

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
WISCONSIN COUNCIL OF COUNTY  
AND MUNICIPAL EMPLOYEES,  
AFSCME, AFL-CIO  
Involving Certain Employees of  
GRANT COUNTY  
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Case VII  
No. 31434 ME-2205  
Decision No. 21063

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Union.  
Melli, Shiels, Walker and Pease, S.C., Attorneys at Law, by Mr. Jack D. Walker, Suite 600, Insurance Building, 119 Monona Avenue, P.O. Box 1664, Madison, Wisconsin 53701, appearing on behalf of the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, having on April 6, 1983 filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election pursuant to the Municipal Employment Relations Act, among certain employees in the employ of Grant County to determine whether said employees desire to be represented for purposes of bargaining by said labor organization; and hearing in the matter having been conducted on May 17, 1983 by Examiner Andrew Roberts; and a transcript having been prepared; and briefs having been filed by August 12, 1983; and the Commission, having considered the record and briefs of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the Union is a labor organization representing municipal employees for purposes of collective bargaining and has its offices at 5 Odana Court, Madison, Wisconsin 53719.

2. That the County is a municipal employer and has its principal offices at the Grant County Courthouse, 130 West Maple Street, Lancaster, Wisconsin 53813; and that among its municipal functions the County has a District Attorney's Office, a Social Services Department and a Public Health Office.

3. That the County has a total of approximately five hundred employees; that of those five hundred employees approximately seventeen comprise a bargaining unit within the Sheriff's Department, which is the only existing bargaining unit at present; that at the beginning of the hearing, the Union proposed a bargaining unit consisting of: all regular full-time and regular part-time professional employees of Grant County, excluding managerial, supervisory, confidential, and all other employees; that the County proposed a bargaining unit consisting of all regular full-time and regular part-time professional employees of Grant County, excluding Assistant District Attorneys and all other employees; that both the Union and the County agree that the positions of Social Workers I, II, III, and IV would be included in either proposed bargaining unit; that there are two Assistant District Attorney positions; that, contrary to the Union, the County contends that Mary Rasmussen, and Connie Klinkhammer, who are incumbents of the Public Health Nurse I position, and David Fritsch, who is an incumbent of the Public Health Nurse II position, in the Public Health Office, are supervisors and should be excluded from the bargaining unit; and that, contrary to the Union, the County contends the Assistant District Attorney position should not be included with the proposed bargaining unit, alleging the position is managerial and/or supervisory, or, alternatively, the position lacks a sufficient community of interest with the other positions in the proposed unit.

4. That all employees in the County who are not covered by a collective bargaining agreement are covered by the "Grant County Central Personnel System Policies" manual, a document which includes County policies on such matters as benefits, holidays, work schedules, discipline, and a grievance procedure; that pursuant to said manual, the normal hours of operation for County departments are 8:00 a.m. through 4:30 p.m.; that the discipline procedure in the manual provides in part as follows:

#### DISCIPLINARY ACTIONS

To emphasize the prevention of rule infraction, the Supervisor or Administration may bring any infraction to the attention of any employee either verbally or in the form of writing. This provides the opportunity to adequately explain the rule, the infraction, and the potential disciplinary action to the involved employee.

Normal steps in disciplinary action are verbal warning, written warning, suspension, and discharge. Each step must be documented. Signature and approval of the Supervisor and Administration are required for all written warnings and discharges. An employee is entitled to a copy of the written warning. A copy of each written warning will be filed in the employee's personnel file. The Employee Relations Committee may review requests for removal of written matter from employees' files.

Cases for Disciplinary Action Include: Excess absenteeism, tardiness, poor work performance, unauthorized solicitation or distribution of literature on or around premises, unauthorized posting or removal of bulletin board items, poor personal hygiene, or leaving early. Additional reasons may be instituted by individual department with a printed copy on file with the Employee Relations Committee.

Any dispute or appeal by an employee may be presented in the form of a grievance procedure.

that the grievance procedure in the manual provides as follows:

#### GRIEVANCE PROCEDURE

Any employing unit can experience honest individual differences of opinion as to work practices. Employees should be free to seek reasonable remedy by fully expressing their complaints or grievances without fear of reprisal. The employee is assured of receiving a fair hearing and impartial treatment by use of the following described process:

When the worker has a complaint, disagreement or grievance:

- 1) Discuss the matter with the immediate supervisor; if that fails to resolve the matter satisfactorily within five (5) working days
- 2) Prepare a written statement of the problem and submit it to the immediate supervisor and/or to the department head. A written response will be given to the employee. If that fails to resolve the matter satisfactorily within ten (10) working days
- 3) Submit a written statement to the department or agency's immediate governing committee or board; or absent, of such to the Employee Relations Committee. Action shall be taken within 30 days and a written response will be given to the employee.

- 4) Copies of all written grievance and responses shall be filed with the Employee Relations Committee.

and that all non-represented employees of the County communicate with the County through an employee policy committee.

5. That both the District Attorney's Offices and the central office for the Public Health Department are located on the first floor of the County's Courthouse; that the Social Services Department is located at two facilities, both of which are separate from the Courthouse; that the Assistant District Attorneys regularly communicate with, and use testimony of, employees from the Social Services and Public Health Departments of the County in juvenile and paternity matters, and, in mental and alcoholic commitment proceedings; that the Assistant District Attorney requests and subpoenas Deputy Sheriffs and Social Workers to testify in court, which actions occasionally result in overtime for Deputy Sheriffs; that the District Attorney supervises the two Assistant District Attorneys; and that the job description of the Assistant District Attorney is as follows:

#### ASSISTANT DISTRICT ATTORNEY

GENERAL STATEMENT OF DUTIES: Performs professional, legal services as the chief assistant to the District Attorney.

DISTINGUISHING FEATURES OF THE CLASS: The Assistant District Attorney II represents the county and state in court and represents the District Attorney when absent. General supervision is received from the District Attorney.

#### EXAMPLES OF DUTIES PERFORMED: (Illustrative Only)

Prosecutes and defends criminal actions in court in behalf of the State of Wisconsin or Grant County;

Interviews witnesses, prepares motions and conducts research for trials;

Supervises office personnel in the provision of appropriate services from the District Attorney's office;

Drafts and prepares criminal complaints, summonses, warrants, and subpoenas;

Furnishes information on inquires and complaints to the District Attorney;

Handles matters pertaining to social service programs and to juvenile cases;

Drafts oral arguments and written briefs in response to legal positions submitted by opposing counsel;

Corresponds with agencies, witnesses and attorneys;

Negotiates pleas and ultimate sentencing dispositions;

Approves transcripts for cases tried;

Prepares reports and instructional bulletins;

Consults with law enforcement officers during working hours and at night or weekends.

Provides occasional supervision and guidance to police officers and deputies in the conduct of investigations;

Answers public inquires by telephone and correspondence; performs related duties as required.

ESSENTIAL KNOWLEDGES, SKILLS AND ABILITIES: Thorough knowledge of county codes and ordinances; thorough knowledge of state and federal constitutional provisions relating to criminal law; thorough knowledge of judicial procedures; demonstrated ability to analyze, appraise and organize facts; ability to make presentations both orally and in writing; ability to establish and maintain effective working relationships with court officials, county officials and the general public; good judgment.

EXPERIENCE AND TRAINING REQUIREMENTS: Graduation from a recognized school of law.

ADDITIONAL REQUIREMENTS: Must have current membership in Wisconsin State Bar.

that the individuals occupying the position of Assistant District Attorney do not possess or exercise supervisory and/or managerial authority in sufficient combination or degree to be deemed supervisory or managerial employees; and that the individuals occupying the position of Assistant District Attorney have sufficient community of interest to be included with the other professional employees of the County in the negotiation of wages, hours and conditions of employment.

6. That the Public Health Office provides both nursing services for patients in their homes and public health nursing services at schools, work sites and public health centers; that the staff of the Public Health Office consists of the Director (Linda Adrian), the Assistant Director (Fivecoat), three full-time nurses (Rasmussen, Klinkhammer and Fritsch), eight part-time nurses (Walker, DiVall, Lendosky, Okey, Trewartha, Judy Adrian, Bandy and Mikonowicz), one physical therapist (Burdon), four Aides (Vogelsberg, Behling, Lewandowski and Moon), and four clerical employes (Udelhoven, Dibbs, Thompson and Jones); that the Nurses have been assigned to specific geographic territories; and that, in addition to the Director and Assistant Director, the only full-time employees are three Nurses (Rasmussen, Klinkhammer and Fritsch) and two secretaries.

7. That Rasmussen directs the activities of Home Health Aide Joyce Behling and Nurses Adrian and Okey; that Klinkhammer directs the activities of Home Health Aide Janet Lewandowski and Nurse Mikonowicz; that Fritsch directs the activities of Nurse Trewartha and Home Health Aide Moon; and that the other employees are directed in their activities by the Director and Assistant Director; and that Rasmussen, Klinkhammer and Fritsch report to the Director who in turn reports to the Health Committee of the County Board.

8. That the job description for Public Health Nurse is as follows:

JOB DESCRIPTION OF PUBLIC HEALTH NURSE STAFF POSITION

I. Job Title: Public Health Nurse - Staff position \* (Se G-3A-4)

The Public Health Nurse works in a field of specialization within both professional nursing and the broad area of organized public health practice. She utilizes the philosophy, content, and methods of public health and the knowledge and skills of professional nursing. She is responsible for the provision of nursing service on a family centered basis for individuals and groups at home, at work, at school and in public health centers. The public health nurse interweaves her services with those of other health and allied workers, and participates in the planning and implementation of community health programs.

II. Supervision

The Public Health Nurse works under the Director/Supervisor of Public Health Nurses of Grant County.

### III. Nature of Work

Provides public health nursing services within a defined district area according to agency programs and policies. Under the general supervision of the County Nurse, requires considerable professional responsibility and initiative, and some knowledge of supervision in directing efforts of lay assistants.

### IV. Responsibilities and Duties

1. Assist in promotion and maintainance of health of individuals, families, and the community through teaching, counseling and preventive and rehabilitive measures carried out in homes, schools and industry.

2. Teaches, demonstrates and delivers nursing care to patients and their families. Plans, directs, and evaluates nursing care to meet immediate and long range needs of patient and his family in their home. Gives nursing care and performs complex nursing functions appropriate for her education and background. Plans for the care of patients with other members of the health team; may be a leader of the nursing team and a coordinator of patient care.

3. Plans and directs community public health program in cooperation with the Grant County Medical Society and Health Committee.

### V. Basic Requirements

1. Registration as a professional nurse in Wisconsin. Eligibility for cetification as Public Health Nurse in Wisconsin is recommended, or the nurse must agree to continue education as outlined by Division of Public Health Nursing in order to become certified in Public Health Nursing.

2. Experience: Years and Kind - A year of public health nursing experience under qualified supervision is desirable but not essential.

3. Must have a car for use during working hours and have a current Wisconsin drivers license.

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and that the job description for the part-time Nurse is as follows:

#### JOB TITLE

Registered Nurse-Part-time Home Nursing

#### Basic Requirements

1. Must be licensed to practice professional nursing in State of Wisconsin.
2. Recent preparation and/or experience is desirable. (Experience within past three years or recent refresher course).
3. If possible should reside within the geographical area of the county in which her services are to be rendered.

#### Job Description

1. All area nurses are under the direct supervision of the County Supervisor Nurse or her designate (sic) and shall abide by all established policies stated in the HN manual.

2. Provides nursing services, treatments and preventative procedures, symptomatic observation of patients in accordance with the nursing care plan and implement rehabilitative procedures as appropriate for the patients care and safety.
3. Observes signs and symptoms and reports to the physician reactions to treatments; including drugs, and changes in the patient's physical or emotional condition.
4. Teaches, supervises and counsels the patient and family members regarding the nursing care needs and other related problems of the patient at home.
5. Keeps records and makes reports as directed by the County Supervising Nurse.
6. Will maintain close contact with the County Supervising Nurse or assigned supervisor for the purpose of reporting on assigned cases, confirmation and renewal of medical order, and re-evaluation of services needed by each patient.
7. Attends such educational and training programs as required by County Supervising Nurse.

9. That Rasmussen, Klinkhammer and Fritsch have never disciplined or discharged any employee under their direction, nor has there been any incident which would warrant discipline; that if an employee under their direction would need to be disciplined, they would confer with the Director; that they have never been told they may recommend what discipline to administer; that the discipline procedure under the personnel manual, as described in Finding of Fact 4, sets forth the disciplinary steps to be followed by a supervisor; that Rasmussen, Klinkhammer and Fritsch annually make written evaluations of the performance of those employees under their respective direction and, along with Linda Adrian, discuss the evaluation with the particular employee; that Rasmussen, Klinkhammer and Fritsch would be expected to respond in the first step of the grievance process, as described in the personnel manual in Finding of Fact 4, though they have not had occasion to do so as of the time of the hearing; that in the past an employee generally passed automatically from probationary to permanent status; that in the future a new employee will be evaluated jointly by Linda Adrian and either Rasmussen, Klinkhammer or Fritsch; that Linda Adrian, along with Rasmussen, Klinkhammer or Fritsch, jointly determine whether vacation requests from Aides are to be granted; that an Aide generally calls the Director to report an absence due to illness; that on one occasion Klinkhammer recommended that part-time nurse Mikonowicz continue in her position after Mikonowicz retracted her resignation; that on one occasion Rasmussen recommended the hiring of Judy Adrian as a part-time Nurse; that Judy Adrian, who was the only applicant for the position, is related to Director Linda Adrian; that Rasmussen may have attended Judy Adrian's interview; that two other employees, Molly Bandy and Vicki Becker, have been hired during the Director's tenure, but that Rasmussen, Klinkhammer and Fritsch were not involved in hiring them because they do not direct their activities; that Nurses direct Aides as to the type of case they will administer to patients; that Rasmussen, Klinkhammer and Fritsch regularly assign duties to Aides; that Rasmussen, Klinkhammer and Fritsch assist the Assistant Director in formulating the Aides' schedules; that Rasmussen, Klinkhammer and Fritsch spend at most five to ten percent of their time in supervisory activities; and that Rasmussen, Klinkhammer and Fritsch do not possess or exercise supervisory authority in sufficient combination or degree to be deemed supervisory employees.

10. That Assistant District Attorneys receive approximately \$16,000 to \$17,000 per year; that Social Workers receive approximately \$12,000 to \$20,000 per year; that Public Health Nurse I's Rasmussen and Klinkhammer receive \$7.68, which, on a full-time basis, would be approximately \$16,000 annually; that Public Health Nurse II Fritsch receives \$8.06 per hour, which, on a full-time basis would be approximately \$16,000 annually; that Nurses under the direction of Public Health Nurses receive between \$7.23 and \$8.06 per hour, which, on a full-time basis,

would be approximately \$15,000 to \$16,800 annually; and that Physical Therapist Burdon receives \$11.00 per hour, which, on a full-time basis, would be approximately \$22,880 annually.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

#### CONCLUSIONS OF LAW

1. That Public Health Nurses Rasmussen, Fritsch and Klinkhammer are not supervisory employes and are therefore "municipal employes" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act and are eligible to vote in the election directed herein.

2. That the occupants of the position of Assistant District Attorney are neither supervisory nor managerial employes and are therefore municipal employes within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act who appropriately are included in the bargaining unit and are eligible to vote in the election directed herein.

3. That all regular full-time and regular part-time professional employes of Grant County, excluding managerial, supervisory, confidential and all other employes, constitute a single appropriate collective bargaining unit within the meaning of Sections 111.70(1)(e) and Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes and issues the following

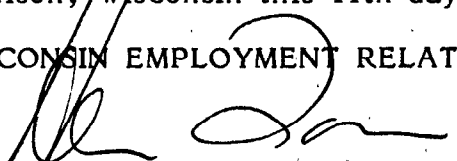
#### DIRECTION OF ELECTION

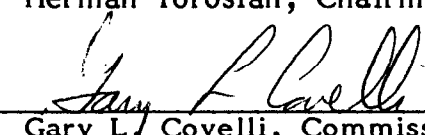
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time professional employes of Grant County, excluding managerial, supervisory, confidential and all other employes, who were employed by Grant County on October 11, 1983; except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO for the purpose of collective bargaining on wages, hours and working conditions with Grant County.

Given under our hands and seal at the City of  
Madison, Wisconsin this 11th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

POSITION OF THE COUNTY

The County contends Rasmussen, Fritsch and Klinkhammer are supervisors because they effectively make recommendations regarding the hiring of employees; a factor the Commission has previously considered in determining supervisory status. Hiring is an important factor, according to the County, because it creates the initial employment relationship. In addition, the three alleged supervisors regularly evaluate employees, assign work, and schedule hours of work for those employees under their direction. Moreover, they approve Aides' vacation schedules and receive reports of an Aide's absence. Finally, if Rasmussen, Fritsch and Klinkhammer are not found to have supervisory status, then the supervisory-employee ratio would be unmanageable because the Director and Assistant Director could not adequately supervise employees who are disbursed over such a large geographic area. It is also important to note that besides the Director and Assistant Director, the only full-time Nurses are the alleged supervisors, which fact indicates they hold a different status than the employees they direct. Although the alleged supervisors spend only a small portion of their time performing supervisory functions, that does not detract from their supervisory status.

The County maintains the Assistant District Attorneys are supervisory and/or managerial employees, or, in the alternative, they do not share a sufficient community of interest with other employees in the proposed unit. Though the Commission has previously held otherwise, the County contends that attorneys who give the County legal advice are managerial employees and that the County should not be required to bargain with such employees. They also do not fit within a unit of health care related employees. The County cites cases which limit units to health care professionals. Moreover, Assistant District Attorneys have post-graduate degrees, perform the same duties as the District Attorney, who is an elected official, are separately supervised, and also represent the County in all civil and criminal litigation. Attorneys have a unique interest in state employment, which should not be obliterated in order to avoid fragmentation. Finally, since the Assistant District Attorneys are law enforcement officials, the same policy considerations which mandate law enforcement units separate from other employee units should apply here as well.

POSITION OF THE UNION

There is nothing in the record which demonstrates that Rasmussen, Klinkhammer and Fritsch possess supervisory authority. With regard to Rasmussen's participation in hiring part-time Nurse Judy Adrian, the record shows she participated only because the applicant was related to the Director. In addition, once a client is determined to be a home health care client, then Home Health Nurses work with those patients without supervision. In fact, the Director and Assistant Director have more supervisory authority over the employees directed by Rasmussen, Klinkhammer and Fritsch than do those three alleged supervisors. Moreover, there is little, and in some cases no, wage differential between Rasmussen, Klinkhammer and Fritsch and the employees they direct. Finally, very little time is spent by those three employees on any sort of supervisory activities.

The Assistant District Attorneys should be part of the Union's proposed unit. Their interests are not so unique or dissimilar from the other professional employees. In fact, they must often work together on various matters and their wage rates and hours are similar to those for Social Workers and Nurses. Further, non-represented employees of the County interact with the County through an employee policy committee. Moreover, if the Assistant District Attorneys are not included, then there would be undue fragmentation. While the County claims that the Assistant District Attorney's position is incompatible with the rest of the unit, there was no demonstration that any lawyer/client relationship would be inconsistent with inclusion in the unit, and while they can assign Deputy Sheriffs, such authority should not affect the question of an appropriate unit.



ALLEGED SUPERVISORY STATUS  
OF PUBLIC HEALTH NURSES

The Commission has repeatedly considered the following factors in determining if a position is supervisory in nature:

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

The Commission has held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, the Commission will find an employee to be a supervisor. 2/

On balance, we have concluded that Rasmussen, Fritsch and Klinkhammer are not supervisors. They have had a role in hiring, but the ultimate decision-making in that respect has rested with Director Linda Adrian, and the number of instances has been few enough in number to permit Adrian to exercise her own independent judgment in such matters rather than strictly relying upon recommendations of the three individuals noted above. Similarly, while they have had a role in scheduling and assigning the Aides and part-time Nurses with whom they work, and in administering vacation requests from the Aides, they have performed those functions in consultation with the Director and Assistant Director, not strictly on their own. While they have evaluated their subordinates' performance, it appears that in the future evaluations of the employees in their respective work groups will be completed both by the full-time nurse directing their work and by the Director. Finally, we note that the rates of pay they receive do not differ significantly from the rates paid to the part-time nurses whose work they direct. That fact, coupled with the small number of subordinates (three or less) working with each of them, the availability of the Director and the Assistant Director to make independent judgments in key supervisory responsibility areas, and the substantial majority of their time being spent on non-supervisory activities persuades us that these three positions are not supervisory within the meaning of MERA.

ASSISTANT DISTRICT ATTORNEYS

Supervisory Status

Based upon the above-listed criteria for determining supervisory status, the Commission finds the Assistant District Attorneys do not exercise supervisory authority in sufficient combination and degree to be supervisors. While a Deputy Sheriff with the County may testify in court, as a result of a request or a subpoena of an Assistant District Attorney, which situation may result in overtime for that Deputy, in such circumstances, the Assistant District Attorney is

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1/ Oneida County, (9134-D) 7/83; City of Manitowoc, (18590) 4/81.

2/ Ibid.

effectuating his/her statutory responsibilities to prosecute cases, rather than exercising a supervisory authority over Deputy Sheriffs. Work directions to office personnel also appear merely incidental to the attorneys' responsibility for legal representation/advising activities.

### Managerial Status

The Commission has determined that managerial status is related to an employee's participation in the formulation, determination, and implementation of management policy and the effective authority to commit the employer's resources. 3/ With regard to managerial status, the County points to the statutory responsibilities of the Assistant District Attorneys, including defending civil and criminal actions, as well as advising the County on various legal matters. While an Assistant District Attorney may well give advice to the County Board, such advisory responsibility does not confer independent managerial decision-making authority for the County as an employer. In County of Kenosha, 4/ the Commission held the position of Assistant Corporate Counsel did not possess managerial status, stating:

The record reveals that the role of the assistant corporation counsel herein is in most respects parallel to that of the assistant city attorneys in the City of Milwaukee. Volpintesta advises public officials concerning the law, recommends acceptance or rejection of settlements and courses of legal action, etc. While his professional inputs are often relied upon by those he advises and represents, and while he provides advice and representation in a manner that is loyal and favorable to the management of the department of public welfare and the county such do not constitute grounds for the conclusion that Volpintesta is a managerial employee. His inputs as to resource allocation policies are limited to suggestions to Salituro and Hickey as to desired provisions in their budgets for the operation of his own office. While he did formulate and propose on his own a detailed plan for the creation and organization of a county child support office, which plan was adopted in nearly all respects by the board of public welfare, that is an isolated exception to Volpintesta's normal mode of functioning. (Footnotes omitted.)

There has been no demonstration that the instant matter is, or should be, distinguishable from County of Kenosha, so as to confer managerial status on the Assistant District Attorney position. 5/ Accordingly, the Commission determines that the Assistant District Attorneys do not hold managerial status.

### Appropriate Unit

The Commission normally considers the following factors in determining whether employees constitute an appropriate collective bargaining unit under MERA:

1. The duties and skills of employees in the unit sought as compared with duties and skills of other employees.
2. The similarity of wages, hours and working conditions of the employees in the unit sought as compared to wages, hours and working conditions of other employees.

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3/ Oneida County, (9134-D) 7/83.

4/ (15371) 3/77.

5/ While the County suggests that Assistant District Attorneys are in effect law enforcement employees, the record does not reflect such a claim. As the Commission has long held, law enforcement employees are distinguishable from other municipal employees because their duties, including the power of arrest, are of an altogether different nature, but the Assistant District Attorneys herein do not hold such responsibilities. See, e.g., City of Milwaukee (Police Department), (8605) 7/68.

3. Whether the employees in the unit sought have separate or common supervision with all other employees.

4. Whether the employees in the unit sought have a common work place with the employees in said declared unit or whether they share the work place with other employees.

5. Whether the unit sought will result in undue fragmentation of bargaining units.

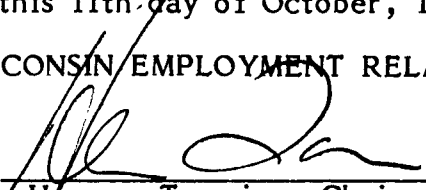
6. Bargaining history. 6/

The record demonstrates those employees of the County who are not part of a bargaining unit are subject to the "Grant County Central Personnel System Policies," which provides uniform programs covering hours and various conditions of employment, as well as such benefits as vacations and holidays. Moreover, the general wage level of the Assistant District Attorney position is similar to those for Social Workers and Nurses. Furthermore, Assistant District Attorneys work closely with Social Workers and Nurses in various matters. Finally, the Commission is also mindful of its statutory responsibility to avoid undue fragmentation, and excluding the two Assistant District Attorneys would cause such unnecessary fragmentation. The County claims that the health care profession is sufficiently different from the Assistant District Attorney profession so as to cause the Assistant District Attorney position to be excluded from the proposed unit. However, in City of Cudahy, 7/ the Commission combined registered nurses with such other professionals as engineers, a data processing analyst, and inspectors, where, as here, they enjoyed common benefits such as vacations and holidays. Accordingly, the Commission deems it appropriate to include Assistant District Attorneys in the professional employee unit.

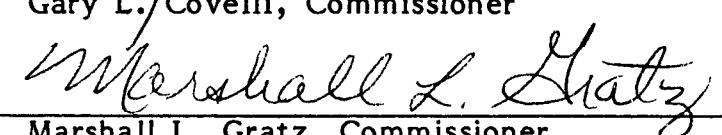
Dated at Madison, Wisconsin this 11th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

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6/ Village of Fox Point (Police and Fire Departments, (20019) 10/82.

7/ (19507) 3/82.