

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Ms. Marianne Goldstein Robbins, Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, 788 North Jefferson Street, Room 600, P. O. Box 92099, Milwaukee, Wisconsin 53202, on behalf of the Petitioner.

Mr. John Selsing, Corporation Counsel for Green Lake County, 120 East Huron Street, Berlin, Wisconsin 54923, on behalf of the Employer.

Mr. James L. Koch, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N7242 Winnebago Drive, Fond du Lac, Wisconsin 54935, on behalf of the Intervenor, Local 514C.

No. 24955
No. 24956

FINDINGS OF FACT

1. That Green Lake County hereafter the County, is a municipal employer with offices located at Green Lake County Courthouse, 492 Hill Street, Green Lake, Wisconsin, 54941.

2. That International Union of Operating Engineers, Local 139, hereafter Petitioner, is a labor organization with offices at 7283 West Appleton Avenue, Milwaukee, Wisconsin, 53216.

3. That Wisconsin Council 40, AFSCME, AFL-CIO, Local 514-C, hereafter Intervenor, is a labor organization with offices at N7242 Winnebago Drive, Fond du Lac, Wisconsin, 54935.

4. That Petitioner in Case 39, No. 37763, ME-2644, seeks elections in two claimed appropriate units although the petition, filed on October 30, 1986 and amended on December 22, 1986, describes one appropriate bargaining unit consisting of "all regular full-time and regular part-time employees of the County, excluding employees represented in other bargaining units"; that, in essence, the Petitioner seeks an election among County professional employees to determine whether they wish to constitute a separate appropriate unit or whether they wish to be combined with all eligible, currently unrepresented non-professional County employees in a residual unit which Petitioner also seeks to represent; and that the Petitioner, by its petition in Case 40, No. 38107, ME-2666, filed on December 22, 1986, seeks an election in a bargaining unit consisting of "all Sheriff's Department supervisors excluding Sheriff."

5. That in 1978, the Intervenor herein filed a petition for elections in Case 12, No. 22324, ME-1494, Dec. No. 16050-B (WERC, 2/78), and elections were conducted by the Commission, upon stipulation of the County and the Intervenor without a hearing, in two Voting Groups of Green Lake County employees, described as follows:

Voting Group I

All regular full-time and regular part-time employees of Green Lake County, excluding elected officials, supervisory and confidential employees, and all employees of the highway and law enforcement departments.

Voting Group II

All professional employees such as nurses, social workers, instructors, teachers, and therapists employed by Green Lake County;

that the professional employees the parties stipulated to be eligible to vote in Voting Group II occupied the following job classifications:

Registered Nurse, Public Health
Instructor I, II, III
Teacher
Physical Education Instructor
Speech Therapist
Social Worker I, II
Case Aide II Social Services (now called Income Maintenance Workers)
Child Support Specialist;

that the employees in Voting Group II voted not to be combined with the non-professional bargaining unit, Voting Group I, and Voting Group II also voted against representation by Intervenor; that the employees constituting Voting Group II have remained unrepresented; and that the employees in Voting Group I (hereafter the "Courthouse" unit) voted in favor of representation by Intervenor herein and on February 8, 1978, Intervenor was certified as the exclusive representative of employees in the following unit:

all regular full-time and regular part-time employees of Green Lake County, excluding elected officials, supervisory and confidential employees, and all employees of the highway and law enforcement departments, and professional employees

6. That since 1978, Intervenor herein has had a series of collective bargaining agreements with the County regarding the wages, hours and conditions of employment of the employees in the certified "Courthouse" unit described above in Finding of Fact 5; that the most recent (1986-1988) collective bargaining agreement between the County and the Intervenor herein recognizes the Intervenor as the exclusive representative of the following employees:

all regular full-time and regular part-time employees of Green Lake County excluding elected officials, supervisory and confidential employees, professional employees such as nurses, social workers, instructors, teachers and therapists, law enforcement employees and the organized Highway Department employees;

that Intervenor's "Courthouse" unit collective bargaining agreement currently lists the job titles of covered employees (in the departments or areas listed below those titles) as follows:

DEPUTIES

Treasurer
Zoning Administrator
Veteran Service Officer
County Clerk
County Clerk
Register of Deeds
Register of Deeds
Clerk of Circuit Court
Clerk of Circuit Court

ACCOUNT CLERK II

Social Services
Social Services
Land Conservation
County Clerk
Mental Health
U.W. Extension
Circuit Court 57%
100%
Circuit Court 43%

SECRETARY BOOKKEEPER II

Nurse
D.D. Program
Mental Health

SECRETARY II

Social Services
U.W. Extension

SECRETARY I

County Clerk
Nurse

INDIVIDUALS

Zoning Administrator
Register in Probate
Head Custodian
Real Property Lister
Nutrition Director
Homemaker II
Nutrition Aide
Asst. Real Property Lister 50%
Offset Press Operator 50%
Groundskeeper (40 hrs.)
Custodian 65%

BUS DRIVERS & AIDES

Lead Bus Drive
Bus Driver
Bus Aide
Bus Aide

that since 1962, the Intervenor herein has also been the exclusive certified representative of the employees in the following certified unit:

all employees of Green Lake County, employed in the Green Lake County Highway Department, excluding Commissioner, Patrol Superintendent and office clerical employees

(Case 2, No. 8687, ME-44 Dec. No. 6108 (WERC, 10/62);

that since 1978, the Intervenor herein has been the voluntarily recognized exclusive representative of all regular non-supervisory law enforcement personnel employed by the County's Sheriff's Department; and that the Intervenor herein has entered into collective bargaining agreements with the County regarding these groups of employees since becoming their representative.

7. That regarding the issue of what units should be found appropriate by the Commission, the Petitioner contends that a supervisory law enforcement unit is appropriate and that it is also appropriate to establish a residual bargaining

unit of unrepresented non-professional employees and a professional unit should the professionals not choose to be combined with the unrepresented non-professionals for the purposes of collective bargaining.

8. That regarding the issue of appropriate units, the Intervenor contends that a supervisory law enforcement unit is appropriate but that the currently unrepresented non-professional County employees should properly be accreted "unconditionally and unilaterally" into Intervenor's currently existing certified "Courthouse" bargaining unit described above in Finding of Fact 5; and that a separate unit of professionals is appropriate.

9. That regarding the appropriate units question, the County essentially agrees with Intervenor and argues that were the Commission to do as the Petitioner wishes, this would lead to fragmentation of County bargaining units and to greater expense and difficulties in contract negotiation and administration.

10. That the Green Lake County Board has a Finance Committee made up of Green Lake County Board members, which receives proposed/recommended budgets from County Departments or Divisions, hears those budgets defended by Department/Division managers and determines whether or not to recommend those budgets to the full County Board for approval; that the County also has a Subcommittee No. 1 (known as the Health Committee), also made up of Green Lake County Board members, which oversees the operations of the Department of Nursing; that the County also has a Social Services Board, made up of five County Board members who are elected by the full County Board to two year terms on the Social Services Board, which oversees the operations of the Department of Social Services and of the Department of Nursing; and that the Unified Board is set up to provide and govern services given to County residents in the areas of Mental Health, Developmental Disabilities and Drugs and Alcohol Abuse as well as other Adults and Youth Services;

11. That the parties stipulated and agreed that the following individuals in the listed classifications are not in dispute in this case for the reasons listed:

- a. Bonnie Werch, Corporation Counsel's secretary, should be excluded as a confidential employee;
- b. Donald Bruendl, Sheriff of Green Lake County should be excluded from the law enforcement supervisory unit as an elected official/managerial employee;
- c. Pamela Brown, Library Director and Cynthia Wallace, Assistant Library Director, should be excluded as they are employees of the Washara-Green Lake County Library Board, not employees of Green Lake County;
- d. Judy Sobraliski, Administrative Assistant to the County Clerk/Chief Deputy County Clerk, should be excluded as a confidential employee;
- e. "Summer Recreation Aides" should be excluded as these positions have either been eliminated or they are seasonal, 11 week summertime positions, at Fox River Industries.
- f. Thomas Guell, Communications/Corrections Officer, also known as "Extra Help Sheriff", employed in the Sheriff's Department, is currently represented by the Intervenor in its non-supervisory law enforcement unit and should be excluded from any unit herein;
- g. Leona Daniels, Secretary I, employed in the County Clerk's office is currently represented by the Intervenor in its certified "Courthouse" unit;
- h. Cheryl Schutte, Land Conservationist, is currently represented by the Intervenor in its certified Courthouse unit;
- i. Marilee Bluska, Secretary/Bookkeeper employed at the Commission on Aging is currently represented by the Intervenor in its certified "Courthouse" unit;

- j. Terry Streight, Plant Operations supervisor is currently represented by the Intervenor in its certified "Courthouse" unit;
- k. Michael McMonigal, Family Court Commissioner is not a County employe but is appointed by the Family Court Judge and serves under the Judge's direction and terms;
- l. "Coordinator of the Commission on Aging" position has been vacant for several months, may be consolidated or eliminated by the County in the future and should not be included in any appropriate unit at this time;
- m. Terry Stellmacher, Secretary in Child Support (under Judith Street) is represented by the Intervenor in its certified "Courthouse" unit;
- n. Gloria Hardel, who is working at the Mental Health Library on a work/study basis, is not a County employe and should be excluded from any unit;
- o. "Meal Site Managers/Transporters" are not County employes;
- p. Phyllis Benson, Veterans' Benefits Administrator, is currently represented by the Intervenor in its certified "Courthouse" unit;
- q. Rebecca Keipe and Donna Lyon are clerical employes employed in the County Clerk's office who are currently represented by the Intervenor in its certified "Courthouse" unit;
- r. Eugene Bednarik, Offset Press Operator and Delores Maizhan Secretary I/Purchasing Agent, are employed in the County Clerk's office and are currently represented by the Intervenor in its certified "Courthouse" unit;
- s. Janet Wendt, Registrar in Probate, is covered by an informal agreement between the Intervenor and the County arising out of a prior case filed by the Intervenor;

12. That the County has a Department of Social Services (located at 500 Lake Steel Street in Green Lake, Wisconsin) which is overseen and controlled by the County Board and the County Board-elected Social Services Board; that the Department is generally organized into three functional Divisions - Social Services, Support and Income Maintenance; that the Department does not employ but receives advice and direction from both the District Attorney (Dan Sondalle) and the County's Corporation Counsel (John Selsing); that the Department's Director is Steve Szatkowski who is directly responsible to the Social Services Board and ultimately responsible to the County Board; that the Department's Administrative Assistant is Eevon Anderson who is directly responsible to Szatkowski; that the parties stipulated and agreed that Szatkowski is a supervisory employe and that Anderson is a supervisory/ confidential employe and that both should be excluded from any bargaining unit; that the Department also employs three clerical employes -- Lori Kinass, Secretary II in the Support Division, Carolyn Wilson, Clerk II and Wendy Grahn, Clerk II, in the Income Maintenance Division; the parties stipulated and agreed that these three clerical employes are not in issue here but are currently represented by the Intervenor in its certified "Courthouse" unit; that the Department also employes Carol Adams, Homemaker II who, the parties stipulated and agreed, is not in issue here because she is also represented by the Intervenor in its certified "Courthouse" unit; that the parties stipulated and agreed that Sue Sleezer, Social Work Supervisor in the Department, is a professional employe eligible to vote in the election among professional County employes; that the parties stipulated at the pre-hearing meeting held on December 22, 1986, that the following Department of Social Services employes are professionals and eligible to vote in the professional voting group herein:

Betty Murphy, Social Worker II
 Mark Fogerburg, Social Worker II
 Ardis Tobison, Social Worker I
 Connie Klick, Social Worker I;

that the job descriptions for these employees indicate that at the least, a college degree or equivalent experience and training is required for these positions, and that the facts herein show that they regularly exercise independent judgment regarding the handling of their cases/clients; and that the following named Department of Social Services employees in the classifications listed are in dispute in these cases:

a. Income Maintenance Division

- 1) Susan Amidon, Income Maintenance Worker
- 2) Michael Magnusson, Income Maintenance Worker
- 3) Rita Beier-Miller, Energy Assistance Coordinator
- 4) Ray Thiem, Welfare Fraud Investigator and General Relief Worker

b. Social Services Division

- 1) Lynn Smith, Intensive In-Home Services Worker

13. That the County has a Department of Nursing located at 500 Lake Steel Street in Green Lake, Wisconsin, which is overseen and controlled by the County Board, the Social Services Board and County Subcommittee No. 1 (Health Committee), in that order; that immediately below the Health Committee in the "chain of command" is the Director of Nursing, Betty Johnson who the parties stipulated and agreed is a supervisory employee to be excluded from any bargaining unit; that the Department is generally organized into three Divisions -- Public Health, the Home Health Agency and Support Staff; that the Home Health Agency Division of the Department of Nursing (HHA) was created in 1966 by a County Board resolution as a separate self-sufficient entity, having its own budget and employing its own registered nurses and nursing assistants; that there are two full-time Registered Nurses, Pat Brey and Joan Besaw, who work as Public Health nurses and who the parties have stipulated and agreed are professional employees and eligible to vote in the professional voting group herein; that the Department employs both a Bookkeeper and a Secretary who, the parties stipulated and agreed, are not in issue here as they are currently represented by the Intervenor in its certified "Courthouse" unit; and that the following Department of Nursing employees in the Divisions and classifications listed are in dispute in these cases:

a. Home Health Agency

- 1) Nancy Chapin, R.N.
- 2) Sharon Fortnum, R.N.
- 3) Irene Ingraham, R.N.
- 4) Judy Kasuboski, R.N.
- 5) Mary Stoll, R.N.
- 6) Mary Guell, Physical Therapist

b. Home Health Agency

- 1) Mary Ann Waltenberg, Nursing Assistant
- 2) Roseann Timm, Nursing Assistant
- 3) Cindy Stobbe, Nursing Assistant
- 4) Susan McCarthy, Nursing Assistant
- 5) Dorothy Dickerson, Nursing Assistant
- 6) Betty Freimark, Community Health Technician

14. That under the direction of the County Board and the Unified Services Board, the County runs its Mental Health Center, located at 500 Lake Steel Street, Green Lake, Wisconsin, and its workshop for the developmentally disabled, known as Fox River Industries, located approximately ten miles away from the Mental Health Center, in Berlin, Wisconsin; that the Program Director, Linda VanNess, administers activities at both the Mental Health Center, and at Fox River Industries by spending Mondays and Fridays at the Center and Tuesdays through Thursdays at Fox River Industries; that Ms. VanNess is directly responsible to the County Board and to the Unified Board for these activities/programs; that the parties stipulated and agreed that Ms. VanNess is a supervisory employee to be excluded from any bargaining unit; that the programs under Ms. VanNess' direction are organized into several Divisions -- Social Services, Program Support Services, Fox River Industries Day Services, Fox River Industries Workshop, Mental Health

Center Clinic operations and Mental Health Center Support Services; the following named employees in the Divisions and classifications listed are not in issue here, according to the parties stipulation and agreement, because they are currently represented by the Intervenor's certified "Courthouse" unit:

a. Support Services

- 1) Penny Bahn, Secretary/Bookkeeper II
- 2) Shirley Hayes, Lead Bus Driver
- 3) Roxanne Feldman, Bus Driver
- 4) Jerry Robinson, Bus Aide

b. Fox River Industries Workshop

- 1) Donna Buhlow, Production Aide

c. Mental Health Center Support Services

- 1) Mary Ann Kautzer, Secretary/Bookkeeper II
- 2) Laurie Bogart, Account Clerk II
- 3) Mary Ann Wolf, Typist;

that the following named employees in the Divisions and classifications listed have been stipulated and agreed by the parties to be professional employees and are eligible to vote in the professional voting group:

d. Social Services Division

- 1) Carol Thomas, Social Worker I *
- 2) Nancy Warren, Social Worker I
- 3) Gloria Lichtfuss, Social Worker I

e. Fox River Industries Workshop

- 1) Jane Lind, Workshop Supervisor
- 2) Tony Jaworski, Production Supervisor

f. Mental Health Center Clinic Operations

- 1) Terry Gilman, AODA Coordinator/Counselor
- 2) John Hynson, Mental Health Coordinator
- 3) June Richter, Community Support Coordinator/R.N.
- 4) Carol Thomas, Psychiatric Social Worker; *

* denotes the same person holding two positions

that the parties also stipulated and agreed that the following individuals or classifications in the listed Divisions are not in issue in these cases for the reasons stated:

g. Fox River Industries Day Services

- 1) Sheila Weiss, Speech Therapist, is an employee of Lutheran Services, not a County employee
- 2) Joanne Vermeil, Occupational Therapists, is an employee of Lutheran Services, not of the County

h. Mental Health Center Clinic Operations

- 1) Karen Hacker, D.P. Assessor, is a casual employee (working only one day per week) under an independent contract with the County.
- 2) Karen Hages, OWI Assessor, is also a casual employee (working one day per week) under an independent contract with the County
- 3) "Adult/Youth Psychiatric Services" two medical doctors work one day per week at the Clinic on a casual, independent contractor basis
- 4) "Residents/Students" are not employees of the County but are students working at the Clinic for training or a grade

- 5) Dr. R. Baker, Medical Director of the Mental Health Center is a medical doctor who works only one day per week at the Center;

and that the following individuals in the listed Divisions and classifications are in dispute in these cases:

i. Fox River Industries

- 1) Rebecca Koon, Developmental Disabilities Coordinator for all of Fox River Industries
- 2) Vanessa Margart, Job Coach

j. Fox River Industries Day Services

- 1) Dallas Lewallen, Physical Education Instructor
- 2) Lorraine Johnson, Instructor I/Self Care
- 3) Janice Polacek, Teacher
- 4) Anne Ganka, Instructor I - Pre-Vocational Training

k. Mental Health Center Clinic Operations

- 1) Thomas Powell, Clinic Coordinator.

15. That also in dispute in this case is the status of Judith Street, Child Support Worker II and Victor Klawitter, Veterans' Transportation/Service Officer.

16. That the parties stipulated that the following individuals occupying the listed positions are not at issue in this case:

- a. Sam Mullen, County Surveyor
- b. Gene Nicolai, Civil Defense Director
- c. Donna Mae Karlovich, Jail Cleaner
- d. Lori Evans, fill-in Secretary in the Sheriff's Department
- e. Richard Crowley, Highway Commissioner
- f. Paul Pfeiffer, Patrol Superintendent in the Highway Department
- g. Sandra Schmitz, contractor providing meals to the jail.

17. That for many years the County has retained individuals to perform specific services for the County pursuant to annual individual employment contracts; that these individuals have not been considered "employees" by the County; that these individuals have generally been paid once a month after submitting monthly vouchers to the County Board for hours worked, mileage and/or meals (as allowed by their contracts); that these individuals have generally received no County benefits, are not covered by unemployment or workers' compensation, and the County has not ordinarily deducted taxes or Social Security from their pay; that generally, the County has supplied contract workers with tools, equipment or materials necessary to perform their jobs; that when "employed" by the Unified Board, contract workers work under the terms described generally herein for "contract" workers and they must give two weeks notice prior to quitting their positions and the Unified Board is required to give these workers two weeks notice of termination; that Program Director Van Ness (who supervises all the Fox River Industries and Mental Health operations for the Unified Board) stated that evaluations are performed at least annually on all employees under her supervision, including "contract" workers; that contract workers, like regular County employees, can be reprimanded and fired; that "contract" workers are not required to obtain certificates of insurability so that some of them may not maintain their own insurance; and that the County and the Unified Board decided not to offer any 1987 individual employment contracts due to the pendency of the petitions in these cases.

18. That regarding the disputed Income Maintenance Worker positions (IMW) in the Social Services Department occupied by Susan Amidon and Michael Magnusson, who Petitioner claims are professional employees, contrary to Intervenor which asserts the IMW'S are non-professional, in 1978 the County had classifications and incumbents of the positions "Social Worker I" and "Social Worker II" and also employed IMW's or their equivalent; that at the time of the 1978 representation elections, IMW's had the title of "Case Aide II, Social Services"; that by stipulation of the parties in 1978, the Case Aide II's were placed in the professional voting group (Voting Group 2); that currently the duties of the IMW's

include the following: interviewing applicants for aid to gather information to meet State and Federal guidelines for entitlement to benefits under such programs as AFDC, Medical Assistance, Food Stamps and General Relief; investigating, preparing and processing applications and determining what code numbers (under the guidelines) should be placed on applicants' forms; sending coded forms to the clerical staff (represented by Intervenor) so that coded information can be fed by clericals into the State computer, which computer then determines eligibility (whether recipients of aid are eligible for continued or additional aid under established guidelines); making home visits to applicants if there is doubt as to the truth of their interview assertions, preparing and updating case records and performing clerical and bookkeeping work regarding cases; and referring applicants and recipients to other agencies or to Social Workers; that in addition to these duties, the evidence showed that IMW's may also counsel recipients of aid on an on-going and continuous basis, even after their aid applications have been processed by the IM Division, to help recipients make decisions and to help them deal with current events in their lives; that the County's current job description for an IMW reads as follows:

GENERAL STATEMENT OF DUTIES: Performs responsible administrative tasks related to eligibility determination and need for public assistance; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: The employee in this class does field and office work related to programs such as financial and medical assistance and Food Stamps. The work is performed within established procedures, policies and guidelines and is performed under the general supervision of the Social Services Director.

EXAMPLES OF WORK: (Illustrative only)

Visits homes of applicants to explain the assistance programs which are available such as Aid to Families With Dependent Children, Medical Assistance, Food Stamps and General Relief; Investigates and certifies the applications of aid recipients; Determines continuing eligibility of aid recipients and updates their case histories; Secures and verifies information pertaining to applications and enters into case files; Assists clients with the preparation of forms; Determines purchase price and allotments for Food Stamp applicants; Performs outreach duties, makes home visits for AFDS cases and certifies foster case payments; Keeps all client information up-to-date and prepares appropriate case records; Refers clients needing additional help to Social Workers; Performs clerical and bookkeeping tasks related to public assistance programs. And any other duties that may be assigned to them by the director.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES: Good knowledge of the rules and regulations pertaining to agency assistance programs; good knowledge of interviewing techniques; good knowledge of community social conditions and the role of social agencies; communication and budgeting skills; ability to establish and maintain effective working relationships with applicants; ability to make simple mathematical computations; ability to gather facts and report them accurately; good judgment; reliability.

ACCEPTABLE EXPERIENCE AND TRAINING: Some prior experience as an Income Maintenance Assistant or personal experience as a current or former categorical aid recipient and graduation from high school; or any combination of experience and training which provides the required knowledge, skills and abilities;

that Amidon and Magnusson, the two incumbents of the two IMW positions, currently handle approximately 300 cases at any one time; that neither of them has a college degree, although both have some college credits; that the last time the Department hired an IMW, it sought applicants with some experience and/or education prior to hire; that both Amidon and Magnusson worked as "Income Maintenance Assistants" for two years prior to the County promoting them to IMW positions; that both Amidon and Magnusson have their own separate offices at 500 Lake Steel Street, Green Lake, Wisconsin, located next to the Director of Social Services' office due to the need for confidential meetings between IMW's and applicants for aid; that the IMW's' direct supervisor is Administrative Assistant Eevon Anderson and their ultimate supervisor is Director Szatkowski; that these IMW's are salaried, receiving \$1275 per month, and they both work full time -- from 8:30 a.m. to 4:30 p.m.; that they are considered County employees and receive full County benefits including pension under the Wisconsin Retirement System (WRS), health insurance, vacation, sick leave, personal days, overtime, unemployment and workers' compensation, and FICA and State and Federal tax deductions; that as a practical matter the IMW's spend approximately one hour on the initial interview of each aid applicant they see; that after interviewing an applicant, they then code the information received according to State and Federal guidelines and give this coded material to the clerical staff (represented by Intervenor) to be entered by the clericals into the computer provided by the State of Wisconsin; that the computer then determines whether or not the applicant is eligible for the aid applied for; that in close cases an IMW may consult with Anderson, and Anderson then determines whether a special opinion regarding eligibility should be sought from State officials; that approximately 1/6 to 1/5 of each IMW's work time is spent counseling recipients after their initial interviews and these counseling sessions may occur every six months or as frequently as once a week, at the recipient's request; that IMW's regularly attend in-service meetings (typically attended by departmental professionals such as Social Workers) and they attend staff meetings (typically attended by all Department staff); that one County employee, Ardis Tobison, who is currently a Social Worker I in the Social Services Department had been an IMW prior to being hired as a Social Worker I under the County's normal hiring procedures; that the duties of the Income Maintenance Workers are not predominantly intellectual and varied in character, they do not involve the consistent exercise of discretion and judgment in their performance, they can be standardized in relation to a given period of time, and the IMW position does not require knowledge of an advanced type acquired by a prolonged course of study and/or training.

19. That the Department of Social Services employs an "Energy Assistance Consultant" (EAC), Rita Beier-Miller, in the Income Maintenance Division of the Department who the County claims is an independent contractor, Petitioner claims the EAC is a professional employee and who the Intervenor claims is a non-professional employee; that the incumbent has served in the position since December, 1986; that prior to Beier-Miller, the position was occupied by Margaret Bauthin who signed a one year individual employment contract (December 2, 1985 through December 1, 1986) regarding the EAC position which read as follows:

CONTRACT FOR ENERGY ASSISTANCE CONSULTANT FOR THE
GREEN LAKE COUNTY DEPARTMENT OF SOCIAL SERVICES

THIS AGREEMENT is made and entered into this 2nd day of December, 1985; BY AND BETWEEN GREEN LAKE COUNTY DEPARTMENT OF SOCIAL SERVICES of the County of Green Lake, State of Wisconsin, hereinafter referred to as the PURCHASER, and _____ hereinafter referred to as the PROVIDER.

WHEREAS, PROVIDER, whose address is _____, is a qualified person to perform this type of work; and

WHEREAS, the PURCHASER, whose address is the Green Lake County Department of Social Services, 500 Lake Steel Street, Green Lake, WI 54941, wishes to purchase certain services from the PROVIDER as it is authorized to do so by Wisconsin Law.

NOW, THEREFORE, the PURCHASER and the PROVIDER agree as follows:

1. Services to be purchased: Subject to the terms and conditions set forth in this AGREEMENT, the PURCHASER agrees to purchase from PROVIDER, and the PROVIDER agrees to furnish to the PURCHASER the following services, during the period from December 2, 1985 to November 30, 1986.
 - a. Interview (sic) persons making claims for energy assistance.
 - b. Investigates and determines eligibility of claimants for energy assistance.
 - c. Completes necessary administrative forms for disbursement.
 - d. Keeps accurate ledgers and forms for all disbursements and expenses.
 - e. And any and all duties that may be assigned by the Director of Social Services.
2. Revision and/or Termination of Agreement:
 - a. Revision of this AGREEMENT MUST BE AGREED TO JOINTLY BY THE PURCHASER and PROVIDER. Authority for revision on behalf of the PURCHASER is vested in the Director of the Social Services Department.
 - b. This AGREEMENT shall be terminated upon two calendar weeks written notice by either party. Authority for termination on behalf of the PURCHASER is vested in the Director of the Social Services Department.
3. Payment of Services:
 - a. Direct Social Service Board Payment: For services rendered by PROVIDER in accordance with this AGREEMENT and during the effective period with the salary per hour of \$6.00.
 - b. Amount of Services: To be rendered by PROVIDER and reimbursed by the PURCHASER in accordance with this AGREEMENT and during the effective period for an average of 35 hours employment per week.
 - c. There is no eligibility for any employee fringe benefits and holidays with this contract, except for office mileage reimbursement at the rate of 20¢ per mile, meals when outside the county on official business and motel expense if authorized. Social Security deductions are the employee's responsibility.
4. For the period beginning May 1, 1986 through October 30, 1986 the PROVIDER shall be a fuel program intervenor. As such the duties shall be to help Green Lake County residents solve energy related problems. The average of 8 hour employment per week will be effective through this period unless additional hours are requested by this PURCHASER.
5. Miscellaneous:
 - a. Agent or Employee of the Board: While providing services in accordance with this AGREEMENT, the

PROVIDER shall be considered an agent of Green Lake County for the purpose of coverage under Section 893.80 Wisconsin Statutes.

- b. Entire Agreement: It is understood and agreed that the entire AGREEMENT of the parties is contained herein and that this AGREEMENT supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the SOCIAL SERVICES BOARD and the PROVIDER have executed this AGREEMENT AS OF THE DAY AND YEAR ABOVE WRITTEN . . .;

that at the time of her hire, Beier-Miller was not offered and did not sign an individual contract for employment as EAC; that Beier-Miller was told what her duties and what the terms and conditions of her position would be at the time of hire and that those duties and those terms and conditions of the EAC job are the same as those Bauthin had had pursuant to the above-quoted individual contract, including a wage of \$6.00 per hour; that Beier-Miller does receive two "benefits" which the County did not give Bauthin under her contract -- deduction of Social Security from wages and payments into the WRS for pension benefits; that Beier-Miller works full-time (35 hours per week) from October 1 through April 30 as an EAC, and from May 1 through September 30, she works two workdays per week as an EAC; that Beier-Miller does not have a college degree, nor is one required for the EAC position; that at the time of Beier-Miller's hire, the County sought applicants with high school diplomas and some technical schooling or some experience working in an office; that in fact Beier-Miller has a technical school associate's degree (requiring 12-18 months' study); that Beier-Miller receives periodic training from the County and she regularly attends in-service departmental meetings attended by IMW's and Social Workers, as well as departmental staff meetings; that the County provides Beier-Miller with her own desk and telephone (located at 500 Lake Steel Street) in the open area outside the separate offices of the IMW's and the Department Director, that the two clerical employees (represented by Intervenor) have their desks in the same open area as Beier-Miller; that the County also supplies Brier-Miller with paper, forms, office supplies and a typewriter to perform duties; that as with all other Department personnel, Administrative Assistant Anderson and Director Szatkowski will evaluate Beier-Miller's job performance, although she has not been evaluated to date; that the County does not gain a profit from operating the Energy Assistance program and the funds for the program come from State and Federal monies which reimburse the County for the EAC's wages and benefits; that in addition to the duties listed above in the quoted individual contract, Beier-Miller performs community outreach services, to inform the public about the program, but Beier-Miller does not increase her wages or get a commission if she brings in more clients through her outreach duties; that if the County no longer needed the services of the EAC, Beier-Miller would risk termination of her position, although both she and Bauthin were regularly scheduled, as described above, in the winter and summer seasons during their tenure as EAC's; that if Beier-Miller repeatedly cancelled her workdays during the (busy) winter season, she would risk discipline by Anderson or Szatkowski, although this has not happened; that if Beier-Miller did not come to work on her regular workday she would not be paid unless she made up the day; that Beier-Miller can vary which two days of the week she works during the summer season with Szatkowski's advanced permission; that Beier-Miller is not prohibited from seeking and acquiring other employment while working for the County so long as she performs her duties for the County, although no evidence was offered that she had sought or acquired such other employment; that as EAC, Beier-Miller does not determine eligibility for assistance on her own but rather she applies State and Federal guidelines to each case; that the Energy Assistance Coordinator has made no financial investment nor has she assumed the risk of an independent contractor and that the EAC's work does not involve 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 learning.

20. That the Department of Social Services has employed, in its Income Maintenance Division, a "Welfare Fraud Investigator" (WFI), Raymond Thiem, who the Petitioner claims is a professional employe, Intervenor claims is a non-professional employe and the County claims is an independent contractor; that

Thiem has been employed as WFI on a 20 hours-per-week basis since 1986, when he signed an individual employment contract with the County regarding the WFI position, which contract reads as follows:

GREEN LAKE COUNTY
WELFARE FRAUD INVESTIGATION CONTRACT

The following contract is hereby entered into between the Green Lake County Department of Social Services (hereinafter referred to as DSS) and Mr. Raymond Thiem (hereinafter referred to as the Investigator) for the purpose of welfare fraud prevention, detection, investigation and prosecution.

DSS agrees to purchase the services of the Investigator in the calendar year 1986, and it is agreed and understood that the maximum budget authorized to cover compensation for the Investigator's services and reimbursement of out-of-pocket expenses including expenses incident to welfare fraud training authorized for the investigator or other DSS personnel will be the sum of \$10,000.00. The Investigator shall complete investigations of all referrals regarding possible fraud on behalf of any past or present recipient of public assistance in Green Lake County, including, but not limited to Aid to Families with Dependent Children (AFDC), Medical Assistance (MA) and USDA food coupons (Food Stamps), etc., and if, upon completion of such investigations the Investigator is of the opinion that there is probable cause to believe that a crime has been committed, he shall refer the matter to the Green Lake County District Attorney.

DSS shall refer all complaints regarding client fraud in writing to the Investigator. Such referral shall contain a summary of the case, including names, dates of birth, social security numbers, addresses of clients, nature and amounts of aid received, type of fraud believed committed (failure to report assets, working but not reporting income, change in family circumstances, etc.), the name of any person making complaint, and any known name and address, such as that of alleged employers or witnesses who may help verify whether a fraud has been committed. DSS shall continue to assist the Investigator in the course of the investigation by making case files available for examination and supply such other information as may be necessary and/or helpful.

The Investigator shall employ professional investigative techniques, to include documentation of evidence, awareness of clients' rights, due process of law, and confidentiality of all cases referred and any and all information gained in connection with the case.

Upon completion of the investigation in any case referred, the Investigator shall determine from the nature of the complaint and evidence available whether a reasonable basis exists that a fraud has been committed and so document that finding in a written report to DSS. If the allegation of fraud has been proven unfounded, the case will be closed. If evidence exists to indicate a fraud has been committed, (sic) the Investigator will prepare a Criminal Complaint to be approved by the Green Lake County District Attorney for filing and subsequent prosecution. The Investigator shall be prepared to testify in Court or any DSS Fair Hearing process as to the nature of any and all evidence obtained and personal contacts made during the investigation. He shall also be expected to work closely with the District Attorney and DSS staff on documented cases of fraud, to include seeking such additional documentation as may be required to prosecute the case.

"Out-of pocket expenses" (sic) as used herein shall include mileage for the use of the Investigator's privately owned automobile at the rate of 20 cents per mile and expenses incident to training sessions and conferences approved by the Social Services Board. The Investigator shall be provided with a telephone credit card and shall make an accounting of all job-related calls charged against the card on a monthly basis. The Investigator shall maintain a daily worklog which reflects the starting and ending times of any job-related activities, including travel and mileage, and the same shall be referenced to the matter being investigated by notation of the name of the welfare client involved and the type of aid in question. Actual daily starting and ending odometer readings shall also be recorded.

Such log shall be kept and maintained by the Investigator for a period of not less than two years after the completion of the calendar year for which the services were contracted and such records shall be made readily available for review and/or audit by any bona fide representative of the County, State and/or Federal Departments of Health and Social Services or the U.S. Department of Agriculture.

DSS further agrees to pay the Investigator at the rate of \$6.00 per hour for all services rendered, to include, but not limited to, investigative actions, report preparation, court appearances, administrative activities as required by this contract including training sessions and conferences which are approved by the Social Services Board. There is no eligibility for any employee fringe benefits with this contract. Social Security payments are the Investigator's responsibility. While providing services in accordance with this agreement, the Investigator shall be considered an agent of Green Lake County for the purposes of coverage under Chapter 893 of the Wisconsin Statutes.

The Investigator shall, prior to the monthly meeting of the Green Lake County Social Services Board, submit vouchers for reimbursement of expenses accompanied with a summary of daily activities by case name and type, and for salary, reflecting hours expended on each case and on other activities. These vouchers will be submitted through the court liaison officer for her approval.

DSS shall, upon review and confirmation of the accuracy of the billing, cause the Investigator to be issued a check for the amount of the billing. It shall further be DSS duty to meet all State and Federal requirements for various program matching funds (75% Federal/25% County Food Stamp fraud investigation, prosecution and hearings) (50% Federal/50% County for all other programs) in accordance with County-State Contract Addendum, State and Federal Policy, and manual requirements regarding reimbursement.

The DSS Court Liaison Officer appointed by the Director of DSS shall have supervision over the work and activities of the Investigator. Any amendments, revisions or modifications on behalf of DSS is vested in the Green Lake County Board of Social Services. It is further understood that the terms of the contract may be terminated by either party serving written notice upon the other 30 days before the intended termination dated . . .;

that the terms and conditions of employment listed in the above-quoted contract were set by resolution of the County Board; that since the County has not offered "contract" workers 1987 individual employment contracts for the reason stated in Finding of Fact 17, Thiem was not offered nor did he sign a 1987 contract covering his WFI position, but he continues to serve as WFI under the same terms and conditions of employment listed in the above quoted contract; that as WFI, Thiem has no set hours of work and he may work evenings and weekends as he deems

necessary to complete his fraud investigations; that as WFI, Thiem is not covered by unemployment or workers' compensation, he does not get Social Security or any taxes deducted from his pay, and he receives no County benefits; that as WFI, Thiem gets referrals for fraud investigations from County employees, informants and members of the public who are encouraged by the County's regularly-placed ads asking individuals to call Thiem if they become aware of welfare fraud; that the County receives a bounty from the Federal government in each case where Thiem uncovers fraud; that as a result of the method of Federal and State reimbursement and bounty payments to the WF program, the program may operate at a profit or at a loss; that if there is a profit made by the WF program, such profit goes into the County treasury's contingency fund and if the program operates at a loss, the County makes up for the loss out of its funds; that Thiem does not share in either the profits or the losses of the WF program; that no advanced degree is required for the WFI position and Thiem does not possess an advanced degree; that as WFI, Thiem's immediate supervisor is Administrative Assistant Eevon Anderson who acts as Liaison between Thiem and his ultimate WFI supervisor, the District Attorney; that since January 1, 1987, Thiem has also been employed as the County's "General Relief Worker" (GRW) under the direction and control of the Social Services Board's Ad Hoc Committee on General Relief; that there is no job description for and no individual contract covering the GRW position; that no County benefits are accrued or paid to the GRW and there is no coverage for the GRW for unemployment or workers' compensation and no Social Security or taxes are deducted from the GRW's pay; that the hourly rate for the GRW position is \$6.00 per hour, the same rate that Thiem receives as WFI; that the funds used to pay Thiem as GRW are 100 percent County funds unlike the funding situation in effect for his WFI work detailed in his "contract" quoted above; that the GRW position is a new County position, established on January 1, 1987 to centrally process all General Relief applications of County residents; that prior to 1987, General Relief applications of County residents were filed and processed in the County municipality in which the applicant resided, but since Thiem's "hire" as GRW, municipal officials/applicants have merely sent applications to Thiem so that he can interview and counsel applicants, determine their eligibility for GR under the applicable State guidelines, process paperwork and set up a voucher system for recipients; that as GRW, Thiem performs duties similar to those of the IMW's in interviewing, counseling applicants and processing their applications but that Thiem's GRW duties do not involve application of the more complex regulations normally applied by IMW's; that as GRW, Thiem discusses his cases with IMW's, since many of his GR clients have already applied for and are receiving Food Stamps through an IMW; that Thiem was "hired" for the GRW position largely because of his prior military investigative experience as well as his experience as WFI; that no advanced degree is required for the GRW position; that initially, the Ad Hoc Committee established the hours of work of the GRW position as, up to 25 hours per month; that, however, Thiem has been allowed to work 60 hours in January and 55 hours in February, 1987 to handle GR applications and to bring the GR Programs up-to-date; that due to his GRW duties, Thiem now works almost full-time and begins his workday at 8:00 a.m.; that Thiem has an office near the IMW's offices where he performs his GR duties including interviewing applicants and processing paperwork; that Thiem is required to attend Departmental in-service meetings relevant to his work; that if Thiem needs supplies in order to perform his duties as GRW or WFI, the County supplies them; that the Director of Social Services stated that if Thiem's work were not up to departmental standards, the Director would follow the same procedures he would with all other Departmental employees by counseling Thiem, issuing written warnings and, if these methods failed, going to the Social Services Board or County Board for further discipline or discharge; that there have been no problems with Thiem's work to date; that at the hearings herein, the County moved that the Commission decide the status of Thiem as WFI only, without considering his GRW position/duties, as the County then intended to review the GRW position in the future, to determine in which department to place the position, whether Thiem should continue to serve as GRW, and how many work hours per month should be allowed for the GRW position; that at the hearings, the Director of Social Services stated that the GRW duties could have been performed by the two IMW's as the GR work is similar to IM work but that he has recommended to his superiors that the GRW position be placed in a different department unless the County Board rescinds its resolution prohibiting the hire of more than two IMW's and creates a third such position, as the two currently employed IMW's do not have time to perform GRW duties; that the Welfare Fraud Investigator has made no financial investment and has not assumed any financial risk; and that the duties of the WFI neither require an advanced degree nor knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction in an institution of higher learning.

21. That in the Department of Social Services there are two Social Worker I's, two Social Worker II's and one Social Worker Supervisor (also known as Case Manager/Intake Worker); that, as stated above, the parties have agreed that these employees are professional employees, eligible to vote in a professional unit herein; that in addition to the above-described employees, the Department of Social Services also employs one "Intensive In-Home Services" Worker, Lynn Smith who Petitioner claims is a professional employee, Intervenor claims is a non-professional employee and the County claims is an independent contractor; that Smith has served as "Intensive In-Home Services Worker (IIHS) for the past two years and she previously signed an individual employment contract regarding the IIHS position for the calendar year 1986 which reads as follows:

GREEN LAKE COUNTY
INTENSIVE IN-HOME SERVICES CONTRACT

The following contract is hereby entered into between the Green Lake County Department of Social Services (hereinafter referred to as DSS) and _____ (hereinafter referred to as Provider) for the purpose of retaining children in their own home rather than institutional placement.

DSS agrees to purchase the services of the Provider in the calendar year 1986. The amount of time involved will be dependent upon the referrals. DSS shall refer cases requiring intensive in-home care to the Provider.

The Social Worker assigned to the case will, in conjunction with the Provider, determine a case plan for each family. This case plan will include, but not be limited to, the number of contacts to be made, what should be done in the event of problems, expected outcome, maximum time and any reporting requirements expected of the provider including verbal and/or written reports.

The Provider shall employ professional techniques, to include documentation of service rendered, awareness of clients' rights, due process of law, and confidentiality of all cases referred and any and all information gained in connection with the case.

"Out-of-pocket" as used herein shall include mileage for the use of the Provider's privately owned automobile at the rate of 20 cents per mile and expenses incident to training sessions and conferences approved by the Social Services Board. The Provider shall maintain a daily worklog which reflects the starting and ending times of any job-related activities, including travel and mileage, and the same shall be referenced to the name of the client involved.

Such log shall be kept and maintained by the Provider for a period of not less than two years after the completion of the calendar year for which the services were contracted and such records shall be made readily available for review and/or audit by any bona fide representative of the County, State and/or Federal Departments of Health and Social Services.

DSS further agrees to pay the Provider at the rate of \$10.00 per hour for all services rendered, but not limited to, report preparation, administrative activities as required by this contract including training sessions and conferences which are approved by the Social Services Board. There is no eligibility for any new employee fringe benefits with this contract. Social Security payments are the Provider's responsibility. While providing services in accordance with this agreement, the Provider shall be considered an agent of Green Lake County for the purpose of coverage under Chapter 893 of the Wisconsin Statutes.

The Provider shall, prior to the monthly meeting of the Green Lake County Social Services Board, submit vouchers for reimbursement of expenses accompanied with a summary of daily activities (sic) reflecting hours expended on each case and on other activities. These vouchers will be submitted through the Administrative Assistant for her approval.

DSS shall, upon review and confirmation of the accuracy of the billing, cause the Provider to be issued a check for the amount of the billing.

The Director of DSS shall have supervision over the work and activities of the Provider. Any amendments, revisions or modifications of this agreement shall be made in writing signed by the parties. Authority for approval of any such amendments, revisions or modifications on behalf of DSS is vested in the Green Lake County Board of Social Services. It is further understood that the term of this contract is from January 1, 1986 through December 31, 1986, and that this contract may be terminated by either party serving written notice upon the other 30 days before the intended termination date;

that, for the reason stated in Finding of Fact 17, the County did not offer Smith a 1987 employment contract, but she continues to be employed as IIHS under the terms and conditions of the above-quoted contract; that Smith receives referrals from County Social Workers only where the Social Workers believe her services could be useful; that, in practice along with the duties listed in her individual contract, Smith's duties include counseling all family members in the home on a regular basis, performing crisis intervention and prevention in the home and performing other counseling duties as assigned by the Social Worker; that although Smith does not possess an advanced degree, Smith had been a Social Worker with the County for an unknown number of years before she was hired as IIHS worker, and her prior employment with the County led Director Szatkowski to consider Smith qualified and to recommend her hire as IIHS Worker to the Social Services Committee; that, in fact, a college degree is not required for the IIHS position but is considered desirable as are training and experience in the social work field; that Smith's rate of pay under the IIHS contract and currently, \$10.00/hour, was the same rate she had received as a County Social Worker; that Smith receives no County benefits, does not have F.I.C.A. or taxes deducted from her pay and she is not covered by unemployment or workers' compensation; that each Social Worker sets up a "contract" or plan with each family detailing the services to be performed by the Department the IIHS Worker and the family's responsibilities; that a particular plan may not be detailed so that Smith may be able to exercise her own judgment as to what needs to be done and when to accomplish the stated goals of the plan; alternatively, a plan may be quite detailed, describing the topics to be covered by Smith and when to cover those and the number of visits per week/month and the time that should be spent by Smith in the home at each visit; that Smith may only work a maximum of 10 hours per week as an IIHS worker and although she can set her own work hours, she must perform the services expected of her under each plan the Social Worker has with each family within that 10 hour maximum; that in this regard, if the plan calls for weekly visits by Smith, Smith must visit the family weekly and if the plan calls for discussion or counseling or specific topics Smith must discuss/counsel regarding those topics at the time(s) stated by the Social Worker; that Smith performs almost all of her work in clients' homes (except for reporting to and consulting with County Social Workers on her cases, attending staff meetings and doing case record keeping, all of which she performs at the Social Work office); that Smith is not supervised while working in the home; that although Smith is not formally evaluated by Department supervisors, her work is evaluated by each Social Worker who uses her services, at least to the extent of determining whether or not Smith's services helped the client(s); that if Smith had problems performing her duties, she would be given the same kind of supervision/help that Social Workers with performance problems receive, including counseling her, writing up a reprimand and seeking discipline or discharge by the Social Services Board; that there have been no problems with Smith's performance to date; that the County receives all monies with which to pay Smith through the State and Federal governments and the County does not make a profit on Smith's services; that although Smith is not required to do so, she attends approximately one-half of the weekly Department staff meetings and she is paid for her time at these meetings;

that Smith is not required to attend Department in-service meetings although she is given notice of these and is paid for her time in attendance if she attends; that when requested to attend a meeting by Department supervisors, Smith has always attended the meeting; that the County supplies Smith with paper, office supplies and equipment with which to do her job; that there was no evidence offered that Smith has other employment outside the County although she would not be prohibited from having additional employment so long as she performed her County duties; that several months ago Smith asked that the maximum number of hours per week she could work be increased to facilitate her handling a larger number of County cases then on referral to her, but that request was denied by the Social Services Board; and, that based upon these facts, Smith regularly exercises independent judgment in handling her cases; that the Intensive In-Home Services Worker neither makes a financial investment nor assumes any risk of loss; that the IIHS Worker's duties are predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance, that the character of the IIHS's work cannot be readily standardized in relation to a given period of time; and that the IIHS Worker position requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study.

22. That the Home Health Agency (HHA), a Division of the Department of Nursing, is separate functionally and financially from the Department itself; that the HHA exists to provide intermittent health care to homebound patients in their homes; that the HHA is a self-supporting entity, created by County Board resolution in 1966 and which, since 1966, has employed registered nurses and nursing assistants in the Home Health area; that the monies that support and pay for the HHA services come from Medicare, Medical Assistance, Veterans' Insurance, private insurance and homebound individuals themselves and that no money for functions comes from the County treasury; that, periodically, Medicare, the VA and/or State of Wisconsin officials inspect HHA client case files and audit HHA books to assure that the HHA continues to function within their certification and license; that Medicare certification and/or State licensing of the HHA can be canceled if standards of operation are not met; that prior to 1987, the HHA budget consisted of an open account run on a year-to-year basis with no annual beginning and ending balance kept; that for the 1987 budget, the County auditor insisted that this open account method be abandoned and that the HHA budget includes year starting and year ending figures; that prior to this change in accounting procedure, and currently, the Director of Nursing simply projected the new year's HHA budget based upon spending experience in the previous year; that Medicare inspection officials do not typically request to see the HHA budget but State inspection officials do normally request to see the HHA budgets but they do not take any action thereon; that none of these State or Federal agencies has become involved in the labor relations practices of the HHA in the process of regulating the HHA; that the HHA employs five Registered Nurses (incumbents: Chapin, Fortnum, Ingraham, Kasuboski, Stoll) whose job title is "Staff Nurse" but who are known as "Home Health Agency Nurses" (HHAN) and who the County, although conceding their professional status, asserts are independent contractors or casual employees and Intervenor and Petitioner assert these HHAN's are professional employees; that the current job description for this position is as follows:

1. Qualifications

a. Education and Experience

- (1) Current registration as a registered professional nurse in Wisconsin.
- (2) A year of successful public health nursing experience is desired.
- (3) Current driver's license in the State of Wisconsin.
- (4) Membership in professional organizations is desirable.

(5) Recent preparation and/or experience is desirable. (Experience within the past three (3) years or a recent refresher course).

(6) Access to automobile.

b. Knowledge and Ability

(1) Comprehensive knowledge and skill in present nursing practice.

(2) Knowledge of community resources.

(3) Knowledge and ability to work as a team leader.

(4) Ability to observe and report meaningfully.

(5) Ability to communicate with effectiveness orally and in writing.

(6) Ability to relate to others to implement programs.

(7) Ability to accept and utilize supervision.

(8) Ability to understand and explain home health nursing, rules and regulations.

(9) Ability to learn new concepts of nursing and apply (sic) effectively.

2. Primary Duties

Under the supervision of the nursing director, provides or serves as a team leader to provide nursing services necessary to implement agency programs in any assigned area.

a. Promoting and maintaining the health of individuals, families, and the community through teaching, counselling and preventative and rehabilitative measures.

b. Identifying patients having physical or emotional illness or disabilities through direct observation and analysis of records and helping families to secure appropriate medical, hospital, or other care.

c. Planning with the supervisor, family, physician, and other concerned members of the health team for patient care which is appropriate.

d. Providing skilled nursing services in homes, clinics, or schools.

e. Demonstrating and teaching nursing care to be given by others in her absence in the home.

f. Observing signs and symptoms and promptly reporting to the physician and supervisor reactions to treatments, including drugs, and changes in the patient's condition or needs.

g. Achieving continuity of patient care through planning and exchanging information with health and social agencies.

h. Planning and providing comprehensive skilled nursing service to homebound individuals and families in their homes.

- (1) Make the initial evaluation visit to the patient.
 - (2) Regularly re-evaluate the patient's needs.
 - (3) Initiate the plan of treatment and necessary revisions.
 - (4) Provide those services requiring substantial specialized care.
 - (5) Initiate appropriate preventive and rehabilitative procedures.
 - (6) Prepare clinical and progress notes.
 - (7) Arrange for counselling the patient and family in meeting related needs.
- i. Under the direct supervision of the nurse director and/or supervising staff nurses, supervises and teachers other personnel.
 - j. Interprets available nursing services.
 - k. Keeps daily records and reports as directed by director of nurses.
 - l. Maintains and assists in enforcing confidentiality of all records.
 - m. Participates in inservice programs for agency staff.
 - n. Additional duties as requested by Director of Nurses. No duty shall be assigned for which (s)he is not capable as evidenced by training or license;

that the County decided not to offer any individual employment contracts to the incumbents due to the pendency of these petitions herein; that, however, in 1987 the five incumbent HHAN's were retained and continued to work under the same terms and conditions they had had prior to 1987; that the individual contract form signed by these HHAN's prior to 1987 read as follows:

CONTRACT

This agreement is made and entered into this day of _____, 19__ between the GREEN LAKE COUNTY HOME HEALTH SERVICES, whose address is Human Service Center, 500 Lake Steel St., Green Lake, Wisconsin and

Witnesseth that for and in consideration of the mutual promises of the parties hereto, it is understood and agreed as follows:

The purpose of this agreement is to provide

_____.

Contracted services to be performed will be provided in the homes of the ill and disabled who have been admitted to the GREEN LAKE COUNTY HOME HEALTH SERVICE under a plan of treatment established by a physician and agency staff. The physician's plan may not be altered in type, scope or duration by the individual employee.

Patients are not to be admitted or discharged by the individual contractee without the approval of the supervisory nurse or the nurse coordinator.

The contracted services to be performed by the GREEN LAKE COUNTY HOME HEALTH SERVICE and _____ in conformance with established agency policy are to be compensated as follows:

_____ per hour and _____ cents per mile, portal to portal.

Beside reimbursement for home visits, this will include time necessary for consultation, records, reports, required educational activities and supervisory conference to plan for improved care. The employee shall provide her own car and assume the responsibility for insurance coverage. GREEN LAKE COUNTY HOME HEALTH SERVICE will assume the cost of insurance for professional liability.

This agreement will remain in effect until (1) year from the date hereof, and may be extended by written statement each year

Either party shall give thirty (30) days written notice to the other of her or its intention to terminate the contract.

This contract for services in no way contracts for a county employee position, but is a part-time position for the GREEN LAKE COUNTY HOME HEALTH SERVICE. Fringe benefits shall be provided as outlined in the Green Lake County Home Health Manual . . .;

that the State of Wisconsin requires that all County nursing agents have and sign an individual employment contract such as the above-quoted one; that the five incumbent HHAN's work part-time (from 0 to 40 hours per week) on an on-call/as needed basis; that the average hours of work of the incumbents have been as follows:

Chapin, 5.5 hours/week
Fortnum, 18 hours/week
Ingraham, 19 hours/week
Kasubaski, 10 hours/week
Stoll, 14 hours/week

that practically speaking, these HHAN's are assigned to care for homebound patients by the Director of Nursing and each HHAN must guarantee a minimum and maximum number of hours with each patient, based upon the needs of the patient as assessed by the HHAN, and/or the patient's doctor; that in addition to their duties as HHAN's, these nurses also direct the work of County Nursing Assistants (also called Home Health Aides) when they work with patients in the home; these HHAN's also fill in for the two Public Health Nurses (Besaw and Brey) but only when the latter are ill; that, however, Public Health Nurses did not fill in for HHAN's at any time; that when an HHAN fills in for a Public Health Nurse, the HHAN is paid at the Public Health Nurse hourly rate (which is based upon their monthly salaries ranging from \$1540 to \$1562 per month) out of the separate Public Health budget; that the HHA bills the Public Health branch of the Department for HHAN fill-ins; that the HHAN's receive the following County benefits pursuant to their contracts and County policy: Social Security, WRS, vacation, sick leave and longevity; that the only County benefit these HHAN's do not receive is health insurance; that the County also deducts taxes from the pay of these HHAN's; that the current hourly rate for these HHAN's is \$9.81; that the immediate supervisor of these HHAN's is the Director of Nursing; that the least senior of these HHAN's has worked for the County in this position for three years, while the most senior HHAN has worked in the position for 20 years; that the County has generally retained the same HHAN's from year to year, offering them consecutive contracts each year; that although some HHAN's have quit their positions in the past, no HHNA has been terminated by the County in the past 13 years; that when the HHAN's reach six hours per day of work, the Director of Nursing typically seeks approval from the County Health Committee to hire another HHNA; that when the County has sought to hire an HHAN, it follows its standard hiring procedure which is to place an ad in certain newspapers, take applications, which are then screened by the Director of Nursing down to the three top candidates, all of whom she then recommends could be hired; that the Health Committee and one member of the Personnel Committee then interview all three recommended candidates and choose one among them; that the applications of the two unsuccessful (but recommended) candidates are then kept on file for six months should another opening occur; that if there is a complaint about the work of an HHAN, the Director of Nursing follows the same procedure she would follow with full-time County employees -- to counsel with the HHAN, to give written notice of the counseling to the HHAN's personnel file regularly maintained by the Department and thereafter, to issue written warnings or harsher discipline if necessary; that the HHAN's must attend Departmental monthly in-service meetings; and, that they obtain the supplies they may need to perform their duties from the Department and they may use the Department office at the Mental Health Center to do their paperwork although they do not have separate offices there; that the Home Health Agency Nurses are employed on a regular and recurring basis and have a reasonable expectation of continued employment from year to year; and, that the HHAN's make no financial investment nor do they assume any financial risk.

23. That the Department of Nursing employs one "Physical Therapist" (PT), Mary Guell in its HHA Division, who performs physical therapy ordered by a physician for homebound patients and who the County claims is an independent contractor or casual employee, contrary to Petitioner and Intervenor; that the current job description for the PT position reads as follows:

1. Qualifications

- a. Must be a graduate of a program in physical therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Physical Therapy Association or its equivalent.

- b. Must be registered to practice in the State of Wisconsin.
- c. Must have access to car and hold valid Wisconsin driver's license.

2. Job Description

- a. Makes the initial evaluation visit to the patient and assists the physician in his evaluation of patients by applying diagnostic and prognostic muscle, nerve, joint and functional ability tests to evaluate the level of function.
- b. Initiates the plan of treatment and necessary revisions to treat patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means, such as exercise, massage, heat, water, light and electricity, for examples.
 - (1) Directs and aids patients in active and passive exercises for muscle re-education.
 - (2) Makes use of equipment such as ultraviolet and infrared lamps, low voltage generators, diathermy and ultrasonic machines.
 - (3) Gives whirlpool and contact baths, and applies moist packs.
- c. Arranges for the provisions on an outpatient basis of services in (2) and (3), which can't be given in the patient's home.
- d. Observes, records, and reports to the physician the patient's reactions to the treatment and any change in the patient's condition.
- e. Instructs patients in the care and use of wheelchairs, canes, braces, crutches and prosthetic and orthotic devices.
- f. Advises and consults with other health team personnel, including when appropriate, home health aides, and family members in certain phases of physical therapy with which they may work with the patient.
- g. Arranges for counselling the patient and the family on the patient's total physical therapy program and related needs.
- h. Prepares clinical and progress notes in the patient's chart.
- i. Observes, records and reports to the home health supervisor the patients' reaction to the treatment and any changes in the patient's condition.
- j. Participates in inservice programs for staff.

3. Specific policies regarding physical therapy services

- a. This service is arranged for and given under written order of the physician.
- b. Patients referred to the physical therapist must be approved by the director of nurses;

that during the past year, Guell has worked approximately one hour per week as a PT for the County; that in 1986, Guell worked approximately 0.2 hours per week as a PT for the County; that her work hours are dependent upon whether private physicians order PT for homebound County patients approved by the Director of Nursing and eligible for those services; that Guell has been the PT for the HHA for the past four years and she has signed an individual employment contract identical to the one quoted in Finding of Fact 22 for each of those years except for the current year for the reasons stated in Finding of Fact 17; that Guell receives the same benefits as the HHAN's; that the Director of Nursing is Guell's immediate supervisor; that Guell possesses a college degree and is a registered PT; that if Guell needs supplies for her work or the use of an office she obtains the supplies from the Department and she can use the Departmental offices; but, that Guell's normal work place is in the patients' homes; that the Physical Therapist performs work for the County on an on-call, as-needed basis and only pursuant to a physician's prescription for her services to certain qualifying homebound patients; that the PT's hours of work per month are therefore irregular, sporadic and few in number and that she lacks a reasonable expectation of continued employment from year to year.

24. That the Department of Nursing also employs five "Nursing Assistants" (NA's) also known as "Home Health Aides" who the Petitioner, contrary to the County and Intervenor, claims are professional employees; that the current job description for this position reads as follows:

1. Qualifications

- a. Basic training program for aides in hospital aide work. Experience is required.
- b. A warm, mature individual, who is interested in and capable of relating to the problems of the chronically ill and/or aged person and his family.
- c. Must be able to record messages and keep simple records.
- d. Must be able to understand and carry out directions or instructions.
- e. Must demonstrate a desire for an acceptance of nursing supervision, understand her own limitations, and have the ability to work cooperatively with others.
- f. Access to automobile.
- g. Holds a valid Wisconsin driver's license.

2. Job Description

- a. Works directly under the supervision of the registered nurse.
- b. Will help with personal care service of the sick at home, including personal hygiene and activities of daily living, such as bathing, care of hair, nails, mouth, skin, dressing, and elimination.
- c. Assists patients with ambulation and transfer into and out of bed and with other transfers.
- d. Performs simple procedures as an extension of therapy services.
- e. Helps patient with prescribed exercises which the patient and home health aid have been taught by appropriate health personnel.

- f. Performs such incidental household services as are essential to the patient's health care at home and necessary to prevent or postpone institutionalization.
 - g. Prepares meals and assists patients in eating.
 - h. Assists with other personal care needs of the patient such as assisting patients to bathroom or in using bedpan.
 - i. Assists patient with medications that are ordinarily self-administered.
 - j. Reports changes in patient's conditions and medications to staff nurse in charge and director.
 - k. Completes appropriate records and reports.
 - l. Attends such educational and training programs as required by director of nurses.
 - m. Maintains confidentiality of all records.
 - n. Additional duties as requested by RN or director of nurses.
3. Specific policies in regard to home health aide services
- a. Home health aide shall be assigned to specific patients by an RN.
 - b. The duties to be performed shall be specifically assigned and supervised by a registered nurse in consultation with the director of nurses. These duties shall be in writing.
 - c. The duties of the aide for each patient will be reviewed and updated every two months (60 days) by a registered nurse or appropriate therapist consistent with the plan of treatment. These instructions will be reviewed by the RN with the aide.
 - d. A basic training program for home health aides will be arranged by the director of nurses.
 - e. An evaluation of the home health aide's ability to carry out assigned duties, relate to other members of the health team, and give care to homebound patients will be done by the director of nurses at least annually.
 - f. The duties of the aide for each patient will be kept in the patient's chart with a duplicate given to the aide for her use;

that the NA's assist the HHAN's in homebound cases by giving homebound patients bed-baths, taking vital signs, observing their behavior and general health signs, performing nail and hair care, encouraging patients to learn and/or to perform self-care tasks, alerting the HHAN if a patient appears to be having a medical or other problem and performing other skilled care for patients in the home; that NA's may either accompany an HHAN to a patient's home or they may visit patients in their homes on their own, preparing regular weekly reports on each patient (to be typed by Departmental clericals) for the HHAN in charge of the case and discussing cases with the HHAN as needed; that the HHAN in charge of the homebound patient directs the NA's work by requesting (in writing for each patient) specific types of patient aid be given at certain times; that the least senior of these NA's has been a County NA for two and one-half years, while the most senior

of them has been a County NA for 14 years; that until 1987 for the reason stated in Finding of Fact 17, each NA was required to sign an individual employment contract with the County, identical to that quoted in Finding of Fact 22; that the NA's have generally been offered consecutive year-long contracts year after year; that the NA's receive the same benefits as HHAN's and, like the HHAN's, the only County benefit they do not receive is health insurance; that the hours of work for incumbent NA's, although varying from one to the other of them, have consistently been as follows in the past year:

Waltenberry, 26 hours/week
Timm, 25 hours/week
Stobbe, 24 hours/week
McCarthy, 23 hours/week
Dickerson, 34 hours/week

that the Director of Nursing assigns cases to the NA's and is their ultimate supervisor; that the NA's come to the Department of Nursing offices at 500 Lake Steel Street to get supplies necessary to perform their duties, to chart cases and to write case notes, as do the HHAN's and other department personnel; that the NA's must attend monthly Departmental in-service meetings, as do the HHAN's; that although some hospital experience and a nursing assistant's certificate (8 week technical course) is required for the NA position, a college degree is not required and the current hourly wage for NA's is \$6.00 per hour; that the Nursing Assistants' duties are not predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance, that the character of the work and results accomplished can be standardized in relation to a given period of time; and that said position does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institute of higher education.

25. That the Department of Nursing also employs a "Community Health Technician - EPSDT" (CHT), also known as a "Nursing Assistant," who the Petitioner, contrary to the County and Intervenor, claims is a professional employee; that the CHT position is currently occupied by Betty Freimark; that the CHT position has been in existence and has been occupied by Freimark since 1973; that the current job description for the CHT position reads as follows:

A. Screening Services

1. Audiometric Screening
 - a. Primary Screening
 - b. Bone Conduction Screening
 - c. Assistance with Otologic Clinic
 - d. State Tabulation
2. Vision Screening
 - a. Primary Screening
 - b. Follow Up on Referrals
 - c. State Tabulation
3. Amblyopia Screening
 - a. Obtains names of children from school districts and send out all screening tests
 - b. Follow up on referrals
4. Scoliosis Screening
 - a. Scheduling for scoliosis clinic
 - b. Clerical work at clinic
5. Adult Health Screening
 - a. Height, weight, hearing, and vision
 - b. Clerical work if needed
6. School screening
 - a. Assist nurses with preschool registrations and screenings.

B. E.P.S.D.T.

1. Outreach duties
 - a. Determine eligibility thru past records, Social Services and computer sheets
 - b. Initiate file on each client
 - c. Home visits for interviews and histories
 - d. Responsible for all outreach activities with clients under supervision of nurse director
2. Screening Clinic
 - a. Vision screening with Goodlite
 - b. Hearing screening with Audiometer
 - c. Administering Ishihara and depth perception
 - d. Height and weight checks
 - e. Temperature
 - f. Obtaining urine specimen if indicated and checking for glucose, protein and pH.
 - g. Responsibility for maintaining all supplies for assessment and immunizations
 - h. Responsibility for aiding RN with assessment if child is fearful or uncooperative
 - i. Setting up clinic
3. Post Clinic
 - a. Complete charts and files both on client and billing
 - b. Monthly report
 - c. Complete case management forms
 - d. Bill all outreach and follow up services.

C. Clerical

1. Answers telephone and relays information
2. Immunizations
 - a. Record
 - b. Typing letters and follow up per phone or letter
3. Filing system for Adult Health Screening
4. Typing as needed

- D. To perform all duties relating to the nursing department as required at the request of the Nursing Director.

QUALIFICATIONS

Education and Experience

- 1) Graduate of accredited high school or G.E.D.
- 2) Successful completion of basic training program for nursing assistant
- 3) One year's experience is desirable.

Knowledge and Ability

- 1) A warm mature individual who is interested in and capable of relating to health problems.
- 2) Must be able to record messages and keep simple records.
- 3) Must be able to understand and carry out directions or instructions.
- 4) Must demonstrate a desire for and acceptance of nursing supervision, understand her own limitations, and have the ability to work cooperatively with others;

that Freimark is now a regular full-time employee of the County working 8:30 a.m. to 4:30 p.m. Monday through Friday and she has been regular full-time for several years; that when Freimark began her employment as CHT with the County in 1973, she was not considered regular full-time but she was required to sign an individual

employment contract with the County annually; that Freimark now receives full County benefits including health insurance and has Social Security and taxes deducted from her pay; that Freimark's regular work location is the Department of Nursing office located at 500 Lake Steel Street in Green Lake; that as a practical matter, Freimark's duties are to test and screen County residents for hearing and vision defects as well as for spinal problems (scoliosis) and for general health problems (obesity, high blood pressure, etc.), to assist the Public Health Nurses in the testing and/or screening of County school-aged children for health problems and to perform all "outreach" services for the County's health grant program, known as "Health-Checks", which seeks to diagnosis and treat local health problems; that her outreach duties do not include speech-making duties; that Freimark also must do all of the clerical work necessary to set up and process screenings/tests for individuals under the grant programs; that in addition to the duties listed in the CHT job discription, Freimark also performs all clerical and testing/screening work under the County's maternal-child health grant program; that Freimark's direct supervisor is the Director of Nursing; that her current hourly wage is \$6.58 per hour; that Freimark does not possess a college degree but has a high school diploma and an audio metric technician's certificate; that Freimark is required to attend Departmental staff and in-service meetings; that the Community Health Technician job does not require an advanced degree of a professional type, and that the CHT's duties are not predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance, and that the character of the work and results accomplished can be standardized in relation to a given period of time.

26. That under the direction of the Unified Services Board and County Board and pursuant to state law, the County maintains a sheltered workshop, known as Fox River Industries (FRI), for chronically mentally ill and developmentally disabled adult County residents; that at FRI, the County provides approximately 20 individuals (divided into two groups -- one group of less severely handicapped and the other group of more severely handicapped individuals) with work, work training, and various types of instruction and/or training; that the FRI is open every day of the week from 9:00 a.m. to 3:30 p.m. for workshop activities; that the FRI also typically initially gives its more severely handicapped clients (usually 10 individuals), pre-vocational, physical education and self-care training as some of these individuals are not ready to perform actual work at the workshop; that the less severely disabled clients receive training and regularly perform work at the workshop, completing whatever subcontracted work the FRI has obtained from private industry and/or the public sector; that for the past one and one-half years, the FRI has employed one full-time (35 hours/week) "Job Coach," (JC), Vanessa Mangart, who possesses a college degree in social work and who has signed one individual employment contract with the County for the period prior to 1987, after which when none was offered to her for the reason stated in Finding of Fact 17, who the Petitioner claims is a professional employe and the County claims is an independent contractor; that the current job description for this position reads as follows:

General Statement of Duties: Develop and maintain competitive and supportive employment sites in businesses and industry for the disabled in Green Lake County.

Distinguishing Features of the Class: Employees in this class work with disabled clients in competitive and supportive employment sites, training them in the skills necessary to complete the assigned tasks of a job. Supervision and training is also given to clients placed in independent living sites, and sheltered workshop activity as time permits.

Examples of Work:

- Work at supported employment sites to do task analysis and position requirements;
- Supervise clients in the set-up, performance and completion of all work tasks;
- Train clients in the skills and work habits required at a particular job site;

- Monitor and be responsible for quantity of work being performed at job site;
- Observe, record and report client work behavior;
- Maintain working relationship with job site employer;
- Participate in staffings as required;
- Assist production staff in doing time studies for prime manufacturing and subcontracts;
- Assist production staff in supervising clients in sheltered work setting as time permits;
- Assists (sic) production supervisors in procurement of subcontracts;
- Procure supported employment sites in community for disabled;
- Prepares (sic) and teaches job seeking skills class;
- Will be familiar with and adhere to general standards and practices of DVR, CARF, Wage and Hour and others as relates to job procurement and placement;
- Performs assessments on client referrals for Specialized Vocational Rehabilitation Services;
- Performs other duties as assigned by Coordinator or Program Director.

Required Knowledge, Skills and Abilities: Good knowledge of instruction principles, practices and techniques; ability to develop effective work relationships with clients, other staff, businesses and industries; ability to develop and plan appropriate work training for clients; ability to keep accurate records and make reports; patience; adaptability; initiative; resourcefulness.

Acceptable Experience and Training: Bachelor degree in social work, psychology, vocational rehabilitation or related field, and/or any combination of experience or training which provides the required knowledge and skills necessary to work with disabled persons.

County currently funds this position partially (9464 in 1986) and DVR (Division of Vocational Rehabilitation) funds the rest (9621) . . .;

that like other County "contract" workers, Mangart does not have Social Security or Federal or State taxes deducted from her pay; that she does not receive County benefits such as vacation, sick leave, WRS, health insurance and longevity pay or overtime pay although she does receive compensation time off and holiday pay; that, in practice, Mangart's duties include finding part-time jobs for former workshop clients who can do work outside a workshop setting, training those clients in their new jobs, supervising and assisting these clients until they learn the outside job, following-up as needed with these clients to make sure that they are functioning well in their new jobs; that Mangart's duties require that her work hours and work location be flexible and she normally works outside the FRI facility, visiting clients during the day and in the evenings at job sites; that Mangart's direct supervisor is Developmental Disability (DD) Coordinator Rebecca Koon; that Mangart keeps track of her own work hours on a chart which is kept in the FRI office; that Mangart's work hours are then checked each month by both Program Director Van Ness and by Developmental Coordinator Koon before a voucher is submitted (monthly) to the Unified Board for issuance of Mangart's monthly paycheck; that prior to the hearings herein, Mangart had approximately 20 active cases she was working on; that the County currently funds one-half of Mangart's \$19,000 salary while the State Division of Vocational Rehabilitation funds up to one-half of her salary; that the Job Coach makes no financial

investment nor does she assume any financial risk; that the Job Coach's duties are predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance, that the character of the work and results accomplished cannot be standardized in relation to a given period of time; and that said position requires knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institute of higher education.

27. That the FRI, in its Day Services Division, also employs the following individuals as teachers or instructors to the developmentally disabled:

Dallas Lewallen, Physical Education Instructor
Lorraine Johnson, Instructor I - Self Care
Janice Palecek, Teacher
Anne Ganka, Instructor I - Pre-Vocational Training;

that these individuals all work full-time (35 hours/week) at the FRI facility in Berlin; that Lewallen, Johnson and Palecek are considered regular County employees by the County, they are paid by the County and they receive full County benefits; that Lewallen is a licensed/certified physical therapist who works with the severely developmentally disabled clients to help them learn to get around better and to learn leisure skills; that his current salary is \$1463.00 per month; that Palecek earns the same monthly salary as Lewallen and that her duties involve teaching writing skills and providing academic training to severely disabled clients as well as supervising and training them on the work floor; that the job descriptions for the "Physical Education Instructor" and the "Teacher" list a college degree or training and/or experience as requirements for those positions and the incumbents of those positions possess such degrees; that the "Teacher," Palecek, is certified to teach in the Special Education area; that none of the parties disputed that the Teacher and the Physical Education Instructor are professional employees as claimed by Petitioner; that Johnson, the incumbent of the Instructor I - Self Care (SC), instructs clients in weight control and personal hygiene techniques as well as teaching clients basic living skills; that Petitioner, contrary to the County and Intervenor, claims the SC is a professional employee; that Ganka, the incumbent of the "Instructor I - Pre-Vocational Training" position (PVT), who the Petitioner, contrary to the Intervenor, claims is a professional employee and the County claims is an independent contractor, is the only one of the four above-listed individuals who had been required to sign an individual employment contract prior to 1987; that Ganka is currently considered a "contract" worker by the County even though she was not required to sign a 1987 contract for the reason stated in Finding of Fact 17; that, therefore, like Mangart, Ganka receives only compensatory time and holiday pay benefits; that Ganka is paid monthly on the County voucher system; that she is not covered by unemployment compensation but that she did receive Workers' Compensation benefits and County-paid medical bills for an on-the-job injury she suffered while working under her individual contract with the County; that the County does not deduct Social Security or taxes from Ganka's pay; that, like Mangart, Ganka fills out her work hours on a chart maintained in the FRI office, which hours are then checked by DD Coordinator Koon and Program Director Van Ness; that the current job description for the PVT positions reads as follows:

GENERAL STATEMENT OF DUTIES: Plans, develops and teaches a program of activities designed for developmentally disabled individuals; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: The Pre-Vocational employee is responsible for teaching clients pre-work skills and assisting them to produce saleable products. The instructor is responsible for developing work samples and prime manufactured items. Work is performed under the general supervision of the D.D. Coordinator and Program Director.

EXAMPLES OF WORK: (Illustrative only)

Plans and manages pre-vocational area including time studies, developing adaptive equipment, and establishing work stations;

Supervises clients doing prime manufacturing subcontract or work samples;

Teaches clients work and safety skills;
Is responsible for recording for client payroll;
Develops work samples;
Purchases, manages and stores material for pre-voc program;
Performs other duties as assigned by employee's supervisor.

REQUIRED KNOWLEDGE, SKILLS & ABILITIES: Some knowledge of developmentally disabled instruction principles, practices and techniques; ability to plan and supervise appropriate instructional activities; ability to develop saleable prime manufactured items; ability to keep records and make reports; patience; adaptability.

ACCEPTABLE EXPERIENCE & TRAINING: Completion of a standard high school course and preferably some experience, either paid or volunteer, working with the developmentally disabled; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

Works with the most severely disabled persons that we serve. Have behavioral problems in addition to problems with dexterity, attention to task, quality, etc.

. . .

that, in practice, Ganka normally works with the approximately 10 more severely handicapped clients that the FRI services, teaching them work skills and training them for work and writing reports (typed by FRI clerical staff) on class development; that no advanced degree is required for the position and Ganka does not possess such a degree although she has two years of college, pre-hire training and experience in the DD field; that the "Instructor I - Self Care" (SC) position does not require an advanced degree and the incumbent of the position, Johnson, does not possess such a degree although she has 15 years' experience working for the County in its DD Programs and she has raised a DD child; that the current job description for the SC position reads as follows:

GENERAL STATEMENT OF DUTIES: Plans, organizes and instructs program activities for developmentally disabled individuals; does related work as required.

DISTINGUISHING FEATURES OF THE CLASS: This Instructor I is responsible for developing, planning and supervising program activities designed for developmentally disabled clients at the adult level. Duties also include assisting other teaching staff with planning or supervision, attending center staffings, maintaining appropriate records and serving on center committees. The Instructor I works under the general guidance and direction of the Developmental Disabilities Director or a higher level member of the teaching staff.

EXAMPLES OF WORK: (Illustrative only)

Plans, develops and teaches self care program for adult clients;
Instructs clients in good social behavior and table manners;
Encourages clients to develop hobbies and make good use of leisure time;
Orders necessary program supplies and keeps all required clients progress records;
Keeps daily attendance log of adults;
Instructs adult clients in workshop activities and training programs;

Works closely with social worker on home visit information, ideas and carry through exercises for parents of adults;
Attends Center staffings in order to participate in planning individual objectives and behavior management for clients;
Organizes and writes newsletter of parents;
Performs other duties as assigned by employee's immediate supervisor.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES: Some knowledge of developmentally disabled instruction principles, practices and techniques; ability to plan and supervise appropriate instructional activities; ability to keep records and make reports; ability to work effectively with people from a variety of income and educational backgrounds; patience, adaptability.

ACCEPTABLE EXPERIENCE AND TRAINING: Completion of a standard high school course and preferably some experience, either paid or volunteer, working with the developmentally disabled; or any equivalent combination of experience and training which provides the required knowledge, skills and abilities.

that, in practice, Johnson works at FRI with clients to teach them both workshop skills and self-care skills (such as hygiene), and she assists other FRI instructors or teachers in their duties; that both Ganka and Johnson have input on how to present a skill to a client, how to teach a skill by component parts and what follow-up teaching should be given; that both prepare class development reports, as do the other FRI Instructors and the Teacher; that the primary responsibilities of the Instructors and the Teacher at FRI are to work directly with clients on the FRI work floor or in a vocational or self care area and to train clients to perform work effectively; that the Teacher and the Physical Education Instructor are professional employees of the County; that the Instructor I - Pre-Vocational Training has made no financial investment nor has she assumed any financial risk; and that both the PVT and the Instructor I - Self-Care's duties neither require an advanced degree nor are they predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in their performance, and the character of the work and results accomplished can be standardized in relation to a given period of time.

28. That it is County and Unified Services Board policy that each employee shall serve a six month probationary period and that employee evaluations have no affect upon employee pay; that it is policy for a Unified Board or County employee to receive raises regularly even if the employee has received a warning, a poor evaluation or has had their probationary period extended; that it is also County and Unified Board policy that these elected bodies shall have the final decision regarding the hiring, firing and discipline of their employees and contract workers; that as a general matter, County and Unified Board employees are not ordinarily scheduled for work because they have pre-established work hours; that the County and Unified Board have policies covering the granting of sick leave and the scheduling of vacations and overtime which make it possible for clerical employees to handle these matters; that it is policy for non-represented employees that vacations are allowed on a first-come-first-serve basis so long as necessary positions are covered by other employees; that it is policy that overtime must be approved by a supervisor but that it only is allowed where necessary to complete a required report or assignment; and, that, generally, sick leave is granted if the employee has accumulated sick leave to use.

29. That Program Director Van Ness (whose position is not in issue here) has an advanced degree in Social Work as well as one in Public Administration; that she spends a majority of her time in administration of the County's Mental Health and Developmental Disabilities programs; that Van Ness spends approximately one-third of her work time preparing required State and other reports, such as State of Wisconsin fiscal reports; that Van Ness also reviews the hours of work of contract employees and she verifies their vouchers and payroll, she develops new programs and writes grant proposals, gives speeches to citizens' groups, and she attends all Unified Board and Subcommittee No. 1 meetings; that Van Ness does not normally evaluate clients as part of her job and her attendance at staff meetings is more as an observer or advisor; that in the past several years, Van Ness has filled-in for one Social Worker employee who went on maternity leave, taking over

that employee's caseload; that it is Van Ness' management style to confer with and seek input from all of her staff who might be affected by a policy or procedural change and to confer with her upper level staff regarding budgetary matters and personnel matters; that in addition to her administrative duties, Van Ness also directly supervises three Social Workers (Thomas, Warren and Lichtfuss) as well as one clerical employee represented by Intervenor (Bahr) and she directs the work of and supervises the Intervenor-represented Transportation Staff (Robinson, Feldman and Hayes) when these employees are not working out of Fox River Industries.

30. That since approximately 1980, the Developmental Disabilities Program Operations have employed Rebecca Koon as the "Developmental Disabilities Coordinator" (DDC); that Koon, who Petitioner and Intervenor claim is professional and the County claims is a supervisory and/or managerial employee, daily directs all Day Services Division and Workshop Division activities and employees at the FRI; that Program Director Linda Van Ness is Koon's immediate supervisor; that the evidence showed that Van Ness is only present at FRI three days out of each week; that when Van Ness is not present at the FRI, Koon is the next in command to Van Ness and the highest ranking official at the FRI; that Director Van Ness has delegated supervisory authority at FRI to Koon; that Koon is a full-time salaried County employee, currently making \$1,874.00 per month and receiving full County benefits; that Koon has had effective input into hiring, evaluating and terminating FRI employees; that in regard to hiring Koon normally screens all job applications with Van Ness, eliminating all but the best three applicants by joint decision; that Koon and Van Ness then jointly recommend the best three applicants for hire by the Unified Board; that, thereafter, the Unified Board interviews the three top applicants and it generally selects one of these three for hire; that neither Koon nor Van Ness participates in the interviewing or the final selection process; that on one occasion, the Unified Board rejected all three recommended applicants and instructed Van Ness to submit three different recommended applicants for its consideration; that in regard to the evaluation of FRI employees, Koon has annually evaluated FRI staff since her hire as DDC, signing each evaluation as the employees' immediate supervisor; that as such, Koon has regularly evaluated the Teacher, the Physical Education Instructor, the Self-Care Instructor, the Pre-Vocational Instructor and the Job Coach as well as the Workshop Supervisors; that Koon then discusses her evaluations with Van Ness who gives Koon her input into the evaluations; that in the past Van Ness has recommended Koon's evaluation be adopted by the Unified Board; that on one occasion during the past year following an investigation, Koon and Van Ness jointly recommended that the Unified Board terminate an FRI Workshop Supervisor prior to the end of that Supervisor's six month probationary period; that the Unified Board followed Koon and Van Ness' joint recommendation to terminate the Supervisor after requesting and receiving the results of a further investigation by Koon and Van Ness; that weekly staff meetings are called and conducted by Koon (which Van Ness attends) for FRI staff to discuss client-related issues or problems and administrative subjects; that in addition Koon's above-described duties at the FRI, Koon is generally responsible for programming all clients into day work and/or classes that are available at the FRI; that in addition, Koon has a caseload of her own for which she is solely responsible; that at the time of these hearings, Koon had approximately 35 open cases; that these cases involved clients who are either not in the FRI programs, have been in the FRI programs or have left the FRI for other pursuits and need follow-up services; that Koon like the other "supervisors" under Van Ness' direction has input into the FRI budget as well as into potential procedural and policy changes at the FRI; that in regard to Koon's budgetary input, Koon assists Van Ness in putting the budget together but it is Van Ness that ultimately prepares, drafts and defends said budget before the Unified Board; that Van Ness stated that Koon cannot spend money ear-marked for one program on another program without seeking authority from above; that in regard to her input into other matters, Van Ness seeks every staff member's input into virtually all issues raised regarding any particular area before she changes something or recommends a change to the Unified Board; that Koon also supervises FRI employees represented by the Intervenor herein and she is the only consistently present, day-to-day supervisor for the approximately ten FRI employees; and that Koon exercises and possesses supervisory authority in sufficient combination and degree to render the position of Developmental Disabilities Coordinator supervisory.

31. That since 1985, the Mental Health Division has employed Thomas Powell as "Clinic Coordinator" (CC) who Petitioner and Intervenor claim is professional and the County claims is a supervisory and/or managerial employee; that in the 1978 representation election, the position of "Clinic Coordinator" was stipulated to be

professional by the parties therein and the incumbent thereof was eligible to vote in Voting Group II; that Powell's immediate supervisor is Program Director Van Ness; that the current job description for the CC position reads as follows:

GENERAL STATEMENT OF DUTIES

Directs those programs developed and administered by the Unified Board and the Program Director having to do with mental illness and substance abuse. Works under the supervision of the Program Director. Provides direct services to clients and clinical supervision to mental health staff.

DISTINGUISHING FEATURES OF THE CLASS

Provides psychotherapy services for more difficult cases. Provides general supervision to mental health staff. Authorizes use of Contract Facilities. Works with Mental Health Coordinator and AODA Coordinator to provide input to the Program Director and the Unified Board regarding planning and budgeting.

EXAMPLES OF WORK

Assists the Program Director in preparing the Mental Health/AODA Sections of the Comprehensive Plan and Budget;
--Assists and advises the Program Director and the Board in the hiring and evaluation of clinic staff;
--Provides general and clinical supervision of the clinic staff;
--Provides direct psychotherapy services to more difficult cases;
--Provided community relations services by speaking to community groups concerning mental health and AODA needs and services;
--Assists the Program Director in negotiating contracts for mental health, AODA and detox inpatient services and for related CBRF's, etc.;
--Organizes staff meetings and assists in making policy decisions regarding the Mental Health Center;
--Serves as leader and active member of the 24-hour on-call Crisis Team;

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES

Comprehensive knowledge of the needs, services and programs for mental health and AODA clients; comprehensive knowledge of the principles and practices of administration and clinical supervision; Ability to work within the structure of County Government and under the direction of the Program Director and the Unified Board; Ability to relate to and communicate effectively with clients, staff, community professionals and agencies and the general public; Ability to express ideas effectively, verbally and in writing; Good administrative and clinical judgment.

that Powell possesses a Masters Degree in Social Work; that as CC, Powell's primary responsibility, is to counsel the most difficult psychiatric patients and 30-40% of his work time is spent on these cases which constitute his own caseload; that Powell also spends a significant amount of time working with other clinic counselors and clinical people, observing them and conferring with them on their cases; that Powell also acts as leader of the on-call crisis team operated by the Clinic; that this team includes the Mental Health Coordinator, Psychiatric Social Worker, AODA Coordinator and Psychiatric Nurse; that each member of this team carries a beeper and each performs crisis intervention duties on a rotation basis whenever called upon for one week out of every five; that Powell is also responsible to generally coordinate the clinical aspects of the Mental Health programs and to direct the work of the three clerical employees represented by the Intervenor in its "Courthouse" unit; that since Van Ness is only present at the Clinic on Mondays and Fridays, Powell is the highest ranking Unified Board employee present at the Clinic at all other times; that Powell is a full-time employee

receiving full County benefits whose current salary is \$2,228.00 per month; that Powell calls and conducts weekly staff meetings on Tuesdays, when Van Ness cannot be present, to discuss patient-related issues as well as administrative problems; that as described above in Finding of Fact 28, Powell does not schedule employees or assign cases to them, as a general matter as their schedules are pre-established and the Bookkeeper/Secretary performs most of the patient intake functions and initially assigns patients to available appropriate staff members; that Powell has the same role and input as Koon has at the FRI in budget preparation and administration and in hiring, evaluating and disciplining clinical staff; that Powell has regularly evaluated the three clerical employees at the Clinic represented by the Intervenor as well as the Mental Health Coordinator, the Psychiatric Nurse and the Psychiatric Social Worker along with the AODA Coordinator; that there was no evidence proffered to indicate that anyone at the Clinic has been disciplined or discharged since Powell became CC; that Powell has a separate office at the Mental Health Center; that his office is in the same areas as the AODA Coordinator's separate office and the Psychiatric Social Worker's separate office; and, that in an adjacent open area, the two clerical employees represented by the Intervenor have their desks; that Powell is the direct supervisor of these two clerical employees represented by Intervenor (Kautzer and Bogart); and that Powell is the only consistently present, day-to-day supervisor for the approximately eight County Mental Health Center employees; and that Powell exercises and possesses supervisory authority in sufficient combination and degree to render the position of Clinic Coordinator supervisory.

32. That since approximately 1976, the County has employed Judith Street; that since 1982 and currently, Street has been the incumbent of the position "Child Support Worker II" (CSW II) a position claimed to be professional by Petitioner and Intervenor and supervisory and/or managerial by the County; that prior to this, Street was employed by the County as a Child Support Worker I from 1978 until 1982; that for 20 months prior thereto, Street was employed by the County as a "Case Aide II - Social Services" (the predecessor position of the current IMW position); that as such Case Aide II, Street was eligible to vote in the 1978 representation election as a professional employee by stipulation of the parties in that case; that the current job description for the CSW II position reads as follows:

CLASS TITLE: Child Support Worker II

DEFINITION: This is a responsible field investigation and collections work performed at the full performance level. Work is performed independently and under limited supervision which is provided through conferences, a review of case reports, and periodic evaluations by supervisory staff.

Employees in this class are responsible for conducting investigations that result in the identification of absent parent(s) with the legal obligation to support their child(ren), location of the absent parent(s), and the securing of information needed to determine the ability of absent parent(s) to make child support payments. Work in this classification involves a great deal of public contact through personal interviews for liable absent parent(s) and by contacting a variety of sources for supportive information.

EXAMPLES OF WORK PERFORMED

Works with/counsels/coaches clerical person responsible for identifying and setting up initial intake/record/systems in child support case.

Evaluates/analyses/determines legal obligation of absent parent(s) to support his/her dependent children (including paternity determination).

Interviews present parent(s), friends, relatives in office and filed and requests aid from law enforcement personnel/state parent locator service in order to locate absent parent(s).

Makes field investigations to gather information and facts regarding the financial ability of absent parent(s) to make child support payments.

Interviews responsible parties and other sources of information such as employers, attorneys, bank officials, city, county, and state officials to determine income, assets, liabilities, insurance, residence, and other relevant information.

Examines public records relating to financial and legal status of involved parties, real estate ownership, mortgages and transfers, tax returns and other related materials.

Contacts responsible parties, answers questions relating to their financial obligations for child support, prepares payment agreements, prepares detailed case reports, and recommends actions to be taken in the case of noncollections or delayed or deferred payments.

Develops and/or implements operating plans and procedures relating to the field investigation and collection of support payments.

Assists in the collection of data and the preparation of cases for legal action.

Required Aptitudes, Knowledges, Skills and Personal Characteristics:

Knowledge of the principles and practices of record keeping (sic) and business management, and skill in applying them to investigation, collection, and reporting procedures.

Knowledge of business and personal financial records and account procedures.

Knowledge of personal financial management, budgeting, and spending practices.

Knowledge of and skill in field and office debt investigation and collection.

Knowledge of legal principles and processes involving ownership and transfer of property, estates, and indebtedness.

Knowledge of the state and federal laws, rules, and regulations governing the specialized area of collections.

Ability to relate to people of various ethnic, religious and social backgrounds.

Ability to analyze individual economic, social, and health situations affecting financial ability to pay debts.

Ability to obtain cooperation from others in situations of conflicting goals or values.

Skill in dealing tactfully, objectively, and effectively with responsible parties in the collection of accounts.

Ability to conduct investigations and interviews, and to secure, document, and prepare usable information and evidence.

Ability to evaluate information and exercise judgment in making recommendations based on facts and pertinent rules and regulations.

Ability to logically assemble and concisely organize information.

Ability to clearly present and interpret procedures, reports, and other information, both orally and in writing, to persons with varying degrees of information and understanding.

TRAINING AND EXPERIENCE

Entry into this classification will normally be by reclassification. To be eligible for regrading, an employee shall have completed one year of experience at or equivalent to the Child Support Worker I level. Experience must have been gained after graduation from a four-year college or its equivalent in relevant training and experience.

that currently, Street works full-time (8:30 - 4:30 p.m.) at a monthly salary of \$1,625.00; that Street has a college degree in Home Economics; that Street has a separate office on the third floor of the County Courthouse building outside of which is a reception area where Street's secretary, Terry Stellmacher has her desk; that Stellmacher works full-time exclusively for Street and is represented by the Intervenor in its "Courthouse" unit; that Stellmacher performs all secretarial, clerical and receptionist duties for Street; that Street directs, assigns work to and evaluates Stellmacher, spending about 25 percent of her time on these duties; that although Street has not had occasion to discipline Stellmacher and Stellmacher has never filed a grievance against Street, Street did play a major role in hiring Stellmacher in 1983 to the full-time secretarial position she now holds; that in this regard the evidence showed that Street screened all job applications and was on the interviewing panel along with members of the County Finance Committee and the County Clerk; that Street then participated in the decision-making process and recommended that the County hire Stellmacher; that with regard to discipline/discharge of Stellmacher, Street is the only person for whom Stellmacher performs work and Street is the only person who knows Stellmacher's work; that Street recommended that Stellmacher be taken off probation at the end of her probationary period and the County followed that recommendation; that Street authorizes and keeps track of Stellmacher's vacation, sick leave, overtime work hours and payroll; that the majority of Street's work time is spent investigating cases, interviewing witnesses, drafting legal documents and attending and/or testifying at hearings regarding divorce, paternity and child support cases; that Street's immediate supervisor is Corporation Counsel John Selsing; that Street negotiates and drafts stipulations without assistance or approval from Attorney Selsing; that Street does submit drafts of legal documents to be used at hearings for Selsing's final approval; that Selsing is not present at the Child Support office to "supervise" Street and generally relies upon Street to perform her duties properly and promptly; that at the time of the hearing herein, Street had 575 pending child support, divorce and paternity cases; that Street makes the initial decisions in what cases the County should seek a judgment of contempt, what cases should receive priority treatment and which cases should receive Court attention; that Street makes recommendations to the court in approximately one-half of her cases as to what should be done for the children, based upon her independent judgment and experience; that although Child Support is technically a function of the Corporation Counsel's office, it has its own separate budget and operates as a separate agency of the County; that Street prepares drafts and defends the Child Support budget before the County Finance Committee; that Corporation Counsel Selsing has never amended Street's budgetary requests nor has he become involved in the preparation, drafting or defending of Street's budget; that although the County sets the Child Support budget and pays for its operations, everything that the Child Support office does is reimbursed by the Federal government; that the Child Support office normally operates at a profit and the excess funds are placed into the County's general fund; that Street has the authority to spend budgeted money on a different area than it was originally designated for without seeking approval from above; and that the Child Support Worker II, Street, possesses and exercises supervisory authority in sufficient combination and degree to render the position supervisory.

33. That since March, 1987, by County Board resolution, the County has had a position entitled "Veteran's Transportation/Service Officer" (VT/SO), the incumbent of which is Victor Klawitter who Petitioner, contrary to the Intervenor and the County, claims is a professional employee; that prior to March, 1987, the County had two positions, "Veteran's Service Officer" and "Veteran's Service Office Driver" which two positions and their duties were combined by the County Board's March, 1987 resolution creating the VT/SO position; that prior to March, 1987, Klawitter served as VSO Driver at an hourly wage and the current County Clerk, Raymond Stoll, served as Veteran's Service Officer at a salary; that the Driver duties involve providing round-trip automobile transportation for eligible veterans to the various V.A. medical treatment facilities around the State of Wisconsin; that the Veteran's Service Officer duties are to handle communication with the Wisconsin Department of Veteran's Affairs on all veteran's matters, to attend various meetings with other VSO's and other Veteran's officials, and to act as liaison for the County and its veterans with other Veteran's groups; that as VT/SO, Klawitter has a separate office at 500 Lake Steel Street in Green Lake; that Klawitter is now employed full-time although his hours must be flexible due to his veterans transportation duties; that Klawitter receives full County benefits as VT/SO and is a salaried employee currently making \$1481.00 per month; that Klawitter was "elected" to the position of VT/SO by the County Board based upon statutory requirements that the successful candidate for such a position must have served in the U.S. Armed Forces on active duty and at least one day of such duty must have been during war time; that an advanced degree is not a requirement of the position or of either of its predecessors, although Klawitter possesses a college degree; that since 1974, the County has employed Phyllis Benson as "Veteran's Benefits Administrator," also known as "Deputy VSO"; that Benson is represented by the Intervenor in its "Courthouse" unit; that Benson essentially runs the day-to-day affairs of the Veteran's office; that she performs all of the necessary typing, filing, receptionist duties and she processes all paperwork for County veterans based upon Wisconsin statutory requirements (Chapter 45) and directions from the Federal V.A. and the Wisconsin Veteran's Affairs Office; that Benson is a salaried employee (\$1121.00 per month) receiving full County benefits; that the Veteran's Transportation/Service Officer's work does not require an advanced degree nor does it involve 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 learning.

34. That Ronald Klick has been employed by the County Sheriff's Department since 1973; that currently Klick, who all parties agree is supervisory, is the incumbent in the position "Chief Deputy" (CD); that the County claims, contrary to Petitioner and Intervenor, that a one-person unit of law enforcement supervisory employees would necessarily be inappropriate; that following his election to Sheriff in 1987, Sheriff Bruendl eliminated the previously existing paid supervisory position of Undersheriff in order to hire one additional Deputy Sheriff, and Bruendl made the Undersheriff position a non-working, non-paid honorary position; that as a result of the elimination of the Undersheriff position, the CD is next in command after the Sheriff over all of the County law enforcement personnel; that the current job description for the CD position reads as follows:

STATEMENT OF DUTIES

The Chief Deputy Sheriff serves as the chief assistant to the Sheriff; assisting in maintaining law and order within Green Lake County. The Chief Deputy Sheriff is authorized Command Authority in the absence of the Sheriff.

DISTINGUISHING FEATURES OF THE POSITION

The employee appointed to this position serves primarily as a supervisory employee, but may be called on to perform other duties as outlined in "Examples of Work."

The Chief Deputy shall perform duties as set forth in established department policy and procedures; seeing to the orderly operation of all divisions of the Green Lake County Sheriff's Department; under the general supervision of the Sheriff.

EXAMPLES OF WORK

Supervises the activities of departmental personnel during criminal, non-criminal and special assignment duties.

Advises personnel on policies and procedures;

Initiates personnel training.

Maintains court officer records and serves as the department court officer;

Schedules the work shifts of department personnel, coordinating the vacation, holiday, sick time and etc.

Supervises the investigations of traffic accidents and advises personnel on enforcement action.

Maintains records on departmental operations including personnel records.

Takes enforcement action in criminal, non-criminal and traffic matters.

May serve and execute civil process matters.

Assists other agencies at the direction of the Sheriff.

KNOWLEDGE, SKILLS AND ABILITIES

Considerable knowledge of the powers of the office of Sheriff, proven investigative techniques, regulations and laws pertaining to civil process, commitment of prisoners, and knowledge of effective personnel procedures.

Must be able to maintain an effective and sympathetic relationship with prisoners, fellow employees and the general public. Must be able to speak clearly and distinctly; the ability to remain calm in emergencies; must be dependable, courteous and in good physical and mental health.

ACCEPTABLE TRAINING AND EXPERIENCE

Completion of specialized law enforcement training, preferable (sic) supplemented with either an associate or undergraduate degree in police science or criminal justice courses; or any combination of experience and training which provides the knowledge, skills and abilities.

ADDITIONAL REQUIREMENTS

Must possess a valid motor vehicle operators license issued by the State of Wisconsin; must be proficient in the use of firearms; must have completed a standard high school course; five or more years of experience in civil or military law enforcement; must successfully acquire Wisconsin Law Enforcement Standards Board certification; must successfully complete other training schools as prescribed by the Sheriff.

that the Sheriff's Department currently employs six Deputy Sheriff's, four Dispatcher/Jailers, six Correctional Officers, one full-time secretary and one part-time secretary, the CD and the Sheriff; that the full-time secretary is represented by the Intervenor in its "Courthouse" unit but the part-time secretary is unrepresented as she works less than 600 hours per year; that the Deputy Sheriffs, and Communications/Dispatch Officers are represented by the Intervenor in its voluntarily recognized non-supervisory law enforcement bargaining unit; that since the parties herein have stipulated that Sheriff Bruendl should be excluded from the supervisory law enforcement unit petitioned for herein because he is an elected official/manager, the only unrepresented employe whose status is

in question here is the CD; that the CD directs the work, sets the work schedules, supervises the jail employes and their activities and supervises the deputy sheriffs and their activities; that the Sheriff only directly supervises criminal investigations; that the CD has the authority to investigate and to recommend the discipline of a Department employe by filing a written disciplinary paper with the Sheriff; that the Sheriff and the CD then confer regarding the paper and they make a joint decision regarding what if any action should be taken in the matter; that the Sheriff generally follows the CD's recommendations regarding discipline; that if the Sheriff is not present in the Department, the CD is in complete charge of the Department, its employes and its functions; and that the CD authorizes all vacation, sick leave and overtime without seeking authority from the Sheriff.

35. That since the 1978 representation elections in Green Lake County, La Voun Wruck has served as Local Union President and chief negotiator for Intervenor's "Courthouse" unit; that currently the "Courthouse" unit consists of approximately 40 unit employes employed in three separate buildings - - the Courthouse, the FRI and the Mental Health Center/Human Services building located at 500 Lake Steel Street in Green Lake, Wisconsin; that since 1978, Wruck, on behalf of the Intervenor, has represented unit employes employed in all three buildings in contract negotiations and on grievances; that prior to the 1978 elections, the County's professional employes were represented by an informal Liaison Committee that requested improved pay and benefits for these employes before the County Finance Committee, and after the 1978 elections, this Liaison Committee continued to represent the interests of County employes not represented by Intervenor, although "contract" workers generally individually sought improvements in their contracts before the Finance Committee; that according to IMW Magnusson, he contacted President Wruck in the summer of 1986 to inquire whether the IMW's could join the Intervenor's "Courthouse" unit, and, according to Magnusson, Wruck agreed to check on the matter and get back to him but Wruck never thereafter contacted Magnusson; that according to Wruck, IMW's Magnusson and Amidon contacted her approximately two years ago to inquire whether the IMW's could join the Intervenor; that Wruck stated that she told Amidon and Magnusson that it would not be a simple thing to just join Intervenor, that the Union would have to go through a certain process to find out if the IMW's were eligible for representation, but that the IMW's could join Intervenor Union and then leave it up to the County to prove they were ineligible; that Wruck assumed that Magnusson and Amidon would get back to her regarding what the IMW's wanted to do but that Amidon and Magnusson never contacted Wruck thereafter; that Wruck then called Magnusson about four or five months later to inquire what decision the IMW's had made and Magnusson told Wruck that the IMW's had given up the idea of representation for the time being; that about one year ago, Wruck began attempting to look into a situation that had come to her attention involving the County's hiring of "contract" workers who were allegedly performing Courthouse unit work; that Wruck contacted then - County Clerk, Jackie McGee, and requested information regarding the situation, but Wruck never received the information requested because McGee did not know how many "contract" workers were used by the County or what their job duties were; and that the Intervenor did not file a grievance, a complaint or a unit clarification petition regarding this situation, although the County did place one contract worker (who had previously been employed in and had retired from the unit) Leona Daniels, into the Courthouse unit based upon her actual duties following Wruck's complaints and attempts to gain information regarding the situation.

36. That Intervenor currently represents a full-time Homemaker II, Carol Adams, employed in the Department of Social Services, whose position is not in dispute here; that the Homemaker is currently paid a salary of \$1028 per month; that no advanced degree is required for this position although the incumbent possesses a degree in Economics; that the duties of the position include going into clients' homes regularly to assist and to train clients to perform various household tasks such as cleaning, shopping, cooking and doing laundry and, where a client has received income maintenance funds but has been placed on "protective pay" because the client has not been paying his/her bills properly, the Homemaker assists the client to set up and stick to a household budget and the Homemaker handles and pays all bills for the client until the client is taken off protective pay; that between 40 and 50 percent of the Homemaker's time is spent on homemaking duties while the other 40-50 percent of her time is spent performing duties regarding protective pay clients; and that the vast majority of the Homemaker's work time is unsupervised and spent in clients' homes.

37. That the Intervenor has not abandoned its representational interest in the currently unrepresented non-professional employees of the County.

38. That the establishment of a collective bargaining unit consisting of all currently unrepresented non-professional employees of Green Lake County would lead to undue fragmentation of bargaining units.

39. That the unconditional inclusion of the 12 currently unrepresented non-professional employees of Green Lake County in the Intervenor's existing non-professional unit consisting of 40 non-professional employees does not call into question Intervenor's continuing status as the collective bargaining representative of said unit.

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

CONCLUSIONS OF LAW

1. That the occupants of the positions of Income Maintenance Worker, Community Health Technician, Veteran's Transportation/Service Officer, and Instructor I - Self Care are not professional employees within the meaning of Sec. 111.70(1)(L), Stats., and thus are not appropriately included in a professional employee voting group but are appropriately included in the existing Intervenor unit.

2. That the occupants of the positions of Teacher and Physical Education Instructor are professional employees within the meaning of Sec. 111.70(1)(L), Stats., and thus are appropriately included in a professional employee voting group.

3. That the occupants of the positions of Intensive In-Home Services Worker, Home Health Agency Nurses, and Job Coach are not independent contractors but are regular full-time or regular part-time professional employees within the meaning of Sec. 111.70(1)(L), Stats., and thus are appropriately included in a professional employee voting group.

4. That the occupants of the positions of Energy Assistance Coordinator, Welfare Fraud Investigator, Nursing Assistant, Instructor I - Pre-Vocational Training, are not independent contractors and are not professional employees within the meaning of Sec. 111.70(1)(L), Stats., and thus are not appropriately included in a professional employee voting group but are appropriately included in the existing Intervenor unit as regular full-time or regular part-time employees.

5. That the occupant of the position of Physical Therapist is a casual municipal employee and thus lacks sufficient community of interest to be included with regular full-time and regular part-time employees in either an existing non-professional bargaining unit or a professional employee voting group.

6. That the occupants of the positions of Developmental Disabilities Coordinator, Mental Health Clinic Coordinator and Child Support Worker II are supervisory employees within the meaning of Sec. 111.70(1)(o)1, Stats., and thus are not appropriately included in any bargaining unit or voting group.

7. That an additional bargaining unit consisting of all currently unrepresented non-professional employees of Green Lake County is inappropriate under Sec. 111.70(4)(d)2.a. Stats., because said employees fall within the scope of the bargaining unit description applicable to the existing AFSCME bargaining unit, AFSCME has not abandoned its representational interest in said employees and establishment of such a unit would lead to undue fragmentation of bargaining units.

8. That a voting group of "all regular full-time and regular part-time professional employees of Green Lake County excluding supervisory, managerial, confidential, executive, temporary, craft, and casual employees and provisionally excluding non-professional employees" constitutes an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats.

9. That the occupant of the position of Chief Deputy is a supervisory employee within the meaning of Sec. 111.70(o)1, Stats., and thus is appropriately included in a bargaining unit of supervisory law enforcement personnel pursuant to Sec. 111.70(8), Stats.

10. That "all regular full-time and regular part-time supervisory law enforcement personnel of the Green Lake County Sheriff's Department excluding non-supervisory law enforcement personnel, managerial, confidential, executive, temporary and casual employees" is an appropriate supervisory collective bargaining unit within the meaning of Sec. 111.70(8), Stats.

11. That a question concerning representation presently exists among the employees of Green Lake County in the voting groups and bargaining units set forth in Conclusions of Law 8 and 10.

Based upon the above and foregoing Finding of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER

1. That the positions identified in conclusions of Law 1 and 4 are hereby included in the non-professional collective bargaining unit identified in Finding of Fact 6.

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

DIRECTION OF ELECTIONS

1. IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Directive among all regular full-time and regular part-time supervisory law enforcement personnel of the Green Lake County Sheriff's Department, excluding non-supervisory law enforcement personnel, managerial, confidential, executive, temporary and casual employees who were employed on November 6, 1987, except such supervisory employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such supervisory employees desire to be represented by the International Union of Operating Engineers, Local 139 or Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of negotiating with Green Lake County with respect to wages, hours and conditions of employment or desire no representation.

2. IT IS HEREBY DIRECTED that an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days of the date of this Directive among all regular full-time and regular part-time professional employees of Green Lake County, excluding supervisory, managerial, confidential, executive, temporary, craft and casual employees who were employed on November 6, 1987, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees desire to be represented by the International Union of Operating Engineers, Local 139 or Wisconsin Council 40, AFSCME, AFL-CIO for the purposes of negotiating with Green Lake County with respect to wages, hours and conditions of employment or desire no representation. If the employees in this voting group vote to be represented by Wisconsin Council 40, AFSCME, AFL-CIO, said employees will be given the opportunity to determine whether they wish to exist as a separate professional bargaining unit or wish to be combined with the existing overall non-professional unit represented by AFSCME.

Given under our hands and seal at the City of
Madison, Wisconsin this 6th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner

GREEN LAKE COUNTY

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER AND DIRECTION OF ELECTIONS

BACKGROUND

International Union of Operating Engineers, Local 139, hereafter Petitioner, filed two petitions in this case: one sought an election in a unit of supervisory law enforcement employees and the other petition sought elections among all unrepresented County employees in two voting groups -- all professional employees and all non-professional employees. In regard to the professionals, Petitioner sought an election in which they could choose whether they wished to constitute a separate appropriate unit or wished to be combined with the unrepresented non-professionals and whether they wished to be represented by a labor organization.

Wisconsin Council 40, AFSCME, AFL-CIO, hereafter Intervenor, has represented Highway Department employees in a certified unit since 1962. Since 1978, Intervenor has represented the non-supervisory law enforcement personnel in the Sheriff's Department in a voluntarily recognized unit. Significantly, since 1978 Intervenor has also been the certified representative of "all regular full-time and regular part-time employees of Green Lake County, excluding elected officials, supervisory and confidential employees, and all employees of the highway and law enforcement departments, and professional employees." The employees in this certified collective bargaining unit are known as "Courthouse" unit employees. Intervenor timely intervened in these proceedings and has essentially claimed that all currently unrepresented non-professional employees fall under its "Courthouse" unit certification and should be added to that unit without an election. Intervenor also wishes to be on the ballot of any election directed by the Commission herein.

POSITIONS OF THE PARTIES

The Petitioner took the position in its opening statement that the County Board and its Committees and Sub-Committees constitute the true supervisory authority in the County, making all of the hiring and firing decisions and all the personnel policies and decisions. Petitioner also contended that the appropriate unit here should be a residual unit containing all currently unrepresented employees including professional employees, assuming the latter group chose to be included in an overall residual unit instead of voting to remain a separate bargaining unit of professionals. Petitioner also asserted that a separate unit of supervisory law enforcement personnel would be appropriate even if it contained only one supervisor. In addition, Petitioner argued, contrary to the County, that the County actually controls the method and means by which its "independent contractors" perform their duties and that, therefore, the County is in fact the true employer of these "contractors." As such, these "contractors" should be included in a residual unit. Petitioner urged that for the past ten years, the Intervenor had abandoned or had shown no interest in the petitioned-for residual unit non-professional employees. Therefore, the Petitioner urged, these residual non-professional employees should have the opportunity to vote regarding which, if any, labor organization they wish to represent them, as some of them testified they wished to do.

That in its brief, Petitioner amplified its hearing arguments as follows. It argued with regard to "independent contractors" that none of the County's contract workers make a financial investment in the County/worker venture; none of these workers assume a true risk of failure or stands to profit from their ventures with the County; many of these workers are paid some fringe benefits and are generally hourly paid rather than being paid based upon the results they achieve; and they do not generally determine by their own independent judgment when, where and how to accomplish their tasks, but rather the County ordinarily has and conveys to these workers pre-established expectations regarding these matters.

That with regard to the individuals the County asserted are supervisors, the Petitioner contended that neither Koon nor Powell is a supervisor, based upon their substantial professional case work, their lack of real authority to hire,

fire or discipline their employees and the nature of the employees they "supervise" -- professional employees who do not need substantial supervision or direction.

Petitioner also argued that the Income Maintenance Workers (IMW's), Energy Assistance Coordinator (EAC), the Instructor/Teachers and the Nursing Assistants (NA's) are professional employees, based upon the nature of their work and the level of knowledge and judgment they apply in their work. In addition, the Petitioner argued that these employees share professional-type duties with, and have skills similar to, those of the County's professional employees. Further, the Petitioner noted that in the 1978 representation elections, the IMW's voted in the professional unit.

Finally, Petitioner argued the petitioned-for residual group has had a bargaining history separate from Intervenor's units and that other facts support these residuals being found to constitute a separate appropriate unit. In this regard, Petitioner noted that these residuals had had a Liaison Committee to negotiate for them since prior to the 1978 elections; that all of these employees work with clients/patients; they all possess some specialized training and/or knowledge; virtually all of them work in the field; many of them have their own offices where they work when not working in the field; these employees generally make more money than Intervenor's Courthouse unit members; Intervenor showed no interest in representing these employees until after the petitions herein were filed; all of these unrepresented employees use some independent judgment in their work, unlike Intervenor's Courthouse unit members; and these employees have different work locations and different supervisors than the Courthouse unit employees. Petitioner notes that only two of the petitioned-for employees (Klawitter and Street) are not found in the three unrepresented Departments/Divisions. In conclusion, Petitioner contended that a separate residual unit appropriate would satisfy both the anti-fragmentation policy of MERA as well as giving the broadest possible right to self-determination to employees and that to accrete these non-professional residual employees without a vote into Petitioner's Courthouse unit would be wholly inappropriate in these circumstances.

The Intervenor argued at hearing that it has not abandoned the County's unrepresented employees and notes that in 1978 the professional employees chose to remain unrepresented. Intervenor asserted that it has sole jurisdiction of the currently unrepresented non-professionals by means of its 1978 certification in the Courthouse unit which clearly covers these employees. The Intervenor observed that to create a new unit of unrepresented non-professionals would unduly fragment the County's bargaining units, contrary to MERA policy. Intervenor pointed to facts which it stated would indicate that it was unable to get reliable information regarding who the unrepresented non-professionals were and what jobs they held to indicate Intervenor neither abandoned nor was disinterested in representing these employees.

In its brief, Intervenor stated that it would stand for an election in any unit(s) found appropriate by the Commission but that the only appropriate units were the professional unit and the law enforcement supervisory unit and that the unrepresented non-professionals must be accreted unconditionally and unilaterally into Intervenor's Courthouse unit, under the facts here. Intervenor contended that were the Commission to find Petitioner's "residual unit" appropriate, this would violate the Commission's anti-fragmentation policy. Finally, Intervenor asserted that the unrepresented non-professionals share a community of interest with its Courthouse unit employees as follows: they have some common supervisors, they are paid based upon the same pay schedule, they share work locations in three separate buildings, they supply some of the same or similar services, and there is interaction and work flow between these groups.

Intervenor has asserted that neither Koon nor Powell is a supervisor as they spend a majority of their time handling their own caseloads and they do not make independent decisions regarding traditional supervisory-type matters. Intervenor contended that the IMW's, EAC, NA's, the Instructor/Teachers and the Welfare Fraud Investigator (WFI/GRW) are not professional employees as Petitioner argued, since none of these employees possess a college degree and their work is not of a truly professional nature. Also, in regard to the 1978 stipulations concerning professional employees, Intervenor asserted that the Commission should not be bound by such informal stipulation agreements in this case.

The County argued at the hearings that a unit of professional employees is appropriate here, but that the petitions should be dismissed insofar as they seek inter alia, an election among unrepresented non-professionals who, the County asserted, should be represented by Intervenor in its existing Courthouse unit. The County contended further that a law enforcement supervisory unit of only one employee would of necessity be inappropriate. The County further argued at hearing that certain individuals were true independent contractors or true supervisors and should be excluded from any appropriate unit. The County asserted that Petitioner's claim that the County Board and its Committees constituted the real supervisory authority in the County was absurd; and that the County, though small, had all of the responsibilities of a large County and its County Board/ Committees could not act as supervisors to all of its employees. Finally, the County argued that certain County workers (Home Health Agency employees) are casual employees because of the small number of hours they work.

In its brief, 1/ the County essentially buttressed its hearing arguments. The County argued specifically that both Koon and Powell are the day-to-day supervisors of their Unified Board employees and/or that they are managerial employees, exempt from any unit. The County also asserted that Street (Child Support Worker II) is a supervisory/managerial employee, responsible for the Child Support Program, for her secretary and for her own budget and spending decisions. The County agreed that Klick (Chief Deputy) is clearly a supervisory law enforcement employee but contended that a unit of one such supervisor would necessarily be inappropriate. In regard to the independent contractor issue, the County specifically asserted that the WFI, the RN's employed by the Home Health agency and the Intensive In-Home Services Worker are all true independent contractors who should be excluded from any bargaining unit.

Finally, in its brief, the County averred that even if the professionals wished representation, they should not be mixed with non-professionals because it would be more difficult for the County to negotiate with a mixed group of professionals and non-professionals as some benefits appropriate for professional employees would be inappropriate for non-professionals; all of the County's clerical-type workers should be treated the same; and there would be contract administration problems were the County required to deal with such a mixed unit.

DISCUSSION

The Appropriate Unit Issue

Petitioner seeks a unit potentially consisting of all currently unrepresented employees. Intervenor and the County contend that the unrepresented non-professional employees should be accreted without a vote into Intervenor's "Courthouse" unit.

We find it significant that Intervenor's certification and the unit description contained in the collective bargaining agreement clearly cover these unrepresented non-professional employees. Beyond this fact, we note that there is insufficient evidence on this record to prove that Intervenor either abandoned or failed to show an interest in these employees, as Petitioner urges, such that Intervenor should be precluded from claiming and representing these employees. Most importantly, a significant number of the non-professional positions in question were either agreed by the parties to be professionals for the elections in 1978 (IMW's and Instructor I's) or have had their employee status clouded by the County's use of individual contracts. Thus Intervenor could have had a reasonable doubt as to whether the employees we have herein added to Intervenor's unit were eligible for Intervenor's representation.

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- 1/ The County also discussed K. Voss, Commission on Aging Coordinator, in its brief and argued that she is a supervisory/managerial employee. We note that at the time of the hearing, no evidence was taken regarding this position as the position did not exist per se at that time because the County had not yet decided whether to reorganize this Commission and what if any employees this Commission would have in the future. We also note that the parties stipulated to the above-described situation and agreed that the status of the position/incumbent would remain unsettled by this case. Therefore, we cannot and do not determine herein the status of the Commission on Aging Coordinator, Voss.

We also note that approximately one year ago, Intervenor attempted to get information regarding new County positions, primarily in order to protect its bargaining unit from being eroded, and Intervenor was unable to obtain accurate information from the County with one exception. That one exception involved employee Leona Daniels who had retired from a County job and who had been rehired by the County as an independent contractor. As a result of Intervenor's inquiries, the County and Intervenor agreed that Daniels and her position should be included in Intervenor's "Courthouse" unit. Record evidence which shows that the IMW's contacted Intervenor two years ago is insufficient to show that Intervenor has abandoned "residual" non-professional employees. In this regard, we note that both the County and Intervenor may have believed, based upon the 1978 election case, that the IMW's were professional employees, excluded from Intervenor's Courthouse unit at the time IMW Magnusson contacted Union President Wruck. Second, the nature of the contact does not make clear that Wruck did not contact Magnusson again for several months because Intervenor was not interested in representing the IMW's. On the contrary, both Magnusson and Wruck (mistakenly) believed that the other would contact him/her. Furthermore, Wruck did contact Magnusson several months after Magnusson contacted Wruck and Magnusson then stated that the IMW's were no longer interested in having the Intervenor represent them.

Finally, there is evidence to show that Intervenor has been an active representative of Courthouse unit employees over the past ten years, negotiating contracts and filing and processing grievances for its members. The fact that Intervenor did not file a complaint or a grievance over the County's apparent failure to furnish reliable information regarding "contract" workers, is insufficient to show that Intervenor has abandoned the employees in question. Cf. Portage County (Department of Social Services), Dec. No. 11309 (WERC, 9/72); City of Milton (Police Department), Dec. No. 13442 (WERC, 3/75).

Lastly, in determining whether the unit sought by Petitioner is appropriate, the Commission considers Sec. 111.70(4)(d) 2. a. Stats., which provides as follows:

The Commission shall determine the appropriate unit for the purpose of collective bargaining and shall whenever possible avoid fragmentation by maintaining as few units as practicable in keeping with the size of the total municipal work force. In making such a determination, the Commission may decide whether, in a particular case, the employees in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a unit.

In applying the above statute, the Commission has considered the following factors:

1. Whether the employees in the unit sought share a "community of interest" distinct from that of other employees.
2. The duties and skills of employees in the unit sought as compared with the duties and skills of other employees.
3. The similarity of wages, hours and working conditions of employees in the unit sought as compared to wages, hours and working conditions of other employees.
4. Whether the employees in the unit sought have separate or common supervision with all other employees.

5. Whether the employees in the unit sought have a common workplace with the employees in said desired unit or whether they share a workplace with other employees.
6. Whether the unit sought will result in undue fragmentation of bargaining units.
7. Bargaining history.

Considering these factors in light of the facts here, we note that the record reveals that the unrepresented non-professional employees have varying duties and skills. This is due, in part, to the fact that they work essentially in three distinct County departments whose goals and mission are distinctly different. However, there are similarities between some of the duties and skills of the disputed employees and those of Intervenor's "Courthouse" unit members. For example, Intervenor represents a Homemaker, employed in the Department of Social Services whose duties/skills are very similar to some of the duties/skills of the IMW's, the Nursing Assistants, the Instructor I - Self Care and the Community Health Technician. The Homemaker, like the Nursing Assistants, spends the majority of her time unsupervised, working with and training clients in their homes; neither the Homemaker nor any of the other above-listed employees were required to have an advanced degree to acquire these jobs; the Homemaker, like the IMW and the Nursing Assistant, is involved in some informal client counseling; due to their long-term relationships with their clients, the Homemaker, like the Nursing Assistant and Self-Care Instructor, teaches clients to perform practical personal tasks. Although the wages of the disputed employees range widely, we note that the contract which the County has with Intervenor regarding "Courthouse" employees shows that the vast majority of these employees are salaried (receiving from \$959 to \$1,473 per month), like disputed employees (who received \$1,275 to \$1,884 per month.) 2/ Courthouse employees who are hourly paid receive from \$4.64 to \$6.64 per hour, while hourly paid contract workers are generally paid \$6.00 per hour. 3/ We note that all County employees have a six month probationary period; they receive wage increases at six month intervals; most of them receive longevity pay; all County workers (not employed under independent contracts) are covered by WRS and receive the same health insurance plan, unemployment and workers' compensation coverage, sick leave, vacation and leave of absence benefits. In addition, the holidays granted to County employees are the same except that "Courthouse" unit employees no longer get an Election Day Holiday as they relinquished that holiday in bargaining for a larger wage increase several years ago. In regard to the supervision for the disputed employees, the record shows that each Department has separate supervision so that only employees in the same Department share common immediate supervision. Similarly, we note that the Intervenor's "Courthouse" employees do not generally share common supervision. "Courthouse" employees, like the disputed unrepresented non-professional employees have different supervisors (by department) and different work locations. But in each work location where the disputed employees are found, there are "Courthouse" unit employees working there also.

Regarding the bargaining history of these unrepresented non-professional employees, it appears that these employees have generally represented themselves before the County Finance Committee in bargaining for better wages and benefits or they have been represented by the Liaison Committee which has attempted to represent the interests of unrepresented County employees on an informal basis since prior to the 1978 representation elections. Thus, the evidence here does not demonstrate that the disputed employees possess a clear and separate bargaining history which would indicate they they should remain separate from "Courthouse" unit employees.

2/ The DD Coordinator receives \$1,884 per month.

3/ The Intensive In-Home Services Worker receives \$10.00 per hour.

Lastly, application of the anti-fragmentation policy is not supportive of establishing a unit for the unrepresented non-professionals. Petitioner's position would yield two units containing non-professional employees while the position of the County and Intervenor would retain the existing unit for such non-professional employees.

In summary, we have found that there are twelve unrepresented non-professional employees in dispute here. The evidence here shows that these non-professionals share a community of interest with Courthouse unit employees inasmuch as they have similar skills, duties and terms and conditions of employment; that it would fragment bargaining units to establish another unit containing non-professional employees; that the Courthouse unit certification and contract unit description clearly cover these employees; and that Intervenor has not abandoned these employees. We have therefore concluded that these twelve non-professionals should be in the Courthouse unit and that Petitioner's non-professional bargaining unit is inappropriate.

We also conclude that the inclusion of these employees in the Courthouse unit should not be conditioned upon a vote. An accretion election among the disputed non-professional employees is inappropriate here because unconditional inclusion of 12 employees into an existing 40 employee unit does not call into question Intervenor's continuing status as representative ^{4/} and because such an accretion election could potentially result in a small group of employees remaining forever ineligible for representation by any labor organization, if they chose not to accrete into the "Courthouse" unit, where we have determined they properly belong.

Department of Social Services Employees in Dispute

Income Maintenance Workers

The status of the two Income Maintenance Workers (IMW's), Magnusson and Amidon is disputed by the parties. While the County did not take a formal position on these IMW's, Petitioner argued they are professional employees and Intervenor argued that they are non-professionals. We believe it is clear from the facts detailed in Finding of Fact 18 that the IMW's are non-professional employees.

As Section 111.70(1)(L), Stats., makes clear, a "professional" employee is:

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;

^{4/} Sauk County, Dec. No. 15315-A (WERC, 10/81); City of Madison, Dec. No. 16763-A, (WERC, 7/84).

- b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

While all of the criteria listed in either Subsection 1. or Subsection 2. must be present in order to find a particular employe to be professional, the category "professional employe" is not limited to employes personally possessing college degrees. In regard to the IMW's here, we note that their job descriptions do not require them to have college degrees and the facts indicate that neither of them possesses such a degree. The facts also indicated that each IMW handles approximately 300 cases at one time and that their primary responsibility is to complete paperwork necessary to determine eligibility and/or need for public assistance ". . . within established procedures, policies and guidelines. . . ." Thus, the IMW's work is not predominantly intellectual and varied in character but normally involves the routine application of set guidelines, policies and procedures. In this regard, we note that the IMW's neither exercise discretion nor do they actually determine eligibility or need. Rather, the State computer or State officials "decide" whether an applicant will receive aid. The facts do not indicate that the IMW's consistently exercise discretion and judgment in their work, despite the extra counseling they give to some aid recipients after aid is granted. In this regard, we note that the record showed that the IMW's spend from one sixth to one fifth of their time performing counseling duties with aid recipients and referring recipients to other agencies for further help if needed. This is generally done at the request of the recipients and, therefore, IMW's may do no counseling/referring after aid has been granted in some cases. The fact that IMW's may counsel aid recipients for a small portion of their workday is, in our opinion, insufficient to prove that they are professional employes. In addition, we note that although the IMW's have separate offices, these arrangements were made based upon a need for confidentiality between aid applicants and IMW's during interviews, not upon the professional character of their work. Significantly, we note that the Social Workers to whom Petitioner would have us compare these IMW's currently earn between \$1546 and \$1728 per month, while IMW's currently earn \$1275 per month. Finally, we are unpersuaded that the parties' 1978 stipulation that the predecessors to these IMW's, "Case Aide II's", were professional employes, should bind us to find that these IMW's are professional employes here. As we noted in Outagamie County (District Attorney's Office), Dec. No. 21143-A, (WERC, 10/86):

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

Thus, whatever duties and responsibilities existed in 1978 are irrelevant herein. Based upon the facts of this case, we find that the IMW's are non-professional employes.

Energy Assistant Coordinator

The status of the Energy Assistance Coordinator (EAC) is disputed by the parties. The County asserted that the EAC is an independent contractor, while Petitioner asserted that the EAC is a professional employe and Intervenor contended that the EAC is a non-professional employe.

Section 111.70(1)(b), Stats., defines a municipal employe as any individual employed by a municipal employer, other than an independent contractor. The test to be applied in determining whether an individual is an employe or an independent contractor is the "right of control" test. 5/ In general, an individual is an employe if the employer for whom the services are performed has the right to control the manner and means by which the result of the services is accomplished. 6/ Conversely, where the employer has control only as to result,

5/ Northern Pines Unified Services Center, Dec. No. 17590 (WERC, 2/80).

6/ Madison Metropolitan School District, Dec. No. 6746-E (WERC, 12/86).

the individual providing the service is regarded as an independent contractor. 7/ No one factor is determinative in deciding whether an individual is an employee or an independent contractor. The determination of the relationship between the employee and the employer depends on the particular facts in each case, and requires a weighing of individual factors, such as the manner in which the employee is paid, the benefits the employer receives, if any, the hours the employee works, the degree of supervision the employer exercises over the employee, and the entrepreneurial investment the employee has in the venture, if any. 8/

In the instant case, the County provides all equipment, supplies and an office to the EAC and there is no financial investment on her part. The EAC job is performed in the County's Mental Health Complex building during regular work hours and the County sets the number of work hours the EAC will work. The EAC is hourly paid; she risks no financial loss nor does she stand to make a profit from her work. It is clear that the Director of Social Services, a County Manager, believes that he could evaluate, discipline and/or discharge the EAC pursuant to County policies were such action(s) warranted. The current EAC has deductions made from her pay for Social Security and the County makes pension payments on her behalf (to WRS). Finally, the facts indicate that the EAC applies established guidelines and procedures in assisting EA applicants and that she does not exercise independent judgment in her position. All of these factors tend to support a conclusion that the EAC is an employee, not an independent contractor. Based upon the facts here, we find that the EAC is a County employee.

Furthermore, we find, based upon these facts, that the EAC is not a professional employee under Section 111.70(1)(L), Stats., quoted above. In this regard, we note that an advanced degree is neither required for the position nor does the incumbent possess such a degree. In addition, we note that there is no evidence that the EAC's work is predominantly intellectual and varied or that she exercises independent judgment in her work. Rather, as stated above, the EAC generally applies established guidelines, without exercising discretion, to determine an applicant's eligibility for assistance. Also, the results of the EAC's work can be standardized in relation to time. We also note in this regard that the EAC is hourly paid, not salaried. Finally, the EAC's hourly wage of \$6.00 per hour fails to support the claim that she is being paid in a professional capacity for her professional expertise. Therefore, we find that she is a non-professional employee.

Welfare Fraud Investigator/General Relief Worker

The parties dispute whether the Welfare Fraud Investigator/General Relief Worker (WFI/GRW) is an independent contractor, a professional employee, or a non-professional employee. First, we are convinced, based upon the facts of this case, that the WFI/GRW is not an independent contractor. In this regard, we are swayed by the following facts: although the County may operate the welfare fraud program at either a profit or a loss, Thiem shares in neither the County's profit or loss and the profit, if any, is placed in the County's contingency fund; Thiem has made no financial investment in the WF program or venture and the County supplies him with all equipment and supplies he may need; Thiem is hourly paid (not salaried or commissioned) so that his pay is not truly based upon the results he accomplishes; Thiem can be both disciplined and/or discharged pursuant to County policy, according to Director of Social Services Szatkowski. All of these facts support a conclusion that Thiem, as WFI, is an employee.

Since we have found that the WFI is an employee, we now address the question whether he is a professional employee. Section 111.70(1)(L), Stats., defines a professional employee as:

1. Any employee engaged in work:
 - a. Predominately intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

7/ Id.

8/ Fort Atkinson School District, Dec. No. 24942 (WERC, 10/87).

- 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;
 - b. Is performing related work under the supervision of a professional employee to qualify himself to become a professional employee as defined in subd. 1.

All of the criteria in Subsection 1 or 2 must be met for a position to be deemed professional. Initially, we note that Thiem neither has nor is required to have a college degree as WFI. Specifically, Thiem conducts all County welfare fraud investigations under the direction of both the District Attorney (D.A.) and Anderson. Although Thiem determines what evidence may be sought, what witnesses should be contacted, when and how those witnesses should be contacted and what questions should be put to the selected witnesses, it is the D.A. who determines what evidence will actually be used in each case and which cases will be prosecuted, based upon the results of Thiem's investigations. It is the D.A. who prepares Thiem to testify in Court regarding his investigations, if necessary. In addition, we find it significant that Thiem is hourly paid at a rate far less than that of County Social Workers and this his "employment contract" lists with particularity the tasks that Thiem must perform as WFI. Based upon these facts, we believe that Thiem's WFI position is a non-professional one. Cf. Outagamie County (District Attorney's Office), Dec. No. 21143-A (WERC, 10/86).

Finally, in regard to Thiem's GRW duties, we note that these duties appear to be very similar to those of the County's IMW's. Indeed, had the Department of Social Services agreed, and had the County Board appropriated funds therefor, the IMW's would have taken over these duties in January of 1987. Also, it appears that as GRW, Thiem has consulted with the IMW's. However, the facts also indicate that the GRW position is a new one and is in a state of flux as the County had not determined (at the time of hearing) whether to create a separate GRW position, to retain/hire Thiem for the position or to hire someone else to fill the position. Thus, we cannot and do not decide the status of the GRW position in this decision.

Intensive In-Home Services Worker

Lynn Smith, formerly a County Social Worker, has been employed, pursuant to an individual employment contract, in the position of Intensive In-Home Services Worker (IIHS). The issues before us are whether Smith is a professional or non-professional employee and/or whether Smith is an independent contractor.

We believe Smith's duties clearly indicate her professional status. In this regard, we note that Smith was hired as IIHS Worker because of her experience as a County Social Worker and that she works under the direct supervision of County Social Workers who are professional employees; Smith's work comes from referrals by County Social Workers as a part of the Social Worker's overall plan for the family to receive social work services; Smith's duties, to counsel families and to perform crisis intervention and prevention, involve the application of Social Work principles and the use of independent judgment and discretion in approaching and handling her cases even when the Social Worker in charge has written a detailed social work "contract" for the family. We find, on these facts that Smith is a professional employee.

We now deal with the issue whether Smith should be excluded from the professional unit because she is an independent contractor. We are persuaded that Smith is an employee. In this regard, we note that although there are some indicia present which would support a conclusion that Smith is an independent contractor, the weight of the evidence indicates that she is a County employee. The County furnishes Smith's equipment and supplies; she makes no profit and suffers no loss

if the IIHS program succeeds or fails; she makes no financial investment in the program; although her job is sometimes not performed during regular County business hours, she is expected to achieve certain goals in her cases by particular dates, set by the supervising Social Worker; she is paid on an hourly basis by the County; she attends and is paid for her time in attending about one-half of the weekly Departmental staff meetings; although she is not regularly evaluated, the Social Workers who refer their clients to her determine whether or not she has been successful in achieving the goals set for her in each case; if Smith were to experience job performance problems, she would receive the same assistance and be warned and/or discipline under the same system as other County employees. Based upon this record, we find that Smith, in her IIHS Worker position, is a professional employee eligible to vote in that voting group.

Home Health Agency Nurses

Currently, there are five Home Health Agency Nurses (HHAN's) employed pursuant to independent contracts with the County. Those HHAN's are Chapin, Fortnum, Ingraham, Kasuboski and Stoll. All of these HHAN's are licensed registered nurses and would clearly fit within the Sec. 111.70(1)(L)1., Stats., definition of a professional employee. Cf. Portage County Dec. No. 18792 (WERC, 6/81), slip op. at pp. 3, 5. Indeed, no party here contended that these HHAN's were non-professional employees. Thus, the issue here is whether these HHAN's are independent contractors, or as the County implicitly argues, casuals.

We are persuaded that the HHAN's are regularly employed County employees, despite the individual contracts they have signed in the past. Specifically, we note that each of the HHAN's regularly works in excess of five hours per week; they have been required to sign individual contracts primarily due to Wisconsin regulations; they are all hourly paid, not salaried or commissioned; they receive County benefits (such as WRS, Social Security, vacation, sick leave and longevity pay) although they do not receive County health insurance; they are regularly re-employed by the County, the incumbents having between 3 and 20 years' service to the County as HHAN's; they must guarantee the County a minimum and maximum number of work hours with each patient to whom they are assigned; none of them profits from nor suffers a loss according to the success or failure of the HHA; none of them makes any financial investment in the HHA venture; the County provides all equipment and supplies for the HHAN's; when the HHAN's periodically fill in for Public Health Nurses (who have been stipulated to be professional employees), the HHAN's are paid at the same hourly rate as the Public Health Nurses; the HHAN's are hired according to regular County hiring procedures, and they must attend inservice meetings, keep records and make reports, just as the Public Health Nurses must do; and if there is a complaint about or problem with the work of an HHAN, the Nursing Director follows the same discipline/discharge procedures as she does with regular County Nursing Department employees. Thus, these Home Health Agency Nurses are regularly employed professionals who shall be allowed to vote in the professional employees' voting group we have found appropriate here.

Physical Therapist

The Department of Nursing employs one Physical Therapist (PT), Mary Guell, who has (prior to 1987) signed individual employment contracts with the County. The issues here are whether the PT is an independent contractor or whether the PT is so irregularly employed as to be a casual employee excludable from any unit.

In regard to the latter issue, it is clear that the Commission considers the regularity of employment to be controlling rather than the number of hours worked in a particular period of time. See e.g. Richland County (Senior Citizens Home & Farm, Dec. No. 11484 (WERC, 12/72); City of Medford (Police Department), Dec. No. 16846 (WERC, 2/79); City of Milton (Police Department), Dec. No. 13442-A (WERC, 6/83). Where an individual's work is done on an on-call or as-needed basis, this tends to show that the individual is a casual rather than a regular part-time employee. City of Milton, *supra*. Although the incumbent of the PT position has been "employed" in that position for the past four years, we note that in 1985-1986, she only worked an average of 0.2 hours per week, while in the past year, she has averaged 1.0 hour per week. In addition, the PT receives work from the County only when a private physician orders such therapy for a County homebound patient, which physician's order must also be approved by the Director of Nursing. Thus, the County only secondarily controls the PT's work level and work hours. Furthermore, there is nothing in the PT's individual employment

contract or County policy which requires her to accept referrals from the County or that restricts her employment by others. On balance, we believe that the PT is a casual employee ineligible for inclusion in a unit of regular employees due to lack of community of interest. Therefore, we do not reach the issue whether the PT is an independent contractor.

Nursing Assistants

The Department of Nursing also employs five "Nursing Assistants" (NA's) also known as "Home Health Aides": Waltenberry, Timm, Stobbe, McCarthy and Dickerson. The County contended that the NA's are independent contractors or casuals. Petitioner asserted that the NA's are professional employees. We disagree with the Petitioner and with the County. We find that the NA's are regular non-professional employees.

We have repeatedly found that nurses aides/assistants are non-professional employees. See, e.g. Portage County, *supra*, slip op. at pp. 2, 5-6. We have found nothing in this record to indicate that the County's NA's are professional employees within the meaning of Sec. 111.70(1)(L), Stats. Neither the job description nor the testimony of one NA, proffered by the Petitioner, indicate that the NA's are engaged in "predominantly intellectual" and "varied" work which involves "consistent exercises of discretion and judgment" such that "the output produced cannot be standardized in relation" to time. Rather, these NA's are hourly paid at the rate generally less than County professionals; they are assigned and directed by the HHAN's to perform specific work for specific patients; they do not have their own cases; they perform predominantly manual and physical work, including performing and training home-bound patients to perform daily living tasks and personal hygiene; they report changes in a patient's health to their superiors and do not take action thereon themselves. In addition, the fact that the NA's must complete an eight week hospital aide training course does not make them professionals nor does the fact that they work under the direction of the HHAN's (who are professionals) require us to find them to be professionals. Rather, based upon the nature and types of duties they perform, the NA's are not professional employees.

Furthermore, we do not believe that the NA's are either casuals or independent contractors based upon the record here. In regard to the issue of their "casual" status, we note that these five NA's have been regularly employed over the past year for from 24 to 34 hours per week; the County has consistently offered these five NA's employment contracts over a long period of time, ranging from 2.5 years to 14 years; the need for their services does not depend upon physician prescription, as with the PT. Thus, we find no basis upon which to hold that the NA's are casual employees.

In regard to the issue whether these NA's are independent contractors, we note that they are hourly paid; they sign the same contract as all other Home Health Agency workers due in large part to the same State regulations requiring such contracts; they receive full County benefits with exception of health insurance; the same County hiring, disciplining and evaluation procedures apply to them as apply to the Public Health Nurses who have been stipulated to be County professional employees; they receive all needed supplies and equipment from the County; they do not risk their own capital on the HHA nor do they make a profit or suffer a loss due to their NA work; they are required to attend County training and in-service sessions; they use the Department of Nursing office to prepare required reports and to confer with HHAN's on their cases. The fact that the hours of work and the workplace(s) of these NA's vary slightly from those of other County employees is insufficient to show that these NA's are independent contractors especially in light of the overall control, exerted by the County, as described above, over the manner and means of performance of their work. Finally, we note that the Homemaker's duties, described in Finding of Fact 36, are very similar to those of the NA's. Therefore, based upon the facts of this case, the NA's are non-professional employees.

Community Health Technician

Betty Freimark is the incumbent of the Community Health Technician EPSDT (CHT) position. Petitioner argued that the CHT is a professional position, while the County and Intervenor argued that it is non-professional. We find it significant that only an eight week nursing assistant course is required for the CHT position; the CHT job description lists specific tasks to be performed by the

CHT rather than listing goals or objectives to be accomplished and professional techniques to be employed, as do job descriptions for professional employees; the CHT also performs all necessary clerical work; the CHT is hourly paid rather than salaried or commissioned; the CHT essentially assists Public Health Nurses in testing school-aged children and other County residents for health, vision and hearing problems, rather than consistently performing these duties on her own. Thus, the facts demonstrate that the CHT is not a professional employee under Sec. 111.70(1)(L), Stats. The fact that the CHT works under the supervision of the Public Health Nurses and the Director of Nursing is insufficient to prove that she is a true professional employee. Given the foregoing and as her duties, experience, and training are similar to the NA's and the Homemaker, we find the CHT non-professional.

Job Coach at Fox River Industries

Vanessa Mangart is the incumbent of the "Job Coach" position. The Petitioner argued that the position is a professional one while the County contended that Mangart is an independent contractor. Intervenor did not make any claims in addition or contrary to those of Petitioner and the County. The facts here demonstrate that the Job Coach is a professional position and that Mangart is not an independent contractor.

Although Mangart is salaried, her salary is based upon the assumption that she will regularly work full-time (35 hours per week) and her salary is not based upon the results she obtains in her work; although her workplace varies, she works at the FRI with FRI clients when she is not visiting clients outside the FRI; both Van Ness and Koon check Mangart's charted work hours for accuracy each month before they are approved and a voucher is submitted to the Unified Board for payment; Mangart does receive compensatory time off and holiday pay from the County; and Mangart does not make a financial investment in the FRI nor does she stand to lose or profit from its functions. The fact that Mangart exercises independent judgment in her interactions with her clients appear to be due to her professional status rather than her alleged independent contractor status. On balance, we believe that in the JC position, Mangart is not an independent contractor.

With regard to the issue of Mangart's professional status, we find it significant that a college degree in social work is required for the job and that Mangart possesses such a degree; her work with clients and the business community cannot be measured or standardized in relation to time; she must exercise judgment and discretion in her duties of training, evaluating and assisting clients at their job sites as well as in her duties regarding seeking and gaining contracts for work in the business community; her work is intellectual and varied in character as her job description indicates, among other things, that she must determine how, when and where best to accomplish the goals of placing and maintaining as many clients as possible in regular jobs in the community. Based upon the fact herein, we find that Mangart in her Job Coach position is a professional employee eligible to vote in the professional voting group herein.

Teacher/Instructor at Fox River Industries

A. Teacher and Physical Education Instructor

There is one "Teacher," Janice Palecek, employed at the FRI. There is one "Physical Education Instructor," Dallas Lewallen, employed at the FRI. Both of these jobs require college degrees and both of the incumbents possess such degrees. None of the parties contended that these individuals were non-professionals once the facts regarding them were placed on the record. The record clearly supports a finding that these positions/incumbents are professional. Therefore, we find them to be professionals and eligible to vote in the professional voting group herein.

B. Instructor I - Pre-Vocational Training and Instructor I - Self Care

The positions/incumbents of the "Instructor I - Self Care" (SC) and the Instructor I - Pre-Vocational Training (PVT) are a different matter, however. In regard to both the SC and the PVT positions, the Petitioner argued that these positions are professional ones while Intervenor asserted that they are non-professional positions. The County supported Intervenor's argument regarding the SC position but contended that the PVT position was occupied by an independent

contractor. We believe that the facts demonstrate that both the SC and the PVT are non-professional employees of the County

In regard to the PVT position and the County's assertion that it is occupied by an independent contractor, we note that the incumbent, Ganka, neither invests in the PVT program nor does she stand to profit or lose by its success or failure; she is a full-time, hourly paid worker; she receives some County benefits, such as compensatory time and holidays; Ganka's work hours are checked by both Koon and Van Ness; and Ganka's regular workplace is the FRI. In addition, the evidence showed that Ganka has received Workers' Compensation benefits and County-paid medical bills for an on-the-job injury she suffered during her tenure as PVT. We believe that the facts show that Ganka is an employee of the County not an independent contractor.

Although Ganka has input into how to accomplish her teaching goals with clients, we believe that the facts of this case do not support a conclusion that the PVT is a professional position. We note that an advanced degree is neither required for the PVT position nor held by Ganka; Ganka's pre-vocational training work, although involving the use of judgment and discretion is essentially routine manual and physical work -- showing clients how to perform tasks, step by step and supervising them during work production; the output of Ganka's work can be standardized in relation to time, in that her success in training clients and the quality of their work can be readily measured; Ganka is paid less than Lewallen and Palecek; Ganka is supervised by DD Coordinator Koon and does not create the program she teaches. In sum, we do not believe Ganka is a professional employee and we find that she properly belongs in Intervenor's Courthouse unit as a non-professional.

Lorraine Johnson is the incumbent of the Instructor I - Self Care (SC) position. As Johnson receives full County benefits and is considered a full-time County employee, the only question with regard to Johnson and the SC position is whether the position is a professional one. In this regard, we note that Johnson neither possesses nor is required to possess an advanced degree to hold the SC position. In addition, although Johnson possesses many years of experience dealing with the developmentally disabled, such experience is not required for the SC position. Also, there are similarities between Johnson's work (training the disabled to perform personal hygiene, self care tasks, general living skills and weight control) and the work of the Nursing Assistants and the Homemaker. The SC's other duties, acting essentially as a teacher's aide at FRI, are also similar to those of the Instructor I. Therefore, we find that Johnson in the SC position is a non-professional employee.

Developmental Disabilities Coordinator

Rebecca Koon has been employed by the County as Developmental Disabilities Coordinator (DDC) since 1980. The County contended she is a supervisory/managerial employee while both Petitioner and Intervenor contended she is a professional employee. In regard to these issues, we believe that the facts of this case demonstrate that Koon is a supervisor and, therefore, we need not reach or decide the other issues regarding her status.

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

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

In interpreting this statutory definition, the Commission has, in numerous decisions, listed the following factors as those to be considered in determining 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 skills 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.

Furthermore, the Commission has held on numerous occasions that not all of the above-listed factors need be present but that they must be present in sufficient combination and degree for a finding of supervisory status to be justified. Although the Unified Board has policies regarding its final authority to hire, discipline, discharge and promote its employees, Koon effectively recommended the discharge of one probationary employee during her tenure and Koon has been consistently involved in the evaluation and recommendation of the top three candidates to be interviewed by the Unified Board and considered by it for hire. Similarly, since her hire by the Unified Board, Koon has annually evaluated FRI staff as their immediate supervisor. Koon also regularly assigns cases to DD staff; she calls and conducts weekly staff meetings at FRI; she is the immediate supervisor of the four members of Intervenor's "Courthouse" unit employed at FRI. Although Koon is a working supervisor who handles her own caseload, we note that she is the only supervisor present at FRI over the eleven FRI employees, on the two days per week when Van Ness is working at the Mental Health Clinic. Koon receives pay higher than that of County professional employees. In sum, we believe that Koon exercises sufficient supervisory authority and possesses sufficient indicia of such authority to justify her exclusion from any appropriate bargaining unit here as a supervisory employee.

Mental Health Clinic Coordinator

Thomas Powell has been employed as the Mental Health Clinic Coordinator (CC) since 1985. The parties made the same arguments with regard to Powell's status as they did with Koon. Again, upon weighing all of the evidence against the relevant factors, we find that Powell in his CC position is a supervisor and, therefore, we do not reach or decide any of the other issues pressed by the parties regarding Powell's status.

We note that Powell has essentially the same authority regarding recommended hiring, discipline and discharge of his staff that Koon has although he has not had occasion to recommend a discharge; Powell is also salaried at a higher rate than County professionals; Powell is the sole supervisor present at the Clinic on the three days of the week that Van Ness works at the FRI; Powell evaluates Clinic staff at the same level as Koon evaluates FRI staff; Powell calls and conducts weekly staff meetings in Van Ness' absence; and Powell supervises the two members of Intervenor's "Courthouse" unit along with the other six Clinic employees on a day-to-day basis.

Based upon these facts and the fact that Powell spends less than a majority of his work time working on his own caseload, we find that Powell possesses sufficient indicia of supervisory authority to justify his exclusion from any bargaining unit herein as a supervisor. 9/

9/ The fact that the CC position was included in the professional voting group in 1978, does not necessitate a different conclusion, given the fact that the inclusion of the position was based upon a stipulation not upon any hearing of the facts surrounding the issue of its inclusion or exclusion. In addition, as noted earlier, it is the facts which presently exist which we utilize to determine an individual's status.

Child Support Worker II

Judith Street has been employed by the County since 1976. Petitioner and Intervenor contended that she is a professional employee, while the County asserted that she is a supervisory/managerial employee who should be excluded from any unit. The facts demonstrate that Street is a supervisory employee and, therefore, we do not reach or decide the other issue raised by Petitioner and Intervenor with regard to Street's status.

Street is the only County employee with authority to assign work to, evaluate and direct the work of the full-time Child Support office clerical, Stellmacher, a member of Intervenor's "Courthouse" unit. Street also significantly participated in the selection of candidates, the interviewing of top candidates and she recommended that Stellmacher be hired into this clerical position. Street also authorizes the keeps track of Stellmacher's vacation, sick leave, overtime, work hours and payroll. Street is paid at a level similar to Koon and Powell. On balance, we believe that although Street engages in a significant amount of professional case work as CSW, she should be excluded from any unit as a supervisory employee.

Veteran's Transportation/Service Officer

Petitioner claimed the Veteran's Transportation/Service Office (VT/SO) is a professional position. The County and Intervenor claimed that the VT/SO is non-professional. We agree with the County and the Intervenor. We note that the VT/SO position does not require an advanced degree. Furthermore, there is no evidence to show that the VT/SO is engaged in predominantly intellectual and varied work involving the consistent exercise of discretion and judgment, the output of which cannot be standardized in relation to time. Rather, the record indicates that the VT/SO spends a good deal of his time in the simple transportation of veterans around the state and that the Veteran's Benefits Administrator, Phyllis Benson, processes veterans' claims under the statutes and handles all paperwork on her own. The interfacing/liaison work and attendance at meetings which the VT/SO engages in does not appear to require any special knowledge or expertise. Rather, the only apparent special requirements for this VT/SO position are that the candidate has been "elected" by the County Board of Supervisors and has served in the armed forces, at least one day of such service having been during wartime.

Based upon the above facts and circumstances, we believe that the VT/SO position occupied by Victor Klawitter is a non-professional position.

Chief Deputy, Sheriff's Department

The County contended that Ronald Klick, the Chief Deputy of the Sheriff's Department, cannot constitute an appropriate law enforcement supervisory unit as such unit would then only contain Klick - who the County and the other parties conceded is a supervisory employee.

Section 111.70(8) Stats., specifically recognizes the appropriateness of supervisory law enforcement units and contains no limitation on the size of such units. Under such circumstances, we reject the County's argument. 10/

10/ We have certified "one-man" units under the Wisconsin Employment Peace Act: Strauss Printing Co., Inc., Dec. No. 17736 (WERC, 5/80); Amalgamated Meatcutters, Local 444, AFL-CIO v. Parkwood IGA, et al., Dec. Nos. 10761-B and cases cited thereon (Fleischli 9/72) aff'd, Dec. No. 10761-C (WERC, 2/73).

Summary

We have directed elections in the supervisory law enforcement unit and the professional voting group and have ordered that the currently unrepresented non-professionals be included in Intervenor's existing "Courthouse" unit.

Dated at Madison, Wisconsin this 6th day of November, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner