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In the Matter of the Petition of	:	
	:	Case XCI
DANE COUNTY JOINT COUNCIL	:	No. 32194 ME-2280
OF UNIONS, AFSCME, AFL-CIO	:	Decision No. 21397
	:	
Involving Certain Employees of	:	
	:	
DANE COUNTY	:	
	:	

Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Union.

Ms. Judith H. Toole, Assistant Corporation Council, Dane County, 210 Monona Avenue, Madison, WI 53709, appearing on behalf of the County.

Dane County Joint Council of Unions, having on September 16, 1983 petitioned the Wisconsin Employment Relations Commission to clarify a bargaining unit consisting of all employees of Dane County excluding supervisory employees, law enforcement employees, non-clerical employees of the Highway, Exposition Center and Airport Departments, confidential employees, professional employees and craft employees to determine whether the position of Clerk of Courts Data Base Coordinator should be included in said unit; and a hearing having been held on October 14, 1983 in Madison, Wisconsin, before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and submitted to the Examiner on November 25, 1983 and Dane County having submitted a brief on December 19, 1983; and the Commission, being fully advised in the premises, makes and issues the following

3. That the current collective bargaining agreement between the County and the Union, effective December 27, 1981 through December 24, 1983 contains the following recognition clause:

No. 21397

Employees defined as regular full-time or regular part-time (permanent) appointed according to the Civil Service procedure who shall have all of the rights, benefits and responsibilities of this Agreement. A regular full-time employee is one who is regularly scheduled to work forty (40) hours per week. A regular part-time employee is one who is regularly scheduled to work less than forty (40) hours per week.

Employees defined as Limited Term Employees (LTE) shall be covered by the terms of Article III and Appendix B. Any disagreement as to the application of Article III and Appendix B shall be resolved in accordance with Article V.

4. That on June 27, 1983 the County's Board of Supervisors passed Resolution 48, 1983-84 creating the position of Half-Time Data Base Coordinator in the County's Clerk of Courts Department; and, that the County, contrary to the Union, contends said position is professional, managerial and/or supervisory and should be excluded from said bargaining unit.

5. That on June 13, 1983 the County established a Position Analysis for said position which in material part provides as follows:

11. Is this position supervisory in nature? ☒ Yes ☐ No
If YES, which of the following are responsibilities of the position?

- ☒ A. Makes work assignments to other employees.
- ☐ B. Effectively recommends disciplinary action.
- ☐ C. May respond for management to grievances.
- ☐ D. Formally evaluates performance of employees.
- ☐ E. Effectively recommends promotions and transfers.
- ☐ F. Effectively recommends hiring.

12. Classes and number in each class supervised by this position.

Clerk II - 2
Clerk III - 9
Court Records Clerk - 2
Deputy Clerk - 13
Steno-Reporter - 1
LTE - 2

13. Job Summary - Describe the basic function of this position.

This position is responsible for data base quality control including maintaining data base tables, correcting problems, advising data entry individuals as to changes in system specifications, and acting as focal point for data control. This position also interfaces with the District Attorney's Office, Sheriff's Department, Wisconsin Court Information System, and Systems and Data Processing Division regarding system specifications and recommendations.

14. List (in descending order of importance) the duties and responsibilities and approximate percentage of time for each duty or responsibility of this position.

Time %

Work Performed

- 29% Directing, assisting, and informing 29 people in the Clerk of Courts office and 4 people in the District Attorney's office of updates, changes in computer and court system procedure, errors, and corrections
- 25% Maintaining the accuracy of the data base by writing various reports thru the Generalized Inquiry Reports Package; on-line inquiry of defendants, cases, events,

charges, etc.; updating data base tables; completing change forms submitted by users; maintaining up-to-date criteria for data element dictionary; checking daily log file report for counts and locating and correcting any errors

- 15% Working with Systems & Data Div. programmer and analyst on additions, changes, and deletions for WCIS programs; various Court related programs; merging of COMASCO and Criminal & Traffic Index; developing new programs and reports for the Courts and District Attorney; verifying the test version to update the current on-line files
- 10% Verifying the WCIS Monthly Print Report before a tape is sent including checking approximately 2500 entries on 4 separate records and making corrections as needed. Also working with Connie Pappas (WCIS) as to changes and compatability of data.
- 5% Developing forms for use in the Courts. Two have been re-designed and are in use. Three have been re-designed and are in printing.
- 5% Keeping User's Manual current including writing, typing, and having new pages printed and distributed to users.
- 5% Training new personnel and/or new users. (Previously 29 users were trained in groups and an additional 7 users were trained individually.)
- 5% Coordinating changes in current court system with new procedures being implemented by the District Attorney's office.
- 1% Assisting Sheriff's Department personnel and District Attorney IV-D personnel and Judges in the Criminal Division in referencing the Court computer system to locate defendants for their individual purposes.

and, that said position has the following training and experience requirements:

Any combination of training and experience equivalent to an Associate Degree in Systems and Data Processing, plus one year of professional level experience in systems analysis.

6. That since September 6, 1983 employee Donna Wills has occupied said position; that Wills has attended one year of college at the University of Wisconsin; that in addition Wills has taken one six (6) to eight (8) week course in Data Processing; that from 1970 to 1978 Wills worked for the County as a Clerk-Typist; that in January, 1978 Wills resigned from her Clerk-Typist position and began working for the County as a Limited Term Employee (LTE); that from June, 1981 to September 6, 1983 Wills worked as an LTE under the direction of Howard Braunschwaig, the County's Senior System Analyst, and under the direction of Clerk of Courts Cynthia Fokakis, in the conversion of Dane County Courts record system to an on-line computer system; that during said two year period Braunschwaig trained Wills to become the County Court's Data Base Coordinator; that although Braunschwaig does not have a degree in data processing he has taken formalized courses in systems analysis and programing and also teaches concepts of data processing in vocational school; and, that the on-the-job training provided by Braunschwaig is equivalent to an Associate Degree in data processing but is not as technical as a college degree in data processing.

7. That Wills assigns work to twenty-nine (29) employees and this takes approximately five percent (5%) of her time; that Wills does not have the effective authority to hire, transfer, suspend, layoff, recall, promote, discipline or promote employees and does not have the effective authority to adjust grievances; and, that the position of Data Base Coordinator does not possess supervisory duties in sufficient combination and degree to render it supervisory.

8. That Wills submits budget recommendations concerning how much and what type of data processing equipment the Clerk of Courts Department needs to Clerk of Courts Cynthia Fokakis; that although Fokakis relies on Wills' information and recommendations concerning equipment needs, Fokakis retains the authority to commit the County's resources; that although Wills makes decisions as to what type of information is put into the Clerk of Courts Department's computer, she does not participate in the formulation, determination or implementation of management policy; and, that the position of Data Base Coordinator does not possess managerial authority sufficient to constitute it to be managerial.

9. That the duties of the Data Base Coordinator, described in Findings of Fact No. 5, are predominantly intellectual and varied in character, involve the consistent exercise of discretion and judgement and are of such a character that the output produced cannot be standardized over a given period of time; that said position does not, however, require knowledge of an advanced type in a field of learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Data Base Coordinator is not a supervisor within the meaning of Section 111.70(1)(o)1, of the Municipal Employment Relations Act (MERA), is not a managerial employe within the meaning of Section 111.70(1)(b), of MERA and is not a professional employe within the meaning of Section 111.70(1)(l) of MERA.

2. That the occupant of the position of Data Base Coordinator is a municipal employe within the meaning of Section 111.70(1)(b).

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

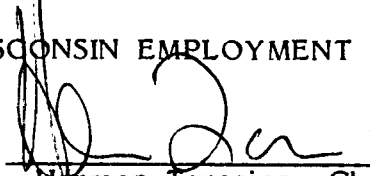
ORDER CLARIFYING BARGAINING UNIT 1/

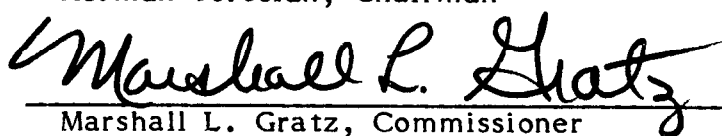
That the position of Data Base Coordinator is hereby included in the bargaining unit set forth in Findings of Fact No. 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 14th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, 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.
(Continued on Page 5)

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. 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.

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.

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

In its petition the Union seeks the inclusion of the newly created position of Data Base Coordinator in the County's Clerk of Courts Department in the voluntarily recognized bargaining unit described in Findings of Fact No. 3. The County contends the position should be excluded from said bargaining unit as it is either supervisory, managerial and/or professional.

The Commission has defined the indicia of supervisory status to be a sufficient combination and degree of the following factors:

Alleged Supervisory Status

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 skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 2/

The Commission has further held that not all these factors need be present, but merely a sufficient number of factors be present. 3/

The record demonstrates that the occupant of the Data Base Coordinator position, Donna Wills, spends approximately five percent (5%) of her time in assigning work to twenty-nine (29) employees. Although it is claimed she may in the future participate in the hiring process and inform her supervisor, Clerk of Courts Cynthia Fokakis, of other employees' performance of assigned duties, it is clear from the record that Fokakis retains hiring and disciplining authority and that Fokakis has not delegated any of said authority to Wills. This is supported by said position's Position Analysis. Question 11 of said analysis specifically asks, "Is this position supervisory in nature?" If answered yes, the following six (6) responsibilities are listed to be checked off if applicable to the position in question:

- A. Makes work assignments to other employees.
- B. Effectively recommends disciplinary action.
- C. May respond for management to grievances.
- D. Formally evaluated performance of employees.
- E. Effectively recommends promotions and transfers.
- F. Effectively recommends hiring.

2/ Dunn County, 21198 (11/83);

3/ Dunn County, supra; City of Rice Lake, 20791 (6/83).

The only responsibility according to the analysis applying to Data Base Coordinator position is "makes work assignments to other employees." Therefore, the Commission is satisfied that the position does not possess supervisory duties in sufficient combination and degree to constitute it to be supervisory.

Alleged Managerial Status

The Commission has defined managerial employees as those employees who participate in the formulation, determination and implementation of management policy or those employees who possess effective authority to commit the municipal employer's resources. 4/ Further, such participation must be at a relatively high level of responsibility. 5/ The record demonstrates that Wills determines both which information from cases should be entered into the on-line computer system and the form of entry. However, the decision to convert the Court's record system to an on-line computer system was not made by Wills. The record demonstrates that Wills only decides what information is to be put on the computer, not what information is to be retained by the Clerk of Courts Department. Therefore, the Commission concludes that the Data Processing Coordinator does not participate to a significant degree in the formulation, determination or implementation of management policy. The record also demonstrates that while Wills has made, and will in the future make, recommendations concerning the type of equipment the County needs, Fokakis has retained the authority to commit the County's resources. Therefore, the Commission is satisfied that the position is not managerial.

Alleged Professional Status

Section 111.70(1)(1) of MERA defines a professional employee as follows:

(1) "Professional employee" means:

1. Any employee 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 employee who:

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

a professional person to qualify himself to become a

The Commission has held that the definition of "professional" employe does not limit professional employes to only those possessing college degrees. 6/ However, all of the criteria found either in subsection 1 or subsection 2 must be present in order to find that a particular employe is professional. 7/

The County, in its brief and oral arguments, cites the Commission's decision in City of Cudahy 8/ to support its contention that the Data Base Coordinator is a professional. In that case the Commission held that the varied nature of duties, regular exercise of independent judgement and discretion, non-standardized output of work, and knowledge necessary to perform the problem solving duties of the Data Processing Analyst position, in addition to the actual training and experience possessed by the incumbent, were sufficient so as to make the position professional. However, the Analyst position in Cudahy is distinguishable from the position at issue here. The Cudahy Analyst was not only responsible for the operation of the computer, but also for its implementation and programming, and for insuring that the computer's hardware and software operated properly. In the instant matter the Data Base Coordinator does not do any programming and her involvement in the implementation of the Court's computer system was under the direction of Senior Analyst Braunschwaig. Further, Braunschwaig testified that Wills' training was not as deeply technical as compared to persons with a Bachelor's Degree in Data Processing. Wills' other training consists of one six (6) to eight (8) week course in data processing and one year of general education at the college level.

The Commission therefore finds that the Data Base Coordinator position does not meet the criteria of Section 111.70(1)(1)d and concludes the incumbent is not a professional employe.

Conclusion

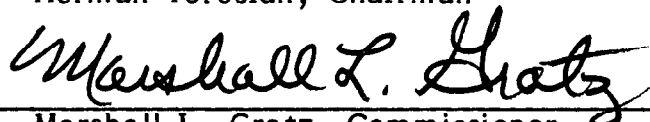
Having found the Data Base Coordinator position to be neither supervisory, managerial, or professional, the Commission finds said position to be occupied by a municipal employe and therefore the position is included in the bargaining unit set forth in Findings of Fact No. 3.

Dated at Madison, Wisconsin this 14th day of February, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner

6/ Milwaukee County, 8765-E, 14786 (7/76).

7/ Milwaukee County, 14786-B (4/80).

8/ Decision No. 19507 (3/82).