

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	:
	:	:
WEAC UNISERV COUNCIL NO. 18 and	:	Case 4
NICOLET AREA TECHNICAL COLLEGE	:	No. 46056 ME-513
	:	Decision No. 23366-C
Involving Certain Employees of	:	:
	:	:
NICOLET AREA TECHNICAL COLLEGE	:	:
	:	:

Appearances:

Mr. Stephen Pieroni, Staff Counsel, Wisconsin Education Association Council, P.O. Box 8003, Madison, Wisconsin 53708-8003, appearing on behalf of WEAC UniServ Council No. 18.

Mr. Robert W. Mulcahy, Michael, Best & Friedrich, Attorneys at Law, 100 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Nicolet Area Technical College.

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

On July 30, 1991, WEAC UniServ Council No. 18, referred to below as the Association, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify whether certain positions should be included in a bargaining unit of municipal employees of the Nicolet Area Technical College, referred to below as the Employer. On December 11, 1991, the Employer filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify whether certain other positions should be included in the same bargaining unit. By agreement of the parties, hearing on the petitions was not held until March 3, March 4, May 13 and May 14, 1992, in Rhinelander, Wisconsin, before Richard B. McLaughlin, an Examiner on the Commission's staff. Each day of hearing was transcribed, and the parties filed briefs by August 18, 1992.

FINDINGS OF FACT

1. The Association is a labor organization which has its offices at 719 West Kemp Street, P.O. Box 1400, Rhinelander, Wisconsin 54501.

2. The Employer is a municipal employer which has its offices located in care of P.O. Box 518, Rhinelander, Wisconsin 54501.

3. The Employer operates, under the Wisconsin statutes, as an educational institution providing vocational, technical and adult education services. The Employer maintains two campuses. Its primary campus is located on Lake Julia near Rhinelander. The Employer maintains a smaller facility known as the Lakeland Campus, in Minocqua, roughly thirty miles from the Lake Julia campus.

4. The Commission certified the Association in Dec. No. 23366-B (WERC, 9/86) as the exclusive collective bargaining representative for certain professionals employed by the Employer. The Association and the Employer are parties to a collective bargaining agreement which is in effect, by its terms, from "July 1, 1989, through June 30, 1992." Among the provisions of that agreement are the following:

I. RECOGNITION

A. The Board acting for Nicolet Area Technical College hereby recognizes the Nicolet Area Technical College Faculty Association as the sole and exclusive bargaining representative for all regular full-time and regular part-time professional staff employed fifty percent (50%) or more, whether under contract, on leave, or employed by Nicolet Area Technical College, excluding managerial, supervisory, confidential, and all other employees.

VII. GRIEVANCE PROCEDURE

...

C. Initiation and Processing

1. Level One. The grievant will first discuss his/her grievance with the grievant's administrative supervisor . . .

Step 1 of the 1991-92 salary schedule stated at Appendix C is \$21,619. Step 10 of that schedule is \$41,018. The salary maximum authorized in that collective bargaining agreement exceeds \$50,000.

5. On July 30, 1991, the Association filed a "Petition To Clarify Bargaining Unit Of Municipal Employes" seeking to have the following positions included in the bargaining unit noted in Finding of Fact 4 above: "Director of Counseling and Human Services; Director (sic) of Admissions; and Lakeland Area Coordinator." The petition noted that the "Employer is proposing

to make current bargaining unit positions management positions." On December 11, 1991, the Employer filed a "Petition To Clarify Bargaining Unit Of Municipal Employees" seeking to have the following positions excluded from the bargaining unit noted in Finding of Fact 4 above: "Director of Student Advising Instructional Services; Director of Native America (sic); Director of Vocational Evaluations; and Director of Financial Aid." At hearing the Association noted that it was dropping its request to clarify, through this proceeding, the status of the then unfilled position of Director of Counseling and Human Services. It was clarified at hearing that the positions in dispute are known as: the Director of Admissions; the Director of the Lakeland Campus; the Director of the Native American Center; the Director of Vocational Evaluations; the Director of Academic Advising; and the Director of Financial Aids.

6. The Employer employs roughly 142 employees. Roughly 72 of those employees are included in the bargaining unit noted in Finding of Fact 4 above. Roughly 34 of those employees are included in a separate bargaining unit of support staff, and roughly nine of those employees are included in a separate bargaining unit of custodians. Each of the three bargaining units is affiliated with the Wisconsin Education Association Council.

7. The Employer has negotiated a collective bargaining agreement with the Nicolet Area Technical College Support Personnel Unit which, by its terms, is in effect from "the first day of July, 1988" until "the thirtieth day of June 30, 1991". "Level One" of the grievance procedure contained in that collective bargaining agreement requires that "(t)he grievant shall first discuss his/her grievance with his/her immediate supervisor".

8. Turn over in the Employer's administrative personnel was cited as an area of concern in the North Central Accreditation Report. In response to this and a general perception of past management problems, the Employer has instituted a series of administrative changes. Those changes have resulted in the administrative structure in effect at the time of hearing on this matter. At the head of this structure is the office of President. Reporting directly to the office of President are the following positions: Dean of Instruction; Director of Human Resources; Chief Financial Officer; Director of Lakeland Campus and Dean of Student Services. These positions are collectively referred to as the Cabinet. The Cabinet meets on a weekly basis, and discusses various policy matters including, when relevant, collective bargaining negotiations. The following positions report directly to the Dean of Instruction: Four Associate Deans; the Director of Consumer and Hospitality Services; and the Director of Academic Advising. Of these six positions, only that of Director of Academic Advising is in the teachers' bargaining unit. The following positions report directly to the Dean of Student Services: the Registrar; the Director of Counseling and Human Services; the Director of Admissions; the Director of Vocational Evaluations; the Director of Financial Aids; and the Director of the Native American Center. Of those positions which were filled at the time of hearing, only that of Registrar is not in the teachers' bargaining unit.

9. The Employer hired Wayne Jones in December of 1991 to be its Director of the Lakeland Campus. The job description for that position is incorporated in this Finding of Fact, and is attached to this decision as Appendix A. In the fall semester of 1991, the Employer opened a

new instructional facility to house its Lakeland campus. The new facility has about 6,000 square feet of space. Prior to the opening of this facility the Employer rented roughly 1,500 square feet of a bank building in Woodruff to house what was then known as the Lakeland Center. The expansion of the Lakeland facilities has cost the Employer roughly \$500,000. Prior to the hire of Jones, the Employer operated the Lakeland Campus through a position known as the Lakeland Center Coordinator. That position was filled with a member of the teachers' bargaining unit. The Employer's expansion of the Lakeland Campus is on-going, and the Employer plans to have that campus attain, at some point in the future, full branch campus status, with resident faculty and staff. No employees have been hired, disciplined, laid off, transferred or promoted during Jones' tenure. Jones is authorized to recommend specific actions within those categories, and within the guidelines set by existing collective bargaining agreements, to the Employer's Director of Human Resources, Robert Pound. Two clerical employees staff the office of the Lakeland Campus. One of those employees works on a full-time and the other works on a part-time (50% FTE) basis. Each of those employees is a member of the WEAC represented support staff bargaining unit. Each of these employees reports to Jones. One teacher is employed on a full-time basis at the Lakeland Campus as an instructor of Office Education. From five to seven bargaining unit teachers will instruct on a course by course basis at the Lakeland Campus. The Lakeland Campus employs roughly 35 adjunct, i.e. non-bargaining unit, faculty. The Employer gets custodial services through an independent contractor. Jones is a salaried employe, whose employment contract covers one year, with twenty days of leave, at a salary of \$39,500. The transition to a larger facility has involved Jones in the day to day assignment of work for the clerical employes to a larger extent than may be the case after the transition is fully effected. Jones is responsible for approving time off and expenses for the clerical employes. At the time of hearing, Jones spent roughly 30 percent of his time assigning work to the clerical staff. Jones is responsible for evaluating the performance of the clerical staff on an annual basis. His evaluation responsibilities for faculty had, as of the time of hearing, not been fully decided. Jones prepares the class schedule at the Lakeland Campus, and monitors adjunct and non-adjunct compliance with that schedule. Jones is the only on-site employe at the Lakeland Campus whose stated responsibilities include supervision.

10. Jones prepares the budget for the Lakeland Campus. The operating budget (total expenditures less capital improvements and capital equipment) for the Lakeland campus for the 1992-1993 fiscal year is over \$100,000. The projected cost of the capital improvements and equipment for that budget is also in excess of \$100,000, including an expenditure for the paving of the facility's parking lot. Jones submits his budget directly to the Cabinet. Jones can reallocate funds from one budget entry to another within an approved budget without further approval. For example, Jones redirected roughly \$1,000 from instructional supplies/expenses to advertising shortly after his arrival because the advertising account had been fully spent. Jones has actively sought to expand outreach courses offered by the Employer. Such courses range from defensive driving to stress management, and are offered on site to interested parties such as the Marshfield Clinic, Howard Young Medical Center, or the Lac du Flambeau Indian Tribe. As Director, Jones negotiates and signs rental agreements for off-site facilities for the Employer's course offerings. Jones also approves the use of Employer facilities by outside parties. The Employer does have formal policies governing rental agreements and the use of its facilities. Jones has primary

authority for developing new classes to be taught at the Lakeland Campus. Such classes are developed in response to public demand or to Jones' initiative in consulting with advisory committees drawn from, for example, business persons, public school administrators, and students. Any such course offerings must be submitted, through the budget process, for final Employer approval.

11. An external marketing study (the Stamatz report) made as one of its major recommendations that the Employer establish a separate Admissions Department, headed by a full-time Director. In September of 1991, the Employer hired Susan Kordula to be its Director of Admissions. The job description for that position is incorporated into this Finding of Fact, and is attached to this decision as Appendix B. Kordula oversees the work of one full-time clerical employe, Chris Meyers. Meyers is a member of the support staff bargaining unit. Kordula assigns Meyers' work, reviews and approves Meyers' record of hours worked, and is responsible for evaluating Meyers' performance on an annual basis. Kordula had not, at the time of hearing, evaluated Meyers. Meyers was employed by the Employer prior to Kordula's arrival, and Kordula has not been involved in the hiring of any employes. Kordula is authorized to play an active role in the hiring of any additional staff within the Admissions Department. Kordula has the authority to discipline Meyers, but would involve Human Resources Director Pound if a suspension or discharge situation arose. There have been no promotions, transfers, layoffs or recalls during her tenure. She has not been instructed on the limits to her authority over such matters contained in the support staff collective bargaining agreement. Kordula played an active role in resolving Meyers' request that work be transferred from Meyers to Sue Swanson, who serves as a secretary to Bill Bernard, the Dean of Student Services. Kordula and Bernard worked out the transfer of duties consensually, with the involvement of Meyers and Swanson. Meyers' hours of work have been set consensually between her and Kordula. Meyers has not worked overtime since Kordula was hired. When Meyers cannot make it to work, or wishes to vary her hours of work, she contacts Kordula and discusses the point. Kordula has not yet denied any request of Meyers to take time off or to vary her hours. Kordula assigns Meyers' work when Kordula is in the office, and assigns Meyers' duties before Kordula leaves the office for off-campus duties. Kordula spends roughly 75% of her time out of the office, recruiting students. No one other than Kordula supervises Meyers' work. Kordula is paid on a twelve month contract, and her annual salary is \$35,000.

12. Bernard's duties take him off-campus from one to three days per week. When he is out of the office, he leaves an administrator from the student services area in charge of his office. Typically, that administrator is Kordula. Kordula submitted a 1992-1993 budget for the Admissions Department. The total expenditures for her department in that budget are roughly \$120,000 including salaries, and roughly \$50,000 without salaries. She submits her budget to Bernard, who presents it to the Cabinet for their deliberation, and may or may not return the budget to Kordula for her further consideration. Kordula can recommend that items within an established budget be reallocated. Such requests are typically made with a "LINE ITEM BUDGET CHANGE WORK SHEET" which Kordula would submit to Bernard or the Bill Peterson, the Employer's Chief Financial Officer. While operating under the budget in effect at the time of her hire, Kordula discovered that the Employer's budget for its annual "Skills Olympics" was roughly \$2,000 below the cost of the event. She sought additional funds to cover the difference by transferring funds from

Bernard's budget. Bernard agreed to her request. The Skills Olympics was over-budget because Kordula made it a more widely attended event than it had been in the past. Kordula initiated the publication of a registration brochure for incoming students. That brochure essentially stated existing admissions and orientation policies in a logical, readable format. She served as chair of the committee which developed a new application form. Representatives from the Registrar's office, Financial Aid Office, and the Native American Center served on this committee. She revamped student orientation, recreating the process so that a new student reports for orientation before classes to hear presentations from representatives from financial aid, counseling, career counseling, instruction and academic advising. She views her most important policy initiative to be the creation of a data tracking procedure to record who applies to Nicolet, where the application comes from, whether the student was admitted, and into what programs the student was admitted. From this data, Kordula can track student interest by area and program, and can also generate letters and survey cards to keep applicants aware of Nicolet. Enrollment has risen roughly 10-15% since Kordula was hired.

13. Deb Trumpy has been the Employer's Director of Academic Advising since the creation of that position in October of 1991. Prior to that, Trumpy was the Employer's Director of Enrollment Services. The job description for the position of Director of Academic Advising is incorporated in this Finding of Fact, and is attached to this decision as Appendix C. Prior to October of 1991, the functions of student advising and of student admissions were combined in the Enrollment Services Department. As noted in Finding of Fact 9, the Employer split these functions on the recommendation of an external marketing survey. Trumpy was offered her choice of the position she presently occupies or the position of Director of Admissions. The Department of Academic Advising employs, in addition to Trumpy, five part-time Academic Advisors who are each members of the teachers' bargaining unit, and one full-time clerical employe. At the time of her testimony, the clerical duties were being performed by a 50% time limited term employe, with the hiring process of a full-time clerical employe pending. The Dean of Instruction, Diann Schindler, proposed to Trumpy that Maggie Lund serve as the LTE, and Trumpy responded Lund would be fine. Lund was then transferred from another department. Before the break-up of the Enrollment Services Department, Trumpy successfully recommended to Bernard that a full-time secretary be hired. When the Department was split up, the clerical support for the Department of Academic Advising was unclear. Trumpy volunteered to demonstrate the need for full-time clerical support. She did so by, with the cooperation of the Academic Advisors and the LTE secretary logging, for forty days, records on student phone calls, student walk-ins, student appointments etc. She, as the Department's representative, defended the position before a number of Deans, Pound and the Employer's President. She also prepared a position description for the then unapproved position, by reviewing other position descriptions and submitting her version to Pound for his approval. The position was originally approved at a lower salary classification than Trumpy had recommended, but Pound agreed with her recommendation, and the position was posted at the classification Trumpy recommended. After the Employer had approved the position of full-time secretary, Trumpy asked Schindler if she could appoint the screening committee which would fill the position. Schindler indicated her approval. Trumpy selected the committee members and submitted their names to Schindler, who accepted Trumpy's recommendation. Neither Schindler nor Pound had any direct input into the selection of the committee members. At the time of

hearing, the position had just been posted. Trumpy also submitted a screening committee to Schindler for the hire of an Academic Advisor. The opening occurred in December of 1991, and the Employer wanted to fill the position during semester break. The committee conducted an interview of the applicants. There was no prepared list of questions, and each committee member asked questions. The committee strove for, but failed to reach, a consensus. Trumpy discussed this situation with two Associate Deans, who suggested to Trumpy that the most senior of the two top applicants be hired. Trumpy reported this suggestion to Schindler, who agreed. Trumpy reported the result to the unsuccessful applicants, and to one teacher who had not applied due to the timing of the interview. Trumpy will be similarly involved in the hire of future Academic Advisors. Trumpy has not disciplined any employe as Director of Academic Advising or as Director of Enrollment Services. She did, while Director of Enrollment Services, take a student complaint about the work performance of an Academic Advisor to a Dean. No discipline resulted, but Trumpy and the Dean discussed ways to address the problem in a non-disciplinary manner. Other than Lund, Trumpy has not been involved in any transfer, layoff, or promotion of employes in the Department of Academic Advising the Department of Enrollment Services. Trumpy assigns work to Lund. She checks the work performed for her by Lund, but not the work done by Lund for the Academic Advisors. She does not, on a daily basis, assign work to the Academic Advisors, who know their duties without need for assignment. She schedules the hours of staff in the Department of Academic Advising to assure the Department is staffed at all times it is open to students. She is a salaried employe, working an eleven month contract at \$45,000. She spends roughly 80% of her time advising students or in duties directly related to advising students. She has not yet evaluated the performance of the Academic Advisors or of clerical employes. She signs Lund's time card, and has signed one such card with overtime on it. She turns the cards over to Schindler. In signing the cards, she relies on Lund's representation, and does not independently verify the hours. She also signs off on the leave requests of Lund as well as the Academic Advisors.

14. Trumpy's role in the budget for her department has not significantly changed since she was Director of Enrollment Services. She enters the non-personnel based expenditures on a budget form and submits it to Schindler. Such expenses totaled roughly \$20,000 in her proposed 1992-93 budget. Schindler may or may not refer Trumpy's request back to Trumpy after Cabinet level deliberations. While in the transition from the Department of Enrollment Services to the Department of Academic Advising, while operating under the budget of the Department of Enrollment Services, Trumpy ordered a filing cabinet costing roughly \$200. After delivery of the cabinet, Trumpy received a purchase order indicating there were no funds in the budget to cover the cost. That bill was eventually paid without any input from Trumpy. Trumpy has consulted with Schindler about the future of the Department of Academic Advising, and has recommended that the five part-time Academic Advisors be replaced by one full-time Academic Advisor. The Employer has not yet acted on this recommendation. She has been assigned to coordinate the Employer's Institutional Evaluation Plan, which is an in-depth

monitoring and evaluation of the Employer's instructional programs and the services of the Department of Academic Advising.

15. William Peshel is the Employer's Financial Aid Director. The job description for that position is incorporated into this Finding of Fact, and is attached to this decision as Appendix D. The Financial Aid Department consists of Peshel, Art Barlow, a full-time Financial Aid Advisor, and a full-time secretary. Karen Walker is the incumbent Secretary, and had been in that position as of Peshel's testimony, for roughly one month. Peshel was on the screening committee which interviewed the applicants for the job ultimately awarded to Walker. He included on the committee the then-incumbent Secretary, Denise Balduc, the Financial Aid Advisor and a representative from the business office. He submitted these names to Bernard, who agreed to the committee's composition. There were two internal applicants for the job. No typing test was administered, and each member of the committee asked questions of each applicant. Peshel and another committee member favored Walker while the other two committee members favored the other internal candidate. Peshel communicated the split to Pound and recommended Walker receive the position. Because Peshel would work closely with the successful applicant, Pound accepted Peshel's preference and Walker received the position. Peshel communicated the results of the process to the successful and the unsuccessful applicant, each of whom was a member of the support staff bargaining unit. The unsuccessful, and more senior, applicant understood Peshel to have implied the applicants were equally qualified. The President of the support staff union informed Peshel if the employees were equally qualified and the least senior applicant received the position, a contract violation had occurred. Peshel reported the matter to Pound, whose office authored the following memo, dated January 6, 1991, which Peshel signed and issued to the support staff union president:

This is to confirm that, in my opinion, Karen Walker is more qualified for appointment as Denise Mancini's replacement than is Maggie Lund. I did not mean to imply to Maggie that they were equally qualified, since that is not the case.

Peshel served as chair of the screening committee which was established to fill the position held by Walker's predecessor. Peshel also served as chair of the screening committees which were established to fill the position held by Art Barlow and his predecessor. The latter committees included only faculty members. Barlow was hired in 1984. Prior to Walker's hiring, the committees chaired by Peshel were appointed by the Employer's District Director. Peshel viewed the goal of each committee he chaired to be to reach consensus, and if consensus was not possible, to reach a majority view. In either case he would report the committee's recommendation to a Dean. He would not inform the Dean of the actual vote which led to the recommendation. In each case, the Dean followed the committee's recommendation. Peshel developed Walker's position description with the assistance of Barlow, Walker's predecessor, and Pound's office. There has been no discipline of any employe of the Financial Aids Office during Peshel's tenure. Bernard has informed Peshel he is responsible for evaluating the work performance of Walker and of Barlow. Peshel has indicated to Bernard his desire not to be put in that position. Peshel assigns work to Walker, but does not spend an appreciable amount of time doing so. Peshel does discuss work priorities and goals with Barlow, but does not view himself to assign work to Barlow. Peshel signs Walker's time cards, and expense reports for Barlow or Walker. He relies on their representations

when doing so. Barlow's requests to attend conferences must be approved by Peshel. He approves Walker's and Barlow's compensatory time requests, approves Barlow's non-contract day requests, and has not had occasion to approve or deny overtime for Walker. Bernard visits the Financial Aid Office roughly once a month, for no longer than one-half hour. Peshel earns an annual salary of \$45,575 on a ten month contract. Barlow earns an annual salary of \$38,186 on a ten month contract, and Walker earns \$16,380 annually on a twelve month contract.

16. Roughly 75% of the Employer's students receive financial aid, and the Financial Aid Department processes roughly \$2,500,000 in state and federal aid money. The Financial Aid Department's total budget for 1991-92 is \$143,630. Peshel submits a budget to Bernard for consideration by the Cabinet. Bernard may or may not return the budget to Peshel for further consideration. He relies on his Secretary to assemble the office supply expenditures for the department, and does not include any salary based expense in the departmental budget request. His request for 1992-93 is \$12,340. He can recommend the reallocation of money from within an approved budget, and typically does so on the Employer's "LINE ITEM BUDGET CHANGE WORK SHEET". Bernard instructed Peshel to prepare a "Goals and Objectives" document to lay out a long-term plan for the department. Peshel, after consulting his Secretary and Barlow, did so and views the document as a consensus conclusion of the department. Peshel did not consult with Bernard from the time Bernard told him to prepare the document, and the time he delivered the finished document to Bernard. Among other points, the document seeks the installation of "new IBM computers", which were to be linked to the Employer's computer network. The final status of this request was not clear at the time of hearing. This was not the first "Goals and Objectives" type of document Peshel prepared, but is the most detailed.

17. Michele LaRock has been the Employer's Director of the Native American Center since 1981. The job description for that position is incorporated in this Finding of Fact, and is attached to this decision as Appendix E. The Center is staffed by LaRock, a full-time Recruiter/Advisor, Gerald Cadotte, a full-time Secretary, Michelle Schenk, and three Area Coordinators. Cadotte is a member of the teachers' bargaining unit, and Schenk is a member of the support staff bargaining unit. The Employer hired Cadotte roughly three years ago. LaRock drafted a job description for the position and submitted it to then incumbent Dean Anthony Vissers, who added to it and advertised for applicants. Vissers appointed a screening committee, chaired by LaRock to interview the applicants. Vissers did not sit on the committee, but met with each applicant after the screening committee interview. The committee unanimously recommended Cadotte, and Vissers accepted the recommendation. LaRock, in 1991, authored a grant application which included clerical support for herself and Cadotte. The grant was approved, and in the fall of 1991, the Employer advertised for applicants for the clerical position. LaRock selected and chaired the screening committee which interviewed each of the six applicants. Pound's office administered a typing test to each applicant. After this test, the screening committee conducted an interview. Each member of the committee asked questions, and the committee ultimately decided to recommend Schenk for the position. LaRock communicated the committee decision to Bernard, who accepted the recommendation. Schenk was hired in November of 1991. LaRock also effectively recommended the screening committee which was created to fill a Counselor position in the Women's Resource Bureau. Roughly three years ago, on the suggestion of a consultant, LaRock

wrote a grant proposal seeking State money targeted at working with community based organizations dealing with young people either not attending school or habitually truant. LaRock's grant proposal, developed with the consultant and Vissers, was approved. Under the grant, a pilot project was established in the fall of 1989 which placed a Coordinator who worked with the students noted above to inform them of state-wide opportunities in the VTAE system. The pilot project ran through June 30, 1991. In 1991, LaRock rewrote the grant application, expanding the project to place a Community Action Coordinator in each of the three main reservations within the Employer's district. This grant was approved. LaRock sought and received Pound's approval to bypass the normal recruiting procedure and to fill one Coordinator position with an individual who had previously been employed by the College. Cadotte and LaRock reviewed the applications for the two remaining Community Action Coordinator positions, and recommended two individuals, whose names LaRock submitted to Bernard. Neither Bernard nor Pound interviewed either of these individuals, each of whom was hired. In February of 1992, one of these Coordinators quit, with grant funds still available for the position. LaRock recommended, and Pound agreed, that one of the other Coordinators could assume the vacant position, thus obviating any hiring delays. There have been no promotions, transfers, or instances of discipline in the Native American Center during LaRock's tenure. LaRock has not performed performance evaluations of Center employees. Bernard has informed her that she is responsible for evaluating the work of Cadotte and Schenk, and LaRock has voiced to Bernard her desire not to be given that duty. LaRock does not typically approve the Schenk's time records, and has neither approved nor denied an overtime request. Schenk did, on one occasion, use compensatory time, which LaRock approved after the request had been discussed with Bernard. LaRock does sign the personal leave, sick leave, and non contract day forms submitted by Cadotte and Schenk. She also signs departmental purchase orders and expense vouchers. Although training Cadotte took up roughly one-half of LaRock's time when he was hired, he now requires little, if any, day-to-day work assignment from LaRock. Cadotte, on one occasion, suggested to Bernard that Cadotte should spend more time at the Lakeland Campus. After Bernard indicated his approval to Cadotte, LaRock voiced her displeasure with Bernard for dealing with Cadotte's availability without consulting her. She spends perhaps 15 to 30 minutes per day assigning work to Schenk. She spent as much as three hours per week assigning the Community Area Coordinators when they were first hired. On an average, she spends from 15 to 30 minutes per week discussing work assignments with each Community Area Coordinator. Bernard visits the Native American Center from one to three times per week. Seventy-five percent of LaRock's salary is derived from grant money. The remainder is funded directly from the Employer. Twenty-five percent of Cadotte's salary is derived from grant money, with the remainder being funded directly from the Employer. LaRock works on a ten month contract, with an annual salary of \$40,649. Cadotte works on a ten month contract with an annual salary of \$39,259. Schenk earns \$13,159 annually. The Community Area Coordinators earn roughly \$9 per hour. In 1991-92, LaRock submitted a request for money to cover her travel to an out of state conference. She did not submit a formal budget for that fiscal year. For 1992-93 LaRock and Cadotte independently prepared a formal budget for submission to Bernard. At the time of her testimony, those budget requests had not be acted on by the Cabinet. On Bernard's request, LaRock, in consultation with Cadotte prepared an Operational Plan for the Native American Center, which LaRock ultimately presented to Bernard. LaRock serves, with Pound, as co-chair of the Employer's Minority Recruitment/Retention Committee. This committee, appointed by the Employer's

President, is charged with determining the types and costs of activities which will be submitted to the State as a grant request. LaRock submits her grant applications with little, if any, substantive oversight from the Employer. Bernard has asked LaRock to put together a program for the Employer to follow regarding minority recruitment. Bernard does not expect to play any role in the development of the document, until it is submitted to him in final form.

18. Todd Allgood is the Employer's Director of Vocational Evaluation, and has been employed by the Employer for roughly six years. The job description for that position is incorporated in this Finding of Fact, and is attached to this decision as Appendix F. The Department of Vocational Evaluation consists of Allgood, an Evaluator, Doug Pfaff, and a part-time clerical employe, Terry Ruppel, who works roughly one-half time in the Department of Vocational Evaluation and the remaining time in the Department of Counseling and AODA. Pfaff is a member of the teachers' bargaining unit, Ruppel is a member of the support staff bargaining unit. Allgood chaired the screening committees which recommended the hire of both Pfaff and Ruppel. In each case, Dean Vissers appointed the screening committee and its chair. In each case, Allgood, as chair, sought a consensus recommendation which he communicated to Vissers. Allgood approves the time records of Pfaff and Ruppel, and oversees the quality of their work. Allgood sets the on and off-site hours of the department, and approves adjustments in Pfaff's and Ruppel's hours to accommodate any schedule changes he may assign. In the one instance in which Ruppel worked overtime, Allgood referred her to Bernard first, and then signed her time card containing the overtime hours. There have been no instances of formal discipline, layoff, promotion or transfer in the Department of Vocational Evaluation during Allgood's tenure. Bernard has informed Allgood that he is responsible for evaluating Pfaff's and Ruppel's performance on an annual basis. For roughly the past two years, Allgood has been actively involved in Pfaff's work performance. After discussing his concern with Pfaff on a number of occasions, Allgood determined Pfaff's performance was not improving, and approached Bernard on the point. Bernard ultimately referred Allgood to Pound, who asked Allgood to document his concerns. In August of 1991, Allgood issued the following memo to Pfaff:

Per our discussion of job performance, it was agreed the following areas would be evaluated and reviewed on a monthly basis, first review being September 10, 1991:

- 1) Time usage - working hours 8:00 - 3:30, a break in the morning, a break in the afternoon, and a half-hour lunch.
- 2) Appropriate selection of individual tests to be administered per specific disability area.
- 3) Weekly (Tuesday a.m.) visits to DVR to generate employment readiness referrals.
- 4) Schedule doctors appointments, physical therapy, etc., around scheduled work hours, if possible.

- 5) Keep informed of medical situation.
- 6) Work on initiative, responsibility, and interaction with clients as discussed.

Allgood personally issued this memo to Pfaff. Allgood felt Pfaff's performance improved for roughly six months and then deteriorated. In March of 1992 Allgood met with Pfaff, his Union representative, and Pound to discuss Pfaff's performance. Pound conducted the meeting. In May of 1992, Allgood met alone with Pfaff to determine a plan to improve Pfaff's performance. A further meeting with Pound and a Union representative was discussed, as was the possibility of Pfaff's requesting a medical leave of absence. Allgood discussed the medical leave issue to Pound and Bernard. Bernard rarely visits the department.

19. Allgood works under an eleven month contract and is compensated under the terms of the teachers' collective bargaining agreement. Allgood confers with Pfaff and Ruppel and submits a budget on a form supplied by the Employer and not including any salary based items, to Bernard for consideration by the Cabinet. The 1991-92 budget for the department, including salaries, is roughly \$150,000. Allgood's proposed budget for the 1992-93 school year, which does not include salaries, is roughly \$8,000. Allgood can reallocate items from an approved budget, but must do so, typically on Employer supplied forms, through Bernard. Allgood, in response to Bernard's request, developed an operational plan for the department. On his own initiative, he has submitted an update to Bernard. Allgood has recommended that the Employer purchase the OASYS program, and put it on its computer network. Allgood learned of the program at a conference, recommended it to Bernard and suggested that the cost of the program could be split between the departments which used it. He then consulted with personnel in other departments to so split the cost of the program. Allgood has successfully recommended that the Employer purchase a computer, software and a printer for the department. Allgood sets the fees the Employer charges the State Department of Vocational Rehabilitation for various evaluation services, and does so without any substantive oversight.

20. The Employer presently taxes at the statutory maximum. The Employer maintains a monthly record of the expenditures of each department and how those expenditures balance against the existing budget. Bernard reviews the document for each department and supplies it to each of the positions noted above which report directly to him. The Employer has informed the incumbents in each of the positions at issue here that they are to evaluate the work performance of the employees in their department. Bernard has developed and distributed a seven page evaluation form for the use of the evaluators. No member of the teachers's bargaining unit except the incumbents of the positions in the unit and in dispute here are authorized to sign time records or expense reports of unit members.

21. Jones participates in the formulation, determination and implementation of policy to a degree sufficient to render him a managerial employe.

22. Trumpy, Kordula, LaRock, Allgood and Peshel possess supervisory duties and responsibilities in sufficient combination and degree to be supervisory employes.

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

CONCLUSIONS OF LAW

1. Wayne Jones, the Director of the Lakeland Campus, is a managerial employe and, therefore, not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. Deb Trumpy, the Director of Academic Advising; Sue Kordula, the Director of Admissions; Michele LaRock, the Director of the Native American Center; Todd Allgood, the Director of the Vocational Evaluation Center; and William Peshel, the Director of Financial Aid, are each a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, not a municipal employe within the meaning of Sec. 111.70(1)(i), 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 positions of Director of the Lakeland Campus, Director of Academic Advising, Director of Admissions, Director of the Native American Center, Director of Vocational Evaluation Center, and Director of Financial Aid are hereby excluded from the bargaining unit of professional employes described in Finding of Fact 4 above.

Given under our hands and seal at the City of Madison, Wisconsin this 18th day of March, 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

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 petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

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.

(footnote continued on Page 15)

1/ (footnote continued from Page 14)

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 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. 227.49, 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.

(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.
(footnote continued on Page 16)

NICOLET AREA TECHNICAL COLLEGE

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

THE ASSOCIATION'S POSITION

The Association prefaced its position by position review of the record with a review of relevant case law, the application of which, according to the Association, warrants exclusion of at most one position.

Director of Admissions

After a review of the evidence, the Association argues that Kordula "does not meet the Commission's criteria to be either a supervisor or a managerial employee within the meaning of MERA." More specifically, the Association contends that Kordula "has minimal authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees." Since she oversees only one employee who can be supervised by either Pound or Bernard, it follows, the Association contends, that she lacks significant supervisory authority. Beyond this, the Association notes that her salary is well within the grid negotiated for teachers, thus indicating she "is paid a salary based upon her skills in the admissions area rather than for supervision of employees." Any evaluation by her of Meyers would, according to the Association, require little of her time, and would "be a pro forma exercise to confirm Ms. Meyers performed the work she is assigned." The Association concludes Kordula is supervising an activity, not employees.

Beyond this, the Association contends Kordula has limited policy authority. Her admissions brochure was, according to the Association, developed "with the assistance of an admissions committee" and set "forth existing practices in a readable format." The Association also asserts that she exercises limited budget authority, and based her budget "largely on the previous year's budget." It follows, the Association concludes, that Kordula's position "should be included in the faculty bargaining unit."

1/ (footnote continued from Page 15)

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.

Director of Lakeland Campus

Noting that even with its recent expansion, the Lakeland Campus "is a small operation", the Association contends that Jones does not meet the definition of either a supervisor or manager. The Association contends that Jones' "supervisory authority appears to be more limited than his managerial authority." He oversees the work of two secretaries, and oversees visiting faculty only to the extent he makes sure they remain at the facility as long as they are supposed to. His annual evaluation of secretarial staff is only, according to the Association, "a way of confirming that the work was completed", not "a significant indicia of supervisory authority."

The Association acknowledges, however, that his position is "a closer call than the other positions in dispute" because "he appears to have the authority to add courses, extend classes, develop schedules for weekend and evening attendance, approve use of facilities and market the Lakeland Campus program in the community to ensure financial stability." In spite of this, the Association argues that he is not a managerial employe, noting his "budgetary authority is more limited." The improvements to the parking lot and other items he has recommended do not, according to the Association, manifest "extensive authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operation." While his position presents "a closer question" than the remaining positions, the Association concludes that Jones is not a managerial, supervisory or confidential employe.

Director of the Native American Center

The Association asserts that LaRock's position has not significantly changed since the Commission last analyzed it. While LaRock did sit on the screening committee which recommended the hire of Cadotte and Schenk, the Association argues that such committees are commonplace in the hiring process, and operate on a consensus basis. Noting that her salary is bargained, and reflects no supervisory add-on, and that her supervisory authority over Schenk or the Area Coordinators is limited at best, the Association concludes LaRock's position should remain in the bargaining unit.

Financial Aid Director

The Association contends that this position has not changed in any meaningful sense since 1986. While acknowledging that Peshel has been called upon to evaluate Barlow, the Association asserts that this "evaluation will be in the nature of a peer review." In the event that performance based problems occur with staff in the Financial Aids Office, the Association contends that Bernard or Pound are available to address them. Nothing in Peshel's salary or the authority he exercises over Walker or Barlow warrants, according to the Association, a finding that his position is managerial or supervisory.

Director of Vocational Evaluation

The Association notes that Allgood has been in the bargaining unit for the past six years, and concludes that the record affords no basis for a conclusion that anything about his duties would warrant his exclusion from the unit. Characterizing Allgood's testimony that he spent 50-60% of his time supervising Pfaff and Ruppel as "wildly exaggerated", the Association asserts that the time is, at most, spent in supervising the activities, not the employees, of the office. The Association acknowledges that Pfaff related two personnel problems which he has addressed over the past six years. Neither, according to the Association, manifests the action of a supervisor. In one, Allgood resolved problems regarding a secretary's work performance by simply talking to the secretary. In Pfaff's case, the Association asserts that Allgood volunteered to assist Pound and Bernard with Pfaff's performance problems. This is irrelevant here because, according to the Association, "(t)he Commission should focus on what is required of the position rather than what is undertaken on a volunteer basis by Mr. Allgood." Nor has Allgood demonstrated managerial authority, according to the Association. He referred his desire to purchase computer equipment to Bernard, as he does "all other budgetary matters", the Association contends. The Association concludes that Allgood's position cannot be characterized as supervisory or managerial.

Director of Academic Advising

The Association asserts initially that there has been no evidence adduced that Trumpy functions as a confidential or supervisory employee. Noting that the Employer devoted much of its argument to Trumpy's relationship with the Academic Advisors, the Association asserts that "Ms. Trumpy's relationship with the advisors has not changed from the time she was Director of Enrollment Services." Beyond this, the Association asserts that Trumpy does not assign, oversee or evaluate the work of the Academic Advisors. The Association acknowledges that Trumpy's new job description calls upon her to evaluate her secretary, but asserts that "this and other job descriptions appear to have been drafted in anticipation of litigation." The Association contends that Trumpy does not check the work of the secretary when the secretary performs duties for the Academic Advisors, does not independently review the time records of the secretary and spends little time in assigning her work. It follows, the Association concludes, that Trumpy supervises the activities, not the employees, in her office. Nor does Trumpy's participation in the screening process by which an Academic Advisor was, or by which a full-time secretary will be hired, undermine this conclusion. The Association asserts that the committees function by consensus, and that "it would be inconsistent for the Commission to consider the collegiality of the screening committee as evidence of supervisory authority." That Trumpy has not been involved in any disciplinary process, did not receive a pay raise on assuming her present duties, and failed to effectively recommend the pay rate of the full-time secretary establishes, the Association contends, that she is not a supervisor.

The Association argues that "(t)his record is even less convincing with respect to Ms. Trumpy's alleged managerial duties." The Association asserts that at most Trumpy can voice an objection if an item she inserts into the budget is denied. The Association contends that with this, as with the other positions, "budget decisions of any consequence are made at the Dean level and above. It follows, the Association concludes, that Trumpy is not a manager and that "her position

should (not) be excluded from the bargaining unit."

THE EMPLOYER'S POSITION

As background to this matter, the Employer notes that it is taxing at the statutory maximum, and is emerging from a period of increased scrutiny of its management structure. As a result, the Employer notes that it has been compelled to dismantle the "kitchen cabinet" type of structure analyzed by the Commission in Dec. No. 23366, and to implement more rigorous and clearly defined managerial and supervisory procedures. Those changes have, the Employer contends, devolved greater authority to the positions at issue here which were previously addressed by the Commission, and enhanced the authority of the positions at issue here which were created after Dec. No. 23366 was issued. This is reflected, according to the Employer, by the fact that only five positions now directly report to the President, where, in 1986, at least seven did.

Director of Lakeland Campus

The Employer notes that its long range plans envision granting full branch campus status to the Lakeland facility, which has undergone, and is continuing to undergo, "a major expansion and new construction". The Employer contends that the indicia of Jones' supervisory authority are apparent. He is, the Employer argues, the "sole supervisor on-site at the Lakeland Campus", who thus "maintains time records for (the clerical employes), assigns work, performs annual evaluations and is responsible for hearing and adjusting grievances or complaints under the staff contract." Beyond this, the Employer asserts Jones has the authority to effectively recommend discipline for the clerical employes up to and including discharge. His authority also extends to adjunct faculty and to represented faculty while at Lakeland. The Employer also notes Jones has exercised significant power over District policy. For example, he has extended class times; expanded outreach programs; approved the use of the Lakeland facility by outside groups; negotiated and signed rental agreements; participated in cabinet and other management level meetings; and administers an operating budget in excess of \$100,000. The Employer argues Jones has requested additional money for capital improvements, and has the authority to "reallocate instructional funds to printing and supplies". He submits his budget directly to the cabinet, and participates in cabinet level "review of the entire institutional budget." Since collective bargaining strategy is considered by the cabinet, the Employer concludes that "it is clear that the position of the Director of the Lakeland Campus should be excluded from the bargaining unit on the basis that it is confidential, managerial and/or supervisory."

Director of Admissions

Noting that this position is based on the recommendations of a marketing study, the Employer argues that this position further reflects its management restructuring. Contending that Kordula "has total discretion over the acceptance of students into the College programs", the Employer concludes that she plays a vital policy role in its recruitment efforts. Kordula is the sole employe with supervisory authority over Meyers, which requires Kordula to assign work to Meyers, oversee that work, maintain her time records, evaluate her and serve as the first step of the

grievance procedure. Kordula fills in for Bernard when he is absent. Beyond this, the Employer contends that Kordula's efforts have resulted in a 16% enrollment increase, reflecting the efficacy of her policy initiatives. Asserting that she has the authority to discipline, hire and approve time off, the Employer concludes she must be considered a supervisor.

The Employer asserts she also possesses managerial authority to create and reallocate expenditures in her budget. That she possesses significant policy authority is demonstrated by her chairing the committee to revise the Employer's application forms. That she is compensated on a twelve month basis affords further evidence that she is distinct from the teachers' bargaining unit, according to the Employer. It follows, the Employer concludes, that she "is both a manager and a supervisor within the meaning of the Act."

Director of Vocational Evaluation

The Employer contends that Allgood, who works under an eleven month contract, "is responsible for and exercises total control over the Vocational Evaluation Center". He is the sole supervisor of a full-time vocational evaluator and a part-time clerical employe. As such, Allgood, according to the Employer, schedules work hours, assigns work, approves all leave requests, approves all expense vouchers, evaluates employes, and serves as the first step in the grievance procedure. Beyond this, the Employer notes that Allgood chaired the screening committees which recommended the hire of Ruppel and Pfaff. That Allgood has played an active role in the counseling of Pfaff regarding his work habits underscores, the Employer argues, the extent of Allgood's authority to effectively recommend discipline. That Allgood "worked to effectuate the transfer of a secretary within the institution" further underscores, according to the Employer, the extent of his authority.

Allgood's managerial authority is established, according to the Employer, by his preparation of goals and objectives for the department and an update of those goals. His role in revamping testing procedures within the District and in securing the OASYS system further underscores his policy making authority, the Employer concludes. The Employer notes that Allgood has the authority to create a budget and to reallocate funds within that budget. That he sets the rate at which the Employer charges DVR for Center services further underscores his managerial authority. The Employer concludes that Allgood's position must be excluded from the bargaining unit as a managerial and/or supervisory position.

Director of Academic Advising

Trumpy's position also flowed from the recommendations of the marketing study. Trumpy's duties are still evolving, according to the Employer, but it is apparent that the position is different than the predecessor examined by the Commission in 1986. Trumpy works under an eleven month contract, supervises five part-time academic advisors, and will eventually supervise a full-time clerical employe. The Employer argues that the relocation of the Academic Advising Center has made Trumpy's position independent of the office of the Dean of Instruction. The Employer asserts that Trumpy's authority to supervise is established by her authority to approve time records, expense

requests, and time off. Trumpy's reluctance to assert her authority in this area, as well as with regard to employe evaluation and discipline, cannot, according to the Employer, reduce the authority delegated to her. Although she similarly understated her role in the hiring process, the Employer contends that she, as chair of screening committees, has effectively recommended the hire of an Advisor, a clerical employe, and the rehire of a retired employe.

That Trumpy has significant managerial authority is demonstrated, according to the Employer, by her recommendation that a full-time Advisor position be created, and by her successful recommendation that the secretarial position be placed one level beyond that recommended by Pound. Trumpy's managerial authority has been somewhat limited by her bargaining unit status, according to the Employer, who notes that she was excluded from an Instructional Administrators' meeting in which collective bargaining was discussed. Although her budgetary authority is still evolving, the Employer contends she can establish and modify the budget for her department. The Employer concludes her position should be excluded from the bargaining unit as managerial and/or supervisory.

Director of Native American Center

LaRock is the sole employe in charge of the Native American Center, according to the Employer. The Employer contends she is the direct supervisor of the Recruiter/Advisor, three Area Coordinators, and a full-time clerical employe. She prepared the position description for each position. She schedules work hours, and assigns work. That she was reluctant to acknowledge her supervisory authority is, according to the Employer, belied by her reaction to Bernard's discussion with Cadotte regarding increasing coverage at the Lakeland campus. The Employer also contends she approves time records for her clerical employe, as well as all leave and expense requests. While she was reluctant to evaluate employes of the Center, the Employer contends her authority, and duty, to do so is apparent. She, as the other supervisors, serves as the Step 1 supervisor in the support staff contract, the Employer asserts. Beyond this, the Employer argues that she, as screening committee chair, effectively recommended the hire of Cadotte and the Area Coordinators. The Employer also asserts she has the authority to discipline, and has effectively recommended the expansion of the hours of an Area Coordinator.

LaRock's authority to implement policy is manifested, the Employer asserts, by the goals and objectives she authored, as well as by her role in enhancing District minority recruitment efforts. Beyond this, she has, according to the Employer, authority to create a budget and to reallocate resources within that budget. The District concludes her position is managerial and/or supervisory.

Director of Financial Aid

The Employer contends, as preface to an analysis of this position, that Peshel's testimony should be accorded "little to no weight . . . since it has been thoroughly discredited by the two management personnel who testified . . . as well as Mr. Peshel himself under extensive cross-examination." Peshel's testimony notwithstanding, the Employer asserts that Peshel has the authority to assign and oversee the work of Barlow and Walker. Peshel works on an extended ten month contract. Beyond this, the Employer contends Peshel is responsible for approving time off, expense requests, and for monitoring the quality of Barlow's and Walker's work. While Peshel has balked at evaluating bargaining unit members, the Employer asserts that his authority and duty to do so stands essentially un rebutted. He serves as the Step 1 representative of the Employer in the support staff contract, according to the Employer. While Peshel minimized his role on screening committees, the Employer contends that he effectively recommended and defended the hire of Walker over a more senior bargaining unit member. That he has the authority to discipline is demonstrated, according to the Employer, by his action in reporting a District employe whom he suspected of improperly drawing certain financial aid.

Peshel's budgetary authority is manifested, according to the Employer, in the goals and objectives he authored, and in the budget documents he has submitted. The significance of his policy authority is demonstrated, according to the Employer, by his management of a department which oversees the disbursement of \$2,500,000 in state and federal aid money. The Employer concludes that Peshel's position must be characterized as supervisory and/or managerial.

DISCUSSION

Section 111.70(1)(o)1 of the Municipal Employment Relations Act (MERA) defines the term "supervisor" as follows:

. . . any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Wisconsin Employment Relations Commission has, on numerous occasions, listed the following factors as those to be considered in determining whether or not an individual is a supervisor within the meaning of Sec. 111.70(1)(o)(1), Stats:

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 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 skill or for his/her 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/her time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 2/

The Commission has consistently held that not all of the above factors need to be present, but if the factors appear in sufficient number and degree, the Commission will find an employee to be a supervisor. 3/ Even an employee who spends a majority of his/her time doing non-supervisory duties, may be determined to be supervisory where sufficient responsibilities and authority of a supervisor are present. 4/

In the absence of a statutory definition of what constitutes a "managerial" employee, the Commission has, through case law, developed a definition of managerial status as being one who participates in the formulation, determination and implementation of management policy, or one who has the authority to commit the employer's resources. The Commission has held that to yield managerial status, the involvement in the employer's policy must be at "a relatively high level of responsibility", and that managerial status based on the 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 provided, or the kind and number of employees to be used in providing services." 5/

The Commission has established that, for an employee to be held confidential, the employee

2/ Muskego-Norway School District, Dec. No. 10585-A (WERC, 12/91); City of Milwaukee, Dec.No. 6960 (WERC, 12/64).

3/ City of Lake Geneva, Dec. No. 18507 (WERC, 3/81); Lodi Jt. School District No. 1, Dec. No. 16667 (WERC, 11/78).

4/ City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82); School District of Montello, Dec. No. 17829-B (WERC, 2/82).

5/ Northland Pines School District, Dec. No. 27154 (WERC, 2/92).

must participate in matters involving the consideration of confidential information relating to labor relations, or must have access to or knowledge of confidential information relating to labor relations. For information to be confidential, it must (a) deal with the employer's strategy or position in collective bargaining, contract administration, litigation or other similar matters pertaining to labor relations and grievance handling between the bargaining representative and the employer and (b) be unavailable to the bargaining representative. 6/

The Director of the Lakeland Campus

Jones' position is Cabinet level and warrants a finding of managerial status. He submits the Lakeland Campus budget directly to the Cabinet, and will participate in Cabinet deliberations on the budgets of each of the Employer's departments. The Employer has determined that the Lakeland Campus should eventually assume full branch status. Jones is instrumental to the implementation of that policy. He has extended class hours, and has expanded the outreach offerings which will spread the Employer's offerings throughout the community. He has reallocated money from the campus budget without the need of further approval. He has recommended the paving of the parking lot of the Campus facility, and other items of capital improvement. His position is instrumental to the Employer's determination to offer more services, through more employees, to the area served by the Lakeland Campus. He is, in short, a managerial employee.

With this finding, it is unnecessary to determine if Jones constitutes a supervisory or confidential employee.

The Remaining Directors

Before discussing each individual position, we would note that as a general matter it seems clear the College fully intends that these employees each possess and exercise similar significant supervisory authority. However, because these positions are relatively new and some of the incumbents clearly wish to retain their bargaining unit status, evidence of the exercise of supervisory authority is spotty. Under these circumstances, we find it particularly appropriate to consider the supervisory authority exercised by any of these Directors as representative of the authority all possess. Such a consideration persuades us that, on balance, the Directors' role in hiring, transfer, promotion, evaluation, day-to-day direction of their subordinates, the absence of any other effective supervisory presence, and their status as the first step in contractual grievance procedures combine to warrant a supervisory conclusion. In light of this conclusion, we need not determine whether any of the Directors are managerial or confidential employees.

6/ Crawford County, Dec. No. 16931-B (WERC, 9/89).

The Director of Admissions

Kordula possesses a limited, independent authority to discipline and would refer a suspension or discharge to Pound. She is, in any event, the first step under the grievance procedure governing Meyers' position. She has not hired any employees. Her office is, however, targeted for expansion, and she would have no less authority to hire than the remaining positions. She would, then, select and chair a screening committee which would be responsible for making a recommendation to Bernard, who typically follows such recommendations. The committees tend to operate as exercises in consensus building, but the ultimate responsibility for reaching the recommendation is the Director's. She does direct and assign Meyers' work, but such duties involve only one employee, and do not occupy a significant part of Kordula's day. Bernard exercises little oversight over her department, and relies on her to evaluate Meyers' performance. Her salary is well within the confines of the teachers' negotiated salary system, thus it is unclear if she receives a "supervisory" premium. Ultimately, the bulk of her time is spent on non-supervisory duties, most typically involving off-site recruitment efforts.

The Director of Academic Advising

Trumpy justified the need for a full-time clerical position, and selected and chaired the screening committee to fill it. She saw her role in that process as that of a consensus builder, but the fact remains that her position has been selected by the Employer as that responsible for the building and communication of a consensus recommendation, which the Dean followed. Significantly, she played the definitive role in the hiring of Academic Advisor Margitan. She is uncomfortable with evaluating, much less disciplining, employees. It is, however, apparent that the Employer sees her as authorized to do so. Having such authority, her position constitutes the first step of the teachers' and the support staffs' contractual grievance procedure. She has exercised limited oversight of the work of the clerical position she oversees, and less oversight of the work of the Academic Advisors. This is, however, less a question of her authority than of the performance of incumbent employees. She exercises authority over a limited number of employees. The five Academic Advisors and one (yet to be hired) clerical employee constitute two full time equivalent positions. Her salary is set by the collective bargaining agreement, and thus cannot manifest any supervisory premium. Beyond this, it is apparent she spends the bulk of her work time in student contact duties.

The Director of The Native American Center

LaRock's position was previously considered by the Commission. She still spends the bulk of her time in off-site duties and in student-contact or related activities. Her supervisory authority has, however, been enhanced. Bernard, unlike Vissers, does not appoint the screening committee which will communicate a hiring recommendation. LaRock played the primary role in securing funding for Schenk's position, played a significant role in drafting the job description for the position, and selected and chaired the screening committee which interviewed the applicants for the position. Here, too, LaRock saw the chair's role as that of consensus builder, but the fact remains that the Employer has placed the responsibility for building consensus and communicating the

recommendation in her position. Most importantly, she played the critical role in the expedited hiring process used to hire a Coordinator. Further, when a Coordinator position became vacant, she effectively recommended reassignment of the work to other Coordinators rather than filling the vacancy with a new hire. She now has, whether she wants it or not, the authority to discipline, and is the step one representative of the Employer in both the teachers' and the support staffs' labor agreement. Beyond this, she has been made accountable for a more rigorous system of evaluation than previously existed.

The Director of the Vocational Evaluation Center

Allgood's and Peshel's testimony serve as the stark background to the difficulty of the issues posed here. Allgood's testimony overstates the scope of the position's supervisory authority, while Peshel's grossly understates it. The analysis of Allgood's position essentially mirrors that of LaRock's and Trumpy's. He devotes the bulk of his time to Center duties, not employee supervision. However, his testimony highlights the scope of the supervisory authority he does possess, and the conflict that poses with the interests of represented employees. His monitoring of Pfaff's work performance, and his counseling of Pfaff, underscores that he serves, essentially, as the Employer's first step representative in the discipline process and in the grievance procedure which is part of that process.

The Director of Financial Aid

What has been said with respect to the supervisory authority of Trumpy's, LaRock's, and Allgood's position also applies to Peshel's. His position, like LaRock's, has been addressed by the Commission. In that earlier case, however, the Commission noted the absence of any significant authority by Peshel to evaluate or discipline the employees of the Financial Aids Office. Those powers, although strenuously denied by Peshel, are now features of his position. The extent of his disciplinary authority is problematic, since he has experienced no work performance problems. It is, however, apparent that Bernard expects him to evaluate both Barlow and Walker. It is also apparent that Peshel understated the scope of his authority in the hiring process. His authority has increased with the change in administration. Screening committees were formerly appointed by the District Director, and are now appointed by Peshel, subject to Bernard's approval. Bernard has accepted every one of the names submitted to him by the Directors who report to him. That Peshel operates his committee by consensus cannot obscure that the creation of that consensus, or at least the majority support of a candidate, was his responsibility. Most significantly, when a committee deadlocked over whether Walker or another candidate should be hired, Peshel's recommendation to Pound was decisive. He was the representative who communicated the Employer's selection of Walker to Lund. That his response almost generated a grievance underscores the competing interests of his position with that of represented employees. He attempted to place responsibility for the memo which diffused the grievance on Pound's office. It remains the fact, however, that the memo bears his signature.

Given all of the foregoing, the remaining Directors are excluded as supervisory employes.

Dated at Madison, Wisconsin this 18th day of March, 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