positions were found nonprofessional of which none had responsibilities that are as intellectual or varied in nature as those of the Senior Engineering Technician position herein.

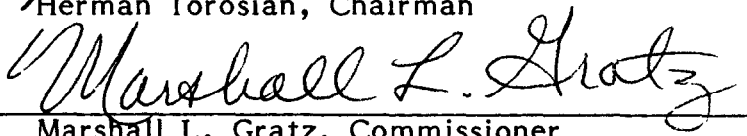
Technician position are sufficient to convince the Commission that the position is a professional position. Because of its professional status, we have excluded the Senior Engineering Technician position from the bargaining unit as presently constituted.


Dated at Madison, Wisconsin this 17th day of October, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner