

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
:
  
In the Matter of the Petition of :
  
:
  
MARINETTE COUNTY : Case 105
  
: No. 44795 ME-3071
  
Involving Certain Employees of : Decision No. 26675
  
:
  
MARINETTE COUNTY :
  
:
  
-----

Appearances:

Mr. James E. Murphy, Corporation Counsel and Mr. Steve O'Malley, County Administrator, P.O. Box 320, Marinette, Wisconsin 54143, appearing on behalf of the County.

Mr. Pat Coraggio, Labor Consultant, 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222, assisted by Ms. Judith LaPlant, Ms. Sandy Waugus, and Ms. Yvonne Brault, appearing on behalf of Labor Association of Wisconsin.

Lawton & Cates, S.C., Attorneys at Law, by Mr. Bruce M. Davey, 214 West Mifflin Street, Madison, Wisconsin 53703-2594 and Mr. Steve Hartmann, Staff Representative, P.O. Box 676, Rhinelander, Wisconsin 54501, appearing on behalf of AFSCME Council 40.

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

On November 24, 1989, the County petitioned the Commission to combine the professional employes in three existing units into one bargaining unit, to conduct an election in that unit, and to order that the nonprofessionals in the existing units be placed in another existing unit. Pursuant to notice, a telephone pre-hearing conference was held on March 7, 1990 and hearing was conducted at the Marinette County Courthouse, Marinette, Wisconsin, on March 19, 1990, by Marshall L. Gratz, a member of the Commission's staff. The parties reserved the right to submit initial and reply briefs, the last of which was received on June 21, 1990.

On August 10, 1990, the Commission requested further information from the parties by way of stipulation, and by August 23, 1990, that information was received by the Commission in a form stipulated to by all parties. Thereafter, AFSCME submitted a request on September 29, 1990, that those employes working at the County's Shelter be deleted from this proceeding on the ground that the County transferred the Shelter to a private, non-profit organization effective on January 1, 1991. On October 8, 1990, the County confirmed in writing that its Shelter employes (consisting of employes in the classifications of Night Shelter Worker, Secretary/Shelter, Shelter Worker I, Shelter Worker II and Day Coordinator) will no longer be County employes. Both the County and LAW agreed with AFSCME, for that reason, that those classifications shall be deleted from this proceeding. Accordingly, no reference to those positions is made herein.

The Commission has considered the record and, being fully advised in the premises, issues the following Findings of Fact, Conclusions of Law, Direction of Election and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. The Petitioner in this proceeding, Marinette County (referred to herein as the County), is a municipal employer with its principal offices located at the County Courthouse, 1926 Hall Avenue, Marinette, Wisconsin. The County is governed by the Marinette County Board of Supervisors (referred to herein as the County Board). The employes of the County are organized into various departments, and policy matters affecting the departments are the primary responsibility of various governing committees of or boards appointed by the County Board. Until January 1, 1990, the County had separate Public Health Department, Social Services Department and Unified Services Board/ADAPT Agency, governed respectively by the County Board's Public Health Committee, Social Services Committee and Unified Services Board. The Public Health Committee and Social Services Committee consisted of the same five individuals meeting at separate times to consider separate agendas. Effective January 1, 1990, the Social Services Department and Unified Services Agency were organizationally consolidated into a single Human Services Department, and a newly created County Board committee, the Health and Human Services Committee, was given governing committee responsibility with respect to the new Human Services Department and the existing and still-organizationally separate Public Health Department, replacing the three previously-existing governing bodies. The County Board Personnel Committee is responsible for directing collective bargaining with the County's represented bargaining units and for recommending collective bargaining agreements for County Board approval. The collective

bargaining negotiations with the units at issue herein are conducted by variously-composed teams led by County Administrator Steve O'Malley. The County Administrator has administrative responsibilities in relation to all of the County's departments. The County presently has relationships with regard to the following nine units, represented by affiliates of the labor organizations noted in parentheses, and consisting of the approximately the following numbers of employes:

Existing units potentially affected by the instant petition:

Social Services Department Professionals (LAW) 18  
Public Health Department Professionals (LAW) 9  
Unified Services Board/ADAPT Professionals and Nonprofessionals (AFSCME) 34  
Courthouse and Related Departments Nonprofessionals (AFSCME) 110

Existing units not potentially affected by the instant petition:

Highway Department Nonprofessionals (IUOE) 43  
Sheriff Department Deputies (WPPA) 25  
Sheriff Department Supervisory Staff (independent) 6  
Pine View Nursing Home Nonprofessionals (AFSCME) 137  
Pine View Nursing Home Registered Nurses (AFSCME) 13

The County's approximately 50 remaining unrepresented employes are excluded from the various units as supervisory, confidential or managerial.

2. Labor Association of Wisconsin (referred to herein as LAW) is a labor organization with principal offices at 2825 North Mayfair Road, Wauwatosa, Wisconsin 53222. LAW has been represented in its dealings with the County by Labor Consultant Patrick J. Coraggio. The Social Services Professionals unit (referred to herein as the Social Services unit) is represented by the LAW-affiliated Professional Staff of the Marinette County Department of Social Services Marinette County. It consists of

all regular full-time and all regular part-time professional employees of the Department of Social Services, excluding managerial and supervisory employes.

The Public Health Professionals unit (referred to herein as the Public Health unit) is represented by the LAW-affiliated Marinette County Public Health Professional Association. It consists of

all regular full-time and all regular part-time professional employees of the Public Health Nursing Service, excluding managerial and supervisory employes.

3. Wisconsin Council of State, County and Municipal Employes, Council 40, AFSCME, AFL-CIO (referred to herein as AFSCME) is a labor organization with principal offices at 5 Odana Court, Madison, Wisconsin 53719. AFSCME has been represented in dealings with the County by Staff Representative Steve Hartmann, whose direct mailing address is P.O. Box 676, Rhineland, Wisconsin 54501. The Unified Services Board/ADAPT Professionals/Nonprofessionals unit (referred to herein as the Unified Services unit) is represented by the AFSCME-affiliated Marinette County Unified Services Board (ADAPT) Employees. It consists of

all regular full-time and all regular part-time employees of the Unified Services Board, excluding managerial and supervisory employes.

The Courthouse Nonprofessionals unit (referred to herein as the Courthouse unit) is represented by the AFSCME-affiliated Marinette County Courthouse Employees, Local 1752. It consists of

all regular full-time and regular part-time employees of the Marinette County Courthouse and related classifications as listed in Appendix A (of the applicable 1989-90 Agreement), but excluding all elected personnel, supervisory personnel and confidential personnel as defined in the Act.

The Courthouse unit includes nonprofessional employes in approximately 83 classifications in various County departments including but not limited to Social Services, Public Health, County Clerk, Register of Deeds, District Attorney, Clerk of Courts, Finance, Property Listing, Data Processing, Maintenance, Forestry, Parks, Emergency Government, but not including Pine View Nursing Home, the Highway Department and the Unified Services/ADAPT agency.

4. In its petition filed on November 21, 1989, the County requests that the Commission direct an election in a professionals-only bargaining unit combining the professionals in what were then the Unified Services Board/ADAPT Agency and the Social Services Department (i.e., in what is now the new Human Services Department described in Finding of Fact 11j, below), with the professionals in what was and remains the Public Health Department. If the Commission does not find that proposed bargaining unit appropriate, the County alternatively, requests an election be directed in a unit consisting of the professionals in the new Human Services Department. The County further requests that the nonprofessionals currently in the Unified Services Board/Adapt unit be included, without a vote, in the Courthouse unit. The County contends that all the employes presently in the Social Services and Public Health units should be deemed professional and eligible to vote and that only the individuals listed under "Positions stipulated professional in existing Unified Services unit" in Finding of Fact 5, below, should be deemed professional from among the employes presently in that unit. The County asserts that its petition is timely filed, but it requests that if the Commission concludes otherwise that the Commission specify on what date filing of the petition would be deemed timely.

5. AFSCME opposes the County's request for an election, arguing that the petition is untimely under the Commission's contract bar and interest arbitration bar doctrines, especially given the timing of the County's voluntary recognitions in relation to its Human Services reorganization decision making. AFSCME argues further that neither of the units alternatively claimed appropriate by the County and LAW is an appropriate unit because the professionals in the Unified Services unit constitute an appropriate unit onto themselves and do not share a community of interest with the professionals in either the Public Health unit or the Social Service unit. AFSCME alternatively argues that if an election is conducted in a unit combining Unified Services unit professionals with other professional employes, then the appropriate unit should be limited to professionals in the new Human Services Department and should not include the professionals in the still-separate Public Health Department and bargaining unit. AFSCME further argues, contrary to the County and LAW, that if an election is directed involving professionals in the Unified Services Board unit, the Commission should declare that the following positions currently in the Social Services unit are nonprofessionals and hence not eligible to vote in the election and properly placable without a vote in the Courthouse unit:

Disputed positions in the Social Services unit:

Darlene Withrow	Homemaker
Sandra Waugus	Front End Verification Specialist
Orville Gauthier	Fraud Investigator

AFSCME agrees with the County and LAW that the balance of the Social Services Professionals, as listed below, are professionals:

Positions stipulated professional in the Social Services unit:

Mary Holzbauer	Social Worker I
Erinn Burmeister	Social Worker I
Kerry Valley	Social Worker I
Wendy Kahl	Social Worker I
Pamela Goes	Social Worker I

Mark Minzlaff	Social Worker II
Bonnie Ehlers	Social Worker II

Judith LaPlant	Social Worker III
Catherine Malesa	Social Worker III
Helen Jo Case	Social Worker III
Larry Mullinst	Social Worker III
Theresa Picard	Social Worker III
Marvin Balwitt	Social Worker III
Louis Rizzardi	Social Worker III
John Gustafson	Social Worker III

Steve Smith	Social Worker V
-------------	-----------------

AFSCME further argues, contrary to the County (with LAW taking no position on the question) that if an election is directed involving professionals in the Unified Services unit, then the following positions currently in that unit should be deemed professionals eligible to vote in that election:

Disputed positions in the Unified Services unit:

Wesley Harper	Community Support Worker
---------------	--------------------------

Cynthia Houle  
Mary Edlebeck

Community Support Worker  
Community Support Worker

AFSCME agrees with the County that the professional/nonprofessional status of the balance of the positions in the Unified Services unit breaks down as follows:

Positions stipulated nonprofessional in the Unified Services unit:

Marlene McGowan	Administrative Secretary/Bookkeeper
Marjorie Wawrzon	Secretary/Medical Transcriber
Doris Costello	Long Term Secretary
Louis Outcelt	Secretary/Community support
Gretchen Aaby	Receptionist/Clerical
Dianna Agatone	Accounts Receivable/HSRS
Mary Scoon	Accounts Receivable/OWI
Sue Baxter	Insurance Specialist

Positions stipulated professional in the Unified Services Board unit:

Cammie Grutza	Prevention Worker
Cathy Dau	Prevention Worker
Kristina Preston	Protective Services
Angela Zagrodnik	Protective Services
Karla Westphal	Developmentally Disabled Case Manager
Pamela Bruso	Developmentally Disabled Case Manager
Susan Neumann/Bork	Early Childhood Worker
George Thottakara	AODA (Alcohol and other Drug Abuse) Counselor
Laura Jacobson	AODA Counselor
Donald Brunn	AODA Counselor
Sharon Brunn	AODA Counselor
George Thottakara	AODA Counselor
Lois Mattson	Coordinator of Inpatient Services
Sue Mueller	Crisis Worker
L. William Topel	Psychologist
Pat Cartwright	Mental Health Therapist
Donald Eack	Mental Health Therapist
Judith Peterson	Mental Health Therapist
Mary Beth Erickson	Mental Health Therapist
William Camp	Chief Psychologist

AFSCME takes no position concerning the professional/nonprofessional status of the positions in the existing Public Health unit.

6. LAW joins in the County's alternative requests for direction of an election in a combined unit of professionals, and LAW argues that the petition is timely. LAW also joins the County in the undisputed assertion that all of the positions in the existing Public Health unit, as listed below, are professionals:

Positions stipulated professional in the Public Health unit:

Mary Colasscco	Staff Nurse
Sharon Wilson	Staff Nurse
Sherry Stender	W.I.C. Nutritionist
Elizabeth Boyle	Special Programs Nurse
Karen Everson	Special Programs Nurse
Sharon St. Clair	Special Programs Nurse
Marcia Britaine	Special Programs Nurse
Coleen Risner	Special Programs Nurse
Yvonne Brault	Public Health Staff Nurse
Karen Townsend	Public Health Staff Nurse

LAW further argues that all of the positions in its existing Social Services unit are professionals, including the incumbent Homemaker, Fraud Investigator and Front End Verification Specialist which AFSCME contends are nonprofessional. LAW takes no position regarding the status of any of the

positions in the existing Unified Services unit, but it agrees with the County and AFSCME that the nonprofessionals in the existing Unified Services unit should be ordered included the Courthouse unit without a vote.

7. At the time the County filed the instant petition on November 21, 1989, the Social Services unit had a 1988-1989 agreement due to expire on December 31, 1989, with no expressed date(s) for the reopening of negotiations about a successor agreement. Negotiations with LAW had been scheduled to begin in November 1989, but they did not go forward as scheduled because the County questioned the appropriateness of the bargaining unit. (After the filing of the petition, the County and LAW agreed upon a one year agreement extension with only wages modified, moving the expiration date to December 31, 1990.) The County has bargained collectively with and entered comprehensive written agreements with representatives of the Social Services unit since 1980. Until early 1989, the unit was unaffiliated with any outside organization. In early 1989, the unit internally voted to affiliate with LAW and so informed the County which promptly recognized LAW as the exclusive representative.

8. At the time the County filed the instant petition on November 21, 1989, the Public Health unit had a 1989-90 agreement in effect which was to expire on December 31, 1990 and which specifies no date(s) for the reopening of negotiations about a successor agreement. The 1989-90 agreement was the County's first covering that unit. The County voluntarily recognized LAW as exclusive representative of that unit in early 1989. The members of the bargaining unit considered whether to request that their group be merged with the Social Service unit, but they chose to seek representation in a separate unit, as noted above. Prior to that time, County representatives sometimes offered members of the bargaining unit an opportunity to discuss wages, but the ensuing discussions did not culminate in written collective bargaining agreements and did not deal with subjects other than wages.

9. At the time the County filed the instant petition on November 21, 1989, the County and AFSCME had no collective bargaining agreement in effect and were in the process of negotiating the initial Unified Services unit contract. Following preliminary discussions, the bargaining teams met bilaterally seven times between April 18 and September 13, 1989 and with the assistance of a mediator/investigator on October 4, 1989. AFSCME filed a petition for interest arbitration on or about July 3, 1989, and that petition was pending at the time the County's instant petition for election was filed. (After the election petition was filed, the County and AFSCME reached a tentative agreement which was mutually ratified by December 21, 1989. It consisted of a 1989-90 agreement which is to expire on December 31, 1990 and which specifies no date(s) for reopening of negotiations about a successor agreement.) There was no collective bargaining relationship affecting the Unified Services unit from the time the Unified Services Board was created in 1974 pursuant to Sec. 51.42, Stats., until AFSCME requested voluntary recognition as exclusive representative for that unit on January 16, 1989 and was granted it by the County sometime between March 7 and 14, 1989.

10. Section 46.23(1), Stats., describes the intent of Sec. 46.23 as:

. . . .

to enable and encourage counties to develop and make available to all citizens a comprehensive range of human services in an integrated and efficient manner; to utilize and expand existing governmental, voluntary and private community resources for the provision of services to prevent or ameliorate social, mental and physical disabilities; to provide for the integration of administration of those services and facilities organized under (ch. 46, Social Services) through the establishment of a unified administrative structure and of the unified policy-making body; and to authorize state consultative services, reviews and establishments of standards and grants-in-aid for such programs of services and facilities.

Section 46.23(2)(a), Stats. defines "Human services" as

. . . the total range of services to people including, but not limited to, health care, mental illness treatment, developmental disabilities services, general relief, income maintenance, probation and parole services, alcohol and drug abuse services, services to children, youth and aging, family counseling, exceptional educational services and manpower services.

Section 46.23(3)(b)1, Stats. provides:

(b) **Transfer of other county powers and duties.**

1. If a county department of human services is established under par. (a), the county board of

supervisors in a county with a single-county department of human services or the county boards of supervisors in counties with a multicounty department of human services shall transfer the powers and duties of the county departments under ss. 46.22, (County Social Services Department) 51.42 (County Mental Health, Developmental Disabilities, Alcoholism and Drug Abuse Services) and 51.437 (County Developmental Disabilities Services) to the county department of human services. The county board of supervisors in a county with a single-county department of human services and the county boards of supervisors in counties with a multicounty department of human services may transfer the powers and duties of the following to the county department of human services established under par. (a):

a. A county unit created by the county board of supervisors exercising its authority under s. 59.025.

b. A board of health or health officer appointed under s. 140.09.

c. A county health commission or committee created under s. 141.01.

d. Any other human services program under county control.

11. The County has considered creation of a Human Services Department at various times since 1974. The chronology of those developments has been as follows:

a. In 1974, the idea of becoming one of a few demonstration counties to try the Human Services concept was considered and not approved by the County Board.

b. In 1985, the County undertook a feasibility study on the subject which was completed in 1986. At that time the County Board deferred creation of a Human Services Department but: authorized location of the Social Services Department in a building that would permit reserving maximum space possible to permit a second and, in time, a third agency to be co-located with the Social Services Department; directed that County government incorporate Human Services concepts to whatever extent was possible and advantageous on an unofficial basis; and created an interagency coordination council to improve coordination while operating separately.

c. On January 12, 1988, the Director of the Social Services Department resigned and the County appointed an Interim Director. At that time, O'Malley convened various meetings on the question of whether the time was right for formal creation of a Human Services Department.

d. Thereafter, on May 19, 1988, the County Board adopted a resolution establishing a long range goal of creation of a Human Services Department combining the three organizational entities of Social Services, Unified Services and Public Health. In doing so, however the County Board expressly noted that its resolution was not specifying a target date for creation of the new department and that establishment of the long range goal was intended to be used only as a guideline for evaluating future policy considerations.

e. On January 16, 1989, the Director of the Unified Services Board/ADAPT Agency resigned and an Interim Director was appointed. On February 16, 1989, the Unified Services Board and the Social Services Committee met jointly and agreed to recommend that the County Board create a position of Human Services Director to head both the Social Services Department and the Unified Services Agency while they continued to operate separately and further recommending that the County Board direct the Social Services Committee and the Unified Services Board to work toward developing a plan for consolidation of those two entities, Services and Unified Services (i.e., not including the Public Health Department at least at that time) with a targeted effective date for creation of the new Human Services Department of January 1, 1990.

f. On March 23, 1989, the County Board approved that joint recommendation in its entirety.

g. On June 22, 1989, Robert Jarentowski was confirmed by the County Board as Human Services Director.

h. Thereafter a planning committee consisting of Jarentowski and representatives of the Social Services Committee and Unified Services Board was formed. That planning committee met biweekly beginning August 16, 1989. It surveyed and visited other counties' Human Services Departments, completed the feasibility study required by Sec. 46.23, Stats., and made various recommendations to the County Board. In its September 26, 1989 report and recommendations, the planning committee recommended combining the Social Services and

Unified Services into a single Human Services Department and made no reference to the Public Health Department. The planning committee's stated expectations in that report were that, if its recommendations were adopted:

Initially, since co-location will not be possible, there will be little, if any significant change in how services are provided. There will be no changes in staffing levels or job duties as a result of Human Services. . . . It is expected that multi-problem families will be better served as awareness of available services is increased due to a single agency. Obviously increased coordination of services and communication among service providers will occur.

The planning committee's stated rationale for the scope of its proposed new department was:

Size of consolidation (sic) department feasible. Particular departments identified have most in common in terms of mission, relationship to State structure, and funding.

With regard to the anticipated impact on "Organizational Structure", the planning committee recommended:

The combination of the two current department structures under the direction of a single governing board and a single administration. Rationale: Maintain all staff positions in current organizational pattern to minimize disruption of client services and uncertainties of staff members.

With regard to "Timetable," the planning committee recommended:

During 1990 staff from both agencies will meet to plan improved consolidation and coordination of services. Also, during 1990 planning for possible co-location of services and exploring the feasibility of outpost services will be explored.

No references to present or future integration of the Public Health Department were recommended or discussed in that report.

i. In September of 1989, Dale VanMieghem was appointed as Jarentowski's Deputy.

j. On October 19, 1989, the County Board adopted the planning committee's recommendations. They included the following actions, effective January 1, 1990: creating a Human Services Department combining the Social Services Department and Unified Services Board/ADAPT agency into a single agency; transferring all Social Services and Unified Services employes to the new Department with "internal re-organization of said department (to) be gradually developed" by the new Department and Board; delegating all powers and duties of the Social Services Committee and Unified Services Board to a new Human Services Board; and providing that the new Board shall have the full power and authority as outlined in Sec. 46.23, Stats.

k. On November 14, 1989, at a Unified Services Board meeting, the consequences of the October 19, 1989 County Board resolution were discussed as regards their impact on the Public Health Department. The question arose whether there remained a separate and distinct Public Health Department. O'Malley later met with the County Board supervisors involved and clarified the fact that a separate Public Health Department would remain in existence and that its governing committee would be the same body as would be the governing committee for the new Human Services Department. Although referred to as a Human Services Board in the October 19, 1989 resolution, that body is referred to as the County Board's Health & Human Services Committee.

12. Following January 1, 1990, the Public Health Department has remained a separate department from the Human Services Department. The Public Health Department continues to be supervised by its own Public Health Director and Public Health Nursing Supervisor. The governing committee of the Public Health Department was changed to the full Health & Human Services Committee, though it remains to be determined by that committee whether it will agenda Public Health Department matters separately from Human Services Department matters. The County intentionally did not include the Public Health Department in the newly created Human Services Department. It chose not to do so, at least in part, because the task of combining Social Services and Unified Services was considered sufficiently complex by itself. In addition, the Director of Public Health was opposed to the idea of including the Public Health Department in the contemplated Department of Human Services. At the present time, it is unknown whether the Public Health Department will be included in the Human Services Department at some future time.

13. From January 1, 1990, to the March 19, 1990 hearing in this matter, the Human Services Department has combined the clerical and administrative personnel from Social Services and Unified Services under the direction of a single Department financial manager, with some changes in how and by whom the work is being performed in that combined division. However, none of the professional employes at issue herein are employed in that division. The other five operational divisions within the Human Services Department have remained organizationally intact relative to their structure and composition prior to the January 1, 1990 reorganization. Thus, the former Social Services divisions of Adult Services, Child Welfare and Income Maintenance, and the former Unified Services divisions of Long Term Support and Short Term Support now constitute identically named and structured divisions within the new Human Services Department. Except for two Human Services Department-wide meetings at which information about the reorganization was disseminated, there have been no significant changes to date in how and by whom the work of the new Department is being performed, relative to the pre-January 1, 1990 situation. A variety of measures designed to gradually integrate the work of the employes in the new Department are under active consideration by Department supervision, however.

14. The general nature of the duties of Public Health unit personnel is ministering to the physical health of County residents either in the form of home care as prescribed by a physician or public health nursing services at homes, at the nurse's office or in clinics open to the public. All but one of the positions in the unit require the employe to be a registered nurse and the remaining position requires a registered dietician or at least a dietician meeting State WIC Office competency requirements. The Public Health Nurse position description describes the type of work done by two of the ten members of the bargaining unit, as follows:

GENERAL STATEMENT OF POSITION: The nurse is responsible for promoting optimal health for individuals and families having both minor and complex health care needs. The health of the community is improved through primary prevention and health promotion as the nurse delivers care to protect families and individuals from communicable diseases, potential environmental hazards, as well as providing direct or indirect participation in the management of an individual's acute or chronic illness.

EXAMPLES OF DUTIES: Conducts clinics for the elimination of vaccine preventable illnesses to the population. Investigates reported cases of communicable diseases to identify individuals at risk for the development of such diseases. Conducts screening clinics and programs for the population as a whole. Provides appropriate health services to other agencies having a contractual agreement with this agency. Provides home visits to those individuals and families identified as having acute/chronic health care needs. Provides consultation services to schools. Collaborates with other disciplines both within and outside of the health care field for continuity of patient care. Provides work direction and supervision of nursing assistants who are serving agency patients. Assists with the learning needs of other staff members and students. Maintains accurate patient documents and confidentiality. Participates in continuing education and staff inservices. Performs related duties as assigned by the nursing supervisor or director.

The position description of the Special Program Nurse describes the work of five others in the unit as providing the health and nutritional assessments as required by particular special programs. Examples of duties include:

. . . coordinating all activities as they relate to a particular clinic; provides health assessment, counseling and appropriate medical referral for the Healthcheck client; provides health and nutritional assessment, counseling and medical referrals for participants of the WIC Program; provides work direction and supervision of technicians conducting preliminary clinic testing . . .

The position description of the Home Care Staff Nurse describes the work of two others in the unit as "provides skilled nursing care to individuals who are homebound, require intermittent skilled nursing care deemed reasonable and necessary and who are under the direct care of a physician." Examples of duties include:

making the initial evaluation of the patient, regularly

re-evaluate the patient's needs, initiating the plan of treatment and necessary revisions, provide those services requiring substantial specialized care, initiate appropriate preventative and rehabilitative procedures, prepare clinical and progress notes, promptly inform the physician and other personnel participating in the patient's care of changes in the patient's condition and needs and arrange for counseling the patient and family in meeting related needs.

The qualifications called for in the Public Health Nurse description are typical of those of the unit, and they are as follows:

QUALIFICATIONS:

Desirable Knowledge: Comprehensive knowledge and skill in current nursing practice. Ability to communicate effectively in working with other staff and disciplines. Working knowledge of the nursing process. Ability to accept constructive criticism and work towards an effective solution to problems.

Education: Graduate of an accredited school of nursing. Must hold licensure as a Registered Nurse in the State of Wisconsin. Must possess the qualifications delineated in SS.HSS 139.08. Must have a current Wisconsin driver's license.

Experience: Five years recent work experience in the field of nursing. Experience with all age groups preferred.

15. The general nature of the duties of Social Services unit personnel is determining eligibility for and administering various programs for the social and economic welfare of County residents, and counseling clients about related problems they may be experiencing. The Social Worker III classification consists of nearly half of the employes in the unit. The position description for that position reads in part as follows:

GENERAL STATEMENT OF THE POSITION: This is the advanced trained social worker position. Social workers carry a mixed caseload with specialization in cases such as foster homes, child abuse and neglect, runaways, child welfare, adult foster homes, elder abuse and neglect, Community Options and Supportive Home Care Programs.

EXAMPLES OF DUTIES: Work with clients of all ages toward a solutions of problems creating dependency, delinquency, and mental illness. Furnish social work services to children and parents in their own home as a means of strengthening family life. Work with schools and other agencies to identify children who are in need of special help and plan jointly how these needs can best be met. Other duties as assigned by supervisor.

QUALIFICATIONS:

Desirable Knowledge: Considerable knowledge and understanding of principles of social work and its application. Knowledge and understanding of the following: Philosophy, history and development of social welfare programs, operation of state and local government, human behavior, dynamics of groups, interpersonal relations, and social interaction. Social problems such as family disorganization, poverty, and aging.

Education: Ability and knowledge that are normally acquired by a Bachelor's Degree in Social Work, Sociology, or a related field; BSW workers must acquire six graduate credits, non BSW workers must acquire 12 graduate credits. Finally, seventy two (72) hours of training must be attained beyond that required for SW II.

Experience: Must have three years experience as a social worker.

16. The general nature of the duties of Unified Services unit personnel is providing counseling, therapy, temporary shelter and other services to

residents of the County and others as regards developmental disabilities, mental health, alcohol and drug abuse and other such problems, in some instances on a short term basis and in other instances on a long term support basis. The 1989-90 Unified Services collective bargaining agreement categorizes the requirements for the various positions in that unit as follows:

(HS required, plus experience):	Community Support Workers Shelter Workers
(BA preferred but not required):	Prevention Worker Protective Services
(BA required):	Day Coordinator Developmental Disability case mgrs
(BA or AODA certified required):	AODA Counselor Crisis Worker (formerly Prevention Specialist) Coordinator Inpatient Services
(Master's plus 5 years req'd):	Therapist
(PhD required):	Chief Psychologist
(MD required):	MD

The AODA (Alcohol and Other Drug Abuse) Counselor position duties are at least somewhat representative of the range of skills and duties characterizing the work of employes in this unit. The position description for AODA Counselor reads, in part, as follows:

MAJOR DUTIES:

1. Intake/Evaluation. Includes assessing and diagnosing new cases requesting services.
2. Information and Referral. Includes providing information about services available in the community (at ADAPT or other agencies) and making appropriate referrals.
3. Crisis Intervention. Includes providing emergency face to face or telephone crisis counseling. Requires immediate assessment and knowledge of available and appropriate resources and necessary referral. Includes hospital and jail visits.
4. AODA Counseling. Includes ongoing out-patient treatment as required on a case by case basis under the supervision of the Medical Director. Treatment may be individual, group or family therapy as required.
5. Case Consultation and coordination. Includes providing consultation to other agencies/resources about their cases and coordinating service provision.
6. Case Management. Includes overall management responsibilities for assigned caseload.
7. Complete required paper work. Includes:
  - a. case files (Initial Contact Sheet, Permission to provide Services, Treatment Plan, Medication Record, Consent for Disclosure of Information, Authorization for Emergency Medical Care, Initial Summary, Treatment Plan Review, Closing Summary, Progress Notes, etc.)
  - b. correspondence
  - c. insurance forms
  - d. Wisconsin Medical Assistance Prior Authorization
  - e. Staffing notes
8. Court Testimony as required.
9. Reconciliation Counseling (Divorce Assessment)
10. Conduct Operating While Intoxicated Assessments completing the necessary paperwork and follow-up with state agencies, local courts and NWTC.

Services provided by Unified Services unit Therapists, AODA Counselors, and Psychologists are often reimbursable by third parties such as government medical assistance programs, medical insurance or other third party payors. To make the County agency eligible for such reimbursements, the employes involved must have State provider numbers. Accordingly, the County requires employes in those classifications to have or be eligible to obtain such a State provider number status. This involves completing 3000 hours of service under the

supervision of a psychiatrist or other qualified supervisor following specified educational attainments.

17. There has been no transfer, substitution or other interchange of employes among the three groups of employes now comprising the Social Service, Public Health, and Unified Services units. There has, however, been a limited degree of professional interaction between members of the three units, principally in the form of inter-agency telephone referrals, but also some joint home visits, consultations or follow-up conferences, and recurring personal presentations of clients for direct provision of services by a member of another agency's staff. The extent to which such professional interactions have occurred has increased somewhat as the County Board has increasingly embraced integration and coordination of services and as the State has introduced programs that call for inter-agency activities, but the overall level of such interaction remains modest in all respects at least as of the time of the March 19, 1990 hearing in this matter.

18. The 1989 wages, hours and other conditions of employment of the employes in the three units are substantially similar. The July 1989 contractual top step wage rates of positions in each of the three units (excluding those stipulated to be nonprofessionals) range as follows:

Public Health Professionals unit -- \$13.70 - \$14.14

Unified Services Board/ADAPT  
Professionals/Nonprofessionals unit -- \$8.54 - \$13.44  
(eff. 7-1-89)

Social Services Professionals unit -- \$9.95 - \$13.24,  
(with five red-circled at between \$14.02 and \$16.16.)

19. The supervision of Public Health Professionals unit members' work is by the Public Health Director and Public Health Nursing Supervisor. As such, it is separate from that of all employes outside the Public Health Department, but the same as the nine nonprofessional Public Health support staff members who are a part of the Courthouse unit.

20. The direct supervision of Unified Services unit members' work is by the heads of the Long Term Support, Short Term support and Financial Divisions of the Department. The Short Term Support division is headed jointly by Human Services Director Jarentowski and his Deputy. Thus, at the division level, the Long Term Support and Financial Division employes' direct supervision is separate from that of all employes outside the Unified Services bargaining unit; but in the Income Maintenance division level, supervision is shared with Court-house unit employes. The Short Term Support division's direct supervision is provided by the same two individuals who have department-wide supervisory responsibilities with respect to the balance of the Human Services Department which includes all of the Social Services unit and the nonprofessional employes presently in both the Courthouse and Unified Services units. As members of the new Human Services Department, the employes in the Unified Services unit share common department level (by Director Jarentowski and his Deputy) with the employes in the Social Services unit and with the Social Services nonprofessionals in the Courthouse unit, but that department level supervision is separate from that of the Public Health Department and of all other departments in the County.

21. The direct supervision of the Social Services Professionals unit members' work is by the heads of the Adult Services, Child Welfare and Income Maintenance Divisions of the new Human Services Department. As such, that division level supervision is separate from that of any employes in either of the other bargaining units at issue herein but, in the case of the Income Maintenance division only, common with that of nonprofessionals in the Courthouse unit. As noted in Finding 20, above, the department level supervision of the Social Services Professionals unit is the same as that of the entire Unified Services unit and the same as that of some additional members of the Courthouse unit, but it is separate department level supervision from that of the Public Health Department and from that of employes in all other departments County-wide.

22. Nine of the ten Public Health Professionals unit employes work out of a Marinette office located at 2500 Hall Avenue. The tenth is based in a satellite office in Niagara. The entire Social Services unit is located in the same building and address. Besides supervisory, confidential and managerial personnel, the only other employes who work at that location are the Courthouse unit employes working in the Public Health department and in what had been the Social Services Department. The Public Health and Social Services employes share the use of common conference rooms, copy machines, break and rest rooms. The Unified Services unit employes are located in two different locations in Marinette and have three unit members located in Niagara. Thus, with the possible exception of the Niagara employe, the Unified Services unit employes

presently have no location in common with any members of the other two professionals units at issue herein. The County plans to co-locate the employes in all three units, except for the Niagara based personnel, sometime in the 1991 budget year. At the time of the instant hearing, the County had not established either a specific location or a specific timetable for implementation of the planned co-location.

23. Maintaining separate units of Social Services and Unified Services professionals in the context of the County's creation of a Sec. 46.23, Stats., Human Services Department combining those employes' departments constitutes undue fragmentation of bargaining units. Maintaining a separate unit of Public Health professionals in the circumstances of this case would not constitute undue fragmentation of bargaining units.

24. The history of bargaining relationships involving the three units the County seeks herein to combine is discussed in Findings of Fact 7-9, above. The County's voluntary recognition of LAW in early 1989 as exclusive represent-ative of the Social Services bargaining unit was an extension of a long-established bargaining relationship manifested by a series of written agreements between the County and the Marinette County Public Health Professional Association as regards the Social Services Professionals unit dating back to 1980. LAW's request for and the County's grant of recognition with respect to the Public Health unit maintained the historically separate treatment of Social Service professionals and represented a conscious choice on the part of the Public Health unit employes and LAW and the County not to include Public Health professionals with the Social Services unit. The October 19, 1989 County Board resolution established for the first time the date on which a Human Services Department was to be created, and it represented an action after which it was certain a Human Services Department would come into being as of a known date absent some subsequent reversal of that action by the County Board. Because both the County's recognition of AFSCME with respect to the Unified Services unit and the bulk of the County's negotiation meetings concerning the initial Unified Services agreement occurred before the County Board's October 19, 1989 resolution, that voluntary recognition of AFSCME does not estop the County from timely filing the instant petition when it did.

25. The County's creation of a Sec. 46.23, Stats., Human Services Department effective January 1, 1990, created an overriding community of interest among the professionals thereby organizationally combined into a single Department operating with the express statutory purposes set forth in Sec. 46.23, Stats. Because the County intentionally chose at the same time not to include the Public Health Department in the new Human Services Department, no such overriding community of interest arose between the professionals in that unit and those in the new Human Services Department.

26. There does not at present exist a community of interest between the Public Health Professionals unit and the professionals in the new Human Services Department sufficient to overcome the historical separation of the former group of employes from the latter for purposes of collective bargaining.

27. The County employs three Community Support Workers, Wesley Harper, Cynthia Houle, and Mary Edlebeck. Those positions are in the Unified Services unit, such that no determination by any party has heretofore been involved in their unit placement. The job description of the Community Support Worker reads in part as follows:

JOB SUMMARY: Work directly with individuals with long term mental illness to maintain placement in community. Provide support counseling, advocacy, coordination of resources. Act as liaison between therapists, psychiatrist and client. Provide updates to psychiatrist for assistance in managing treatment of illness. Responsible for assessments, case plan development and ongoing management of individual treatment plans.

DUTIES:

Assessment, caseplan development and ongoing monitoring of services for individuals.  
Advocacy.  
Coordination of resources.  
Communicate with psychiatrist and other providers.  
Assist individuals in securing maximum benefits.  
Review of caseplans in accordance with Wisconsin CSP standards.  
Provision of direct service to clients  
Attend staffings for long term clients.  
Liaison with other community resources.  
Document needs, communicate needs or problems to supervisor.  
Make appropriate referrals.  
Assist in skill development to foster indepen-

dence.  
Work closely with psychiatrist and other staff.  
Other duties as assigned.

SUPERVISION RECEIVED: From Manager of Long Term Services

QUALIFICATIONS: B.S. or pertinent experience.  
Excellent verbal communication skills, problem solving skills, ability to get along well with staff, clients, and other community resources, ability to work independently.

The Community Support Worker is placed under a qualifications reference of "HS required, plus experience" in the 1989-90 AFSCME-County collective bargaining agreement with an 18-month wage rate of \$8.06 per hour. The incumbents' educational backgrounds are as follows: Harper has a Bachelor's degree in Social Work and two years towards a Masters; Edlebeck has an Associate's degree in Occupational Therapy; and Houle is a High School graduate with continuing education credits in Community support and experience working nights at the County's Shelter and on its crisis line. The Community Support Workers are engaged in work that is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; but not 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.

28. The County employs one Homemaker, Darlene Withrow. A second Homemaker position had existed at one time, but it ceased to exist when its incumbent, Mary Holzbauer, was named a Social Worker I sometime after February 21, 1989. At all material times, the Homemaker position(s) have been in what was the Social Services Department and what became the Human Services Department on January 1, 1990. The Homemaker classification has been in the Social Services unit since February 21, 1989. Prior to that date, those positions had been in AFSCME's Courthouse unit. On that date, following County-initiated discussions involving Hartmann and others, AFSCME Local 1752, by its president, informed the County in writing as follows: "Local 1752 AFSCME has reviewed the Homemaker positions and based on the statutory criteria, we believe these positions to be professional. The Homemakers should, therefore, be in the DSS bargaining unit." (At or about the same time the Energy Program Coordinator previously included in the Social Services unit was placed in the Courthouse Nonprofessionals unit.) The Homemaker position description reads, in part, as follows:

JOB DUTIES & QUALIFICATIONS:

This position will work extensively with the elderly client, the Community Options Program, the supportive home care program and the certification of day care providers for the county, under the supervision of Social Work Supervisor Jill Davis. Some of the job specifics for the elderly will be: assisting them with light housekeeping tasks, meal preparation, diet and nutrition, grocery shopping and other duties that assist them in remaining in their own homes. This position may or may not involve providing emergency and temporary homemaker services to children in their own home if parent is absent without child care arrangement. Participating in weekend-long family enrichment sessions at Camp Bird. This position will also involve the establishment of a volunteer program to work effectively with our clientele.

QUALIFICATIONS: Bachelor's Degree in Home Economics, Social Work or related human services field; basic understanding of human growth and development, and aging process. Must have valid Wisconsin Drivers license and a vehicle.

A further description of the duties appears on a State of Wisconsin Department of Health and Social Services Division of Business Management form signed by then the acting Social Services Department Director, as follows:

(45% of time): Working with elderly and disabled clients in the supportive Home Care and Community Options programs: assisting with light housekeeping

tasks, meal preparation, diet and nutrition, grocery shopping, and other services that enable them to remain in their homes. Responsibility for the certification of day care providers of services to these clients, maintaining a register of certified providers, and participating in the training of these providers.

(30% of time): Providing emergency and/or temporary homemaker services to children in their own homes when parent is absent without having arranged for child care. Responsibility for recruiting and certifying child care providers, maintaining register of certified providers, and participating in the training of these providers.

(25% of time): Establishing and maintaining voluntary program through recruiting volunteers, assessing their capacity for providing services, matching them with clients and evaluating their performance.

The incumbent, Darlene Withrow, held a bachelor's degree in Home Economics/ Education when hired for this position on March 6, 1990. The rates of pay for the Homemaker position as of July of 1989 were a start rate of \$7.73 and an 18-month rate of \$8.42. The Homemaker position is engaged in work that is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and judgment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and 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.

29. The County employs one Fraud Investigator, Orville Gauthier, in what had been its Social Services Department and what is now its Human Services Department. The Fraud Investigator position has been a part of the Social Services Professionals unit at all material times, with a single 1989 hourly rate of \$11.51. The Fraud Investigator position description reads, in part, as follows:

Duties include investigation of alleged fraudulent activities by clients applying for or receiving public assistance or by agency employees responsible for the implementation of an assistance program. Accept referrals of possible fraud, initiate investigatory procedures in coordination with local law enforcement agencies, and participate in the disposition of the case by either criminal or civil action. Work flexible hours and make periodic reports to agency management.

QUALIFICATIONS: Minimum of two years of training in law enforcement. Minimum of five years experience in investigative or law enforcement work. Must have car available for travel within and outside of Marinette County.

ABILITIES: (a) Skill in oral and written communications, (b) Knowledge of investigative and interrogative techniques and rules of evidence, (c) Knowledge of law enforcement systems, (d) Ability to deal with suspect clients in a respectful and confidential manner, (e) Ability to maintain statistics, (f) Ability to provide testimony in court as an expert witness skilled in investigations, (g) Ability to maintain workload statistics and to prepare written reports, (i) Ability to work flexible hours and to accept hostility from agency clients and witnesses, (j) Ability to move about within and outside of the office in the performance of work.

The Fraud Investigator works closely with the District Attorney's office, without first obtaining intermediate approval of decisions by Human Services Department supervision. The Fraud Investigator serves in something of a lead worker capacity as regards the Income Maintenance and Front End Verification Specialist employees with whom he works on cases of suspected fraud. Incumbent Gauthier's training and experience was derived from substantially more than five years in a law enforcement department, where he was a lead investigator before taking the Fraud Investigator position. The work of the Fraud Investigator requires an extensive background in law enforcement investigation

that is ordinarily acquired through experience in a law enforcement agency, though it could be provided, in part, through formal education. The Fraud Investigator is not engaged in work 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.

30. The County employs one Front End Verification Specialist (referred to herein as FEVS), Sandra Waugus, in what had been the Income Maintenance Division of its Social Services Department and in what is now the Income Maintenance Division of its Department of Human Services. Since its creation in approximately September of 1988, the FEVS position was placed in and has remained in the Social Services unit. While O'Malley recalls contacting bargaining units on that subject at the time the position was created, it is not clear from the record to what extent or in what manner AFSCME was contacted regarding the question of unit placement of this position at that time. The FEVS wage rate for 1989 was \$9.07. The FEVS position description reads, in part, as follows:

GENERAL STATEMENT OF POSITION: Investigation of alleged fraudulent activities by clients applying for public assistance. Complete investigation and verification of all eligiblity (sic) factors prior to the issuance of any benefits.

EXAMPLES OF DUTIES: Accept front-end referrals from Income Maintenance Workers. Conduct investigation, contact client, make collateral contacts, work with other law enforcement agencies, provide Income Maintenance Worker with investigation report within five days of referral. Prepare reports for agency management, keep investigative forms updated, prepare news releases.

QUALIFICATIONS:

Desirable Knowledge: Familiar with county. Basic math. Good reading comprehension. Knowledge of investigative and interrogative techniques and rules of evidence. Knowledge of law enforcement systems. Interviewing techniques.

Education: Two years training in law enforcement.

Experience: Two years experience in law enforcement and/or investigative work.

The Fraud Investigator and the FEVS are the only two employees in the Income Maintenance Division who are presently being treated as professional employees. The remaining 16, including nine Income Maintenance Workers, are all in the Courthouse unit. The FEVS is less involved in direct discussions with District Attorney's office personnel than is the Fraud Investigator. The incumbent Sandra Waugus' background and experience when hired for the position on October 17, 1988 were a 1978 BS degree in Criminal Justice and 8.5 years of experience as a law enforcement officer. The Front End Verification Specialist is not engaged in work 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.

CONCLUSIONS OF LAW

1. The County's November 11, 1989 election petition in this matter was filed shortly after the County Board's October 19, 1989, resolution creating a Sec. 46.23, Stats., Human Services Department effective January 1, 1990. For that reason, the petition was timely filed for purposes of an election under Sec. 111.70(4)(d), Stats., in the circumstances of this case, notwithstanding the existence of a 1989-90 Public Health unit collective bargaining agreement and notwithstanding the pendency of AFSCME's petition for interest arbitration with respect to initial contract negotiations regarding the Unified Services unit.

2. As a consequence of the County Board's October 19, 1989 resolution

creating a Sec. 46.23, Stats., Human Services Department effective January 1, 1990, a bargaining unit of employes of Marinette County consisting of "all regular full-time and regular part-time professional employes of the Human Services Department but excluding managerial, confidential and supervisory employees" is an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a., Stats. A collective bargaining unit combining the employes in that unit with the existing Public Health unit would not constitute an appropriate collective bargaining unit in the circumstances as they presently exist.

3. A question of representation presently exists with respect to the employes in the appropriate bargaining unit described in Conclusion of Law 2, above.

4. The position of Homemaker is held by a professional employe within the meaning of Sec. 111.70(1)(L), Stats.

5. The positions of Community Support Worker, Fraud Investigator and Front End Verification Specialist are not held by professional employes within the meaning of Sec. 111.70(1)(L), Stats.

6. It is proper under Secs. 111.70(1)(L) and (4)(d)2.a., Stats., to place the positions listed under "Positions stipulated nonprofessional" in Finding of Fact 5, above, along with the following nonprofessional positions, in the existing Courthouse unit represented by AFSCME, without a vote, effective January 1, 1991:

Community Support Worker  
Fraud Investigator  
Front End Verification Specialist

#### DIRECTION OF ELECTION

IT IS DIRECTED that an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive among employes of Marinette County in a bargaining unit consisting of "all regular full-time and regular part-time professional employes of the Human Services Department but excluding managerial, confidential and supervisory employees" who were employed on November 7, 1990, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes desire to be represented by Labor Association of Wisconsin or by Wisconsin Council 40, AFSCME, AFL-CIO, for the purposes of collective bargaining with Marinette County with respect to wages, hours and conditions of employment, or desire no representation.

The compositions of the existing Social Services and Unified Services bargaining units shall not be altered by this Direction, by the results of the election or by the balance of this decision, until January 1, 1991, even if a Certification of Representative is issued prior to that date.

#### ORDER CLARIFYING BARGAINING UNIT

1. Effective January 1, 1991, the following positions, held currently by the following incumbents, shall be placed in the Courthouse Nonprofessional bargaining unit:

Wesley Harper	Community Support Worker
Cynthia Houle	Community Support Worker
Mary Edlebeck	Community Support Worker
Sandra Waugus	Front End Verification Specialist
Orville Gauthier	Fraud Investigator
Marlene McGowan	Administrative Secretary/Bookkeeper
Marjorie Wawrzon	Secretary/Medical Transcriber
Doris Costello	Long Term Secretary
Louis Outcelt	Secretary/Community support

Gretchen Aaby	Receptionist/Clerical
Dianna Agatone	Accounts Receivable/HSRS
Mary Scoon	Accounts Receivable/OWI
Sue Baxter	Insurance Specialist

2. Unless the result of the election directed above is a majority preference for no representation, the following positions, held currently by the following incumbents, shall, effective January 1, 1991, be included in the Human Services bargaining unit described in Conclusion of Law 2, above.

Darlene Withrow	Homemaker
Cammie Grutza	Prevention Worker
Cathy Dau	Prevention Worker
Kristina Preston	Protective Services
Angela Zagrodnik	Protective Services
Karla Westphal	Developmentally Disabled Case Manager
Pamela Brusio	Developmentally Disabled Case Manager
Susan Neumann/Bork	Early Childhood Worker
George Thottakara	AODA (Alcohol and other Drug Abuse) Counselor
Laura Jacobson	AODA Counselor
Donald Brunn	AODA Counselor
Sharon Brunn	AODA Counselor
George Thottakara	AODA Counselor
Lois Mattson	Coordinator of Inpatient Services
Sue Mueller	Crisis Worker
L. William Topel	Psychologist
Pat Cartwright	Mental Health Therapist
Donald Eack	Mental Health Therapist
Judith Peterson	Mental Health Therapist
Mary Beth Erickson	Mental Health Therapist
William Camp	Chief Psychologist
Mary Holzbauer	Social Worker I
Erinn Burmeister	Social Worker I
Kerry Valley	Social Worker I
Wendy Kahl	Social Worker I
Pamela Goes	Social Worker I

Mark Minzlaff	Social Worker II
Bonnie Ehlers	Social Worker II
Judith LaPlant	Social Worker III
Catherine Malesa	Social Worker III
Helen Jo Case	Social Worker III
Larry Mullinst	Social Worker III
Theresa Picard	Social Worker III
Marvin Balwitt	Social Worker III
Louis Rizzardi	Social Worker III
John Gustafson	Social Worker III
Steve Smith	Social Worker V

Given under our hands and seal at the City of  
Madison, Wisconsin this 8th day of November,  
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

\_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner

MARINETTE COUNTY

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

BACKGROUND

The nature of this dispute and the parties' positions are described in detail in the preface and Findings of Fact 1-6.

Briefly restated, this is an election proceeding initiated by the County's November 11, 1989 petition seeking to combine at least two and preferably three existing bargaining units into one on the basis that on October 19, 1989, the County Board created a Sec. 46.23, Stats., Human Services Department combining its Social Services Department and Unified Services Board/ADAPT agency effective January 1, 1990. LAW, which represents separate units of professionals in the Social Services and Public Health Departments joins in the County's alternative requests for an election. AFSCME, which represents a mixed professional/nonpro-fessional unit of Unified Services Board/ADAPT agency employees opposes the petition, arguing that it is not timely and that neither of the units in which the County seeks an election is an appropriate unit. If an election is directed, AFSCME, contrary to one or both of the other parties, claims that three classifications presently in LAW's Social Services unit are nonpro-fessional and that one classification in its own Unified Services unit is pro-fessional. None of the parties objects to unconditional inclusion (i.e., without a vote) of positions stipulated or determined herein to be nonpro-fessional, if an election involving the professionals in the Unified Services unit is directed. The issues presented by the parties' positions are discussed in the same order in which the Findings of Fact and Conclusions of Law have addressed them.

DISCUSSION

Timeliness of the Petition

AFSCME argues that the petition is untimely both on general contract bar and interest arbitration bar principles, in the latter respect, citing, Marathon County, Dec. No. 23286 (WERC, 2/86). In those regards, AFSCME notes that the County's election petition was filed during the first year of the LAW's 1989-90 Public Health unit agreement and during the pendency of AFSCME's interest arbitration petition in what had been a lengthy and intensive round of negotiations for a first Unified Services unit contract. AFSCME further asserts that as things have turned out, the three units have a common contract termination date of December 31, 1989, such that it is not unreasonable to require the County to wait until the appropriate window periods under those agreements to initiate the instant petition. AFSCME also argues that the County should be bound to the unit structure it agreed to create by extending voluntary recognitions to AFSCME and LAW in early 1989, especially because the County knew at that time that its creation of a Human Services Department was a virtual certainty. In that regard, AFSCME notes that when the County granted those voluntary recognitions, the County Board had previously held off since January of 1988 from appointing a permanent new Social Services Director and had set creation of a Human Services Department as a long range goal on May 19, 1988. Furthermore, AFSCME notes, the Unified Services Board and Social Services Committees had jointly agreed on February 16, 1989 to recommend the concepts of a Human Services Department combining the two entities they respectively governed and to further recommend the creation and hiring of a Human Services Director to supervise both agencies with a goal of combining them.

The County and LAW counter that the County filed its petition promptly after the County Board acted on October 19, 1989, for the first time specifying a date certain on which the combined Human Services Board would be created. Prior to that time, they argue, no such date had been set by the County Board, and a petition for an election based on reorganization would have arguably been premature. The County and LAW further argue that at the time the petition was filed the two existing LAW contracts had different termination dates, and the bargain with AFSCME about the Unified Services unit agreement had not been completed. As things then stood, therefore, the County might never have been able to timely file its petition since the contracts did not offer a common window period in which to do so. Finally, because it is filed by the municipal employer on account of a reorganization that affects the continuing viability of the existing bargaining unit structure, a petition such as this one ought not be subjected to the same rules as are applicable to a petition by a competing labor organization.

The Commission finds the petition timely filed under the circumstances. Were the Commission to conclude otherwise, it could prevent a multiple-unit petition of this kind from ever being timely filed given the absence of common termination dates existent at the time the County filed its petition herein.

Such a conclusion would deny employees their right to seek to change or end their union representation through an election and undercut both the anti-fragmentation policy in Sec. 111.70(4)(d)2.a., Stats., as well as the principles developed in the Commission's earlier cases (discussed in relation to the appropriate unit issue, below) recognizing the importance of accommodating the purposes of Sec. 46.23, Stats., reorganizations. The fact that developments following the filing of the petition produced a common termination date does not, in our view, render the petition untimely after the fact. See, Marathon County, Dec. No. 21286, *supra*, at 5 ("We would emphasize that our decision that the instant election petition was untimely filed is not based on developments occurring after the filing of the election petition.")

AFSCME's reliance on contract bar principles is not well placed since the parties to the Public Health unit agreement both support the timeliness of the petition and the conduct of the petitioned-for election regardless of the existence of that agreement. It can also be noted that since none of the agreements in question specifies a date for the reopening of negotiations about a successor agreement, the County could likely timely refile the petition immediately if we were to dismiss it.

Finally, we agree with the County and LAW that the voluntary recognitions in the Public Health and Unified Services units were extended months before the County Board took the key step of establishing a date certain on which the reorganization was to occur. Unlike the earlier County actions cited by AFSCME, the October 19, 1989 resolution for the first time established that there would be a reorganization effective as of a date certain (absent some later County Board action to the contrary). It was at that point for the first time that the County was in a position to support its petition with a firm commitment to reorganize as of a date certain. In any event, the recognition of LAW as the representative of the Social Services unit did not alter the parameters of that unit as they had existed for many years; it merely confirmed the bargaining unit's internal decision to affiliate with LAW rather than continue as an independent organization.

We recognize that treating the petition as timely filed represents another limited exception to the interest arbitration bar rule established in Dunn County, Dec. No. 17861 (WERC, 6/80) and City of Prescott, Dec. No. 18471 (WERC, 6/81) and refined in Mukwonago School District, Dec. No. 24600 (WERC, 6/87). However, just as the Commission has been unwilling to permit an interest arbitration bar or any other to eliminate entirely the employees' opportunity to test the incumbent's majority status, see, Oconto County, Dec. No. 21887 (WERC, 7/84) and Marinette County, Dec. No. 22102 (WERC, 11/84) and discussion thereof in Marathon County, *supra* at 5, we are unwilling to permit a combination of interest arbitration and contract bars to create a situation potentially precluding a municipal employer from petitioning for a unit restructuring following a Sec. 46.23, Stats., reorganization. In sum, we are satisfied, for the reasons set forth above, that this additional exception is warranted.

Accordingly, we have concluded that the petition is timely filed and that a question concerning representation presently exists among the employees in the appropriate combined unit discussed below. We have nevertheless attempted to give due regard to the existence of the various agreements. Specifically, as discussed at the end of this Memorandum, we have delayed the effective date of the alterations in bargaining units resulting from our decision herein until the now-common termination dates of the agreements including the positions involved.

#### Appropriateness of Alternatively Petitioned-for Units

The County and LAW assert that the County's adoption of a Sec. 46.23 Human Services reorganization creates an overriding community of interests among the professional employees in the three units in question. Citing, Portage County, Dec. No. 18792 (WERC, 6/81), Green County, Dec. No. 21453 (WERC, 2/84); and Jackson County, Dec. No. 14129-D (WERC, 7/86). While the current Human Services Department has not yet come to include the Public Health Department, they argue that ought not defeat appropriateness of including the Public Health unit, as well, noting: the County Board's October 19, 1989 resolution granted the new Human Services Board full Sec. 46.23 powers; the human services concept as set forth in Sec. 46.23 includes Public Health services; the County Board's May 19, 1988 long range goal was and remains to include Public Health in the Human Services Department; and toward that end the County Board created the same governing body to be responsible for both the new Human Services and the existing Public Health Department. They argue further that inclusion of Public Health at this time would both remove labor relations obstacles to the integration of services underlying Sec. 46.23 and would allow the Public Health Professionals unit employees an opportunity to participate in the selection of the representative of the Human Services Department rather than subject the Public Health professionals to a no-vote inclusion in the larger unit when the scope of the Human Services Department is ultimately broadened.

The County and LAW further argue that the Commission's traditional unit

determination criteria support the appropriateness of a unit combining the professionals in all three units -- or at least in one combining the professionals in the Social Services and Unified Board units. They point to similarities in the educational background and human-services-type duties of the three groups of positions and to the varied and increasing instances of work-related interactions among all three groups. They note that wages, hours and other conditions of employment are quite similar among the three, to the extent that having separate units dividing them has permitted. They note that under the reorganization all three groups are under the overall supervision of the same governing body and that the Social Services and Unified Board personnel now have common department-wide supervision, an integrated administrative and clerical staff, and more integration on the drawing board. They further note that all but one of the Public Health Department employes share a common work location with all of the Social Services personnel, to the exclusion of all other departments' personnel, and that the County plans to collocate all but three of the former Unified Services personnel some time during the 1991 budget year. The County and LAW stress that retaining two units of professionals within the newly-created Human Services unit would constitute undue fragmentation of bargaining units contrary to the Sec. 111.70(4)(d)2.a., Stats., anti-fragmentation policy, and that combining all three units would serve that policy most effectively. Finally, they assert that the history of comprehensive collective bargaining with written agreements in the Public Health and Unified Services units is short, dating back only to 1989; and that the County's voluntary recognitions predated the Sec. 46.23, Stats., reorganization and did not waive County's rights to reorganize and to seek a restructuring of bargaining units based on such a reorganization. They conclude that the reorganization and anti-fragmentation considerations should outweigh any bargaining history to the contrary.

AFSCME counters that the professionals in the Unified Services unit constitute an appropriate unit unto themselves and that they do not share a community of interest with the employes in either of the other two units. AFSCME argues that the instant reorganization does not justify overriding the application of the Commission's traditional unit determination criteria herein.

AFSCME notes that the three groups of professionals continue to perform their work in the same divisional organizational structures and with the same separate divisional supervision as they had before the reorganization. The restructuring of governing bodies does not significantly increase integration between the Public Health and Social Services groups since the Public Health and Social Services Committees historically consisted of the same five individuals, and the overall significance of the single governing body is reduced by the fact that collective bargaining will be, as always, governed by the Personnel Committee and not the new Health & Human Services Committee. AFSCME reiterates that the County's voluntary recognitions of AFSCME and LAW in early 1989 -- with full knowledge of the County's goals regarding a Human Services Department -- constituted an acknowledgement by the County that the three groups of professionals involved did not share a community of interest and belonged in separate bargaining units. Finally, AFSCME emphasizes that the County Board intentionally kept the Public Health Department out of the Human Services Department, leaving Public Health a separate department just as it was before the reorganization.

Applying the seven criteria, AFSCME notes that none of the Unified Services unit professionals shares the sort of nursing education or performs the sort of work -- focusing on physical health needs in areas such as controlling communicable diseases and conducting vaccination clinics -- that constitutes the work of most of the Public Health unit. While there is admittedly a similarity between the educational backgrounds of the AFSCME and Social Services professionals, AFSCME asserts that the two groups perform work that is quite different. Social Service professionals deal with social and economic problems and how they affect the family; administer welfare programs; and work in areas such as foster homes, child abuse/neglect and runaways, typically making assessments, evaluations and referrals more than directly providing therapy services. Unified Services unit professionals, on the other hand, deal principally with problems of long-term mental illness, domestic abuse, incest, drug and alcohol abuse, more often providing counselling and therapy services to groups and individuals. Unlike the professionals in the other two groups, the work of the Unified Services professionals is frequently paid for by third party payors such as government medical assistance or private health insurance, making it important for the employes providing such services to have completed the substantial requirements for obtaining the State provider number essential to the County receiving the significant amount of third party payments these services produce. While the three groups have always had some degree of inter-agency referrals, those referrals are usually done by phone, and the frequency of inter-group meetings and face-to-face professional consultation/collaboration remains quite limited.

AFSCME notes that there are some differences in the length of unpaid lunch hours, starting times and sick leave accumulation maximums. It notes that the aside from the financial division which employs no professionals, the five remaining divisions continue to operate unchanged in structure, work performed, and division-level supervision, and that the County's plans for greater integration remain vague. The Public Health Department remains

separately super-vised at the department level, as well. The locations of the three groups of professional employes has also not changed following the reorganization, and the County's plans remain uncertain as regards where and when the three groups will be housed in one building.

AFSCME argues that a restructuring of bargaining units is not necessary to avoid undue fragmentation, noting that in a decision issued after Portage County, the Commission found appropriate a separate unit of social services professionals in a division within a department of human services. Citing, City of Madison, Dec. No. 19772 (WERC, 1982). AFSCME considers there to be 26 pro-fessionals in the Unified Services unit, asserting that that is surely not too small a group to be viable in light of the Commission's recent determination that a unit of 11 public health nurses sought by LAW would not constitute undue fragmentation. Citing, Chippewa County, Dec. No. 26216 (WERC, 10/89). Because the County did not object to the creation of separate Public Health and Unified Services units in early 1989, it is unfair -- now that AFSCME has gone to the time and expense of a lengthy initial contract negotiation -- for the County to be allowed to change its mind about the unit structure it considers suitable. The existence of the Social Services professionals as a separate bargaining unit with written agreements dates back to 1980. The Unified Services professionals have never been combined with other professionals. Given that bargaining his-tory and the County's voluntary recognitions and the fact that the reorganization has not altered the way the work is organized or done by any of the professional groups involved, the Commission should conclude that no unit combining the Unified Services professionals with any other professionals is appropriate. In short, AFSCME urges that no election affecting the Unified Services professionals be conducted. If the Commission concludes otherwise, then AFSCME alternatively argues that there is no basis for expanding the scope of the new unit beyond the scope of the Human Services Department. The professionals in the separate Public Health department should remain a separate bargaining unit.

The following factors are taken into consideration by the Commission in the establishment of appropriate collective bargaining units under MERA:

1. Whether the employes in the unit sought share a "community of interest" distinct from that of other employes
2. The duties and skills of the employes in the unit sought as compared with the duties and skills of other employes;
3. The similarity of wages, hours and working conditions of employes in the unit sought as compared to wages, hours and working conditions of other employes;
4. Whether the employes in the unit sought have separate or common supervision with all other employes.
5. Whether the employes in the unit sought have a common work place with employes in said desired unit or whether they share a work place with other employes.
6. Whether the unit sought will result in undue fragmentation of bargaining units; and
7. Bargaining history.

E.g., Green County, Dec. No. 21453, supra, at 8-9. Not all the criteria necessarily deserve the same weight and in some cases one or more criteria may predominate. E.g., Shawano-Gresham School District, Dec. No. 21265 (WERC, 12/83).

The Commission finds persuasive the County's and LAW's contention that the Sec. 46.23 reorganization approved by the County Board on October 19, 1989 and implemented on January 1, 1990 created an overriding community of interest among the two groups of professionals that were organizationally combined into a single Human Services Department as of the latter date. In Portage County, and Green County, the Commission, in applying the foregoing criteria, considered the implications for an existing bargaining unit structure among groups of pro-fessional employes when those groups are organizationally combined into a single Human Services Department for the first time by a Sec. 46.23, Stats., reorgan-ization. In directing Human Services Department-wide elections among the professional employes in those cases, the Commission rejected many of the same kinds of contentions advanced herein by AFSCME. In both cases the Commission stated,

. . . that the commonality of the professional education, training and skills characteristic of the

professionals involved herein, as well as the programs in which they are involved, and apparently as recognized by the State Legislature in enacting Sec. 46.23, Stats., and the County in establishing the Department of Community Human Services, in accordance with such statutory provision, creates a community of interest among said professional employes which overrides other factors, including bargaining history . . . especially in view of the statutory admonition to avoid the fragmentation of bargaining units.

Green County, supra, at 9, quoting Portage County, supra, at 11.

We are satisfied that the same overriding community of interest among professional employes in the newly created Human Services Department was created herein by the County's Sec. 46.23 creation of such a department herein. That reorganization is sufficient to overcome the lengthy separate unit history of bargaining in the Social Services Professionals unit and the County's recent recognition of and bargaining round with AFSCME.

Neither the absence at present of a common work location nor the retention of historical divisional structures and supervision within the Human Services Department dissuades us from the propriety of our conclusion above. See, Portage County, supra, at 11 ("We are cognizant that the professionals employed in the three new divisions [incorporated in the Human Services Department] do not interchange among divisions, are under separate divisional supervision, and exercise their professional skills in different human care services. They are nevertheless all engaged in providing same to the residents of the County.") The removal of what the reorganization has made into artificial and unjust-ifiable bargaining unit differentiations among the professionals in the combined Human Services Department will enhance the ability of all concerned to integrate the services provided by all of the professionals in the new department in the manner outlined in Sec. 46.23, Stats.

AFSCME's reliance on City of Madison, and Chippewa County, is misplaced since neither of those cases involved a Sec. 46.23 Human Services Department. Therefore, neither of those cases represents an exception to the approach taken in Portage County and Green County, and neither supports the continued existence of a unit of former Unified Services Board/ADAPT professionals in the face of the Sec. 46.23 Human Services Department reorganization adopted by the County Board in this case.

We agree with AFSCME, however, that because the instant Sec. 46.23 reorganization has thus far left the Public Health Department intact and separate, the reorganization does not warrant the additional inclusion of the Public Health unit at this time. The County has chosen to keep the Public Health Department organizationally separate and separately supervised at the division and department levels. In the words of its feasibility study, the "particular departments identified (i.e., Social Services and Unified Services Board/ADAPT) have most in common in terms of mission, relationship to the State structure, and funding." Exhibit 13 at 6. As AFSCME points out, the governance of the Public Health Department by a committee identical in membership with that responsible for additional service personnel outside that Department is not new in Marinette County, given the dual function previously performed by the identical membership of the Social Services and Public Health Committees. With regard to the County's and LAW's concern about the Public Health professionals' opportunities for self-determination, it should be noted at least in passing that in early 1989, the Public Health Professionals considered but did not seek to be combined with the existing Social Services Professionals unit. (Tr. 144-45.) They chose at that time to seek to be represented by LAW in a separate unit, and the County voluntarily accepted that choice.

Given the creation of a Human Services Department intentionally not including the Public Health Department and the existence of a separate unit of Public Health Professionals voluntarily recognized by the County and intentionally created separate from other professionals, we conclude that the Public Health Professionals unit need not and ought not be included in the restructuring of bargaining units occasioned by the County's Sec. 46.23 Human Services reorganization.

The evidence establishes that, at the time of the hearing in this matter, it was not known whether the Public Health Department would ever be included in the Human Services Department. (Tr. 48.) If and when the County Board decides to expand the scope of the Human Services Department to include what is now the separate Public Health Department, the County will be free to file a petition seeking a further restructuring of the Human Services Professionals unit. In the meantime, if and when the new Human Services Professionals unit and the Public Health Professionals unit are represented by the same organization, the County and that organization could merge the two bargaining units by voluntary agreement.

For the foregoing reasons, then, we have found that and the County's petition for a restructuring of bargaining units based on its Sec. 46.23, Stats., reorganization gives rise to a question of representation with respect to an appropriate bargaining unit consisting of the professional employees in the new Department of Human Services but not including the professionals in the separate Public Health Department. We have directed an election in that appropriate bargaining unit at this time.

Standards for Resolving Professional/Nonprofessional Disputes

Section 111.70(1)(L), Stats., provides that "Professional employe" means:

1. Any employe 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 employe who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;
  - b. Is performing related work under the supervision of a professional person to qualify himself to become a professional employe as defined in subd. 1.

All of the criteria in 1 or 2, above, must be present for a position to be deemed professional. E.g., Chippewa Valley Technical College, Dec. No. 22230-A (WERC, 5/88). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is customarily acquired, but it is the nature of the work that the employer requires of the employe on which the statute focuses its attention. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work involved. See, e.g., Outagamie County (District Attorney's Office), Dec. No. 21143-A (WERC, 10/86). To meet the requirement of Sec. 111.70(1)(L)1.d., Stats., it is not essential that the incumbent have in fact acquired that knowledge through the means specified in 1.d., but only that the knowledge required to perform the incumbent's job duties be of a type customarily acquired through the means specified in 1.d. Chippewa Valley Technical College, supra.

Disputed Professional/Nonprofessional  
Status of Community Support Worker

The County argues that the Community Support Workers' work does not meet the knowledge requirement of 111.70(1)(L)1.d., Stats. It also notes that they are paid time and one-half for overtime under the Unified Services unit contract; that they have been placed in that agreement in the same pay range with jobs requiring only a high school diploma; and that the Community Support Worker job description does not require a Bachelor's degree or other such course of specialized study.

AFSCME argues that the three Community Support Workers meet all of the statutory requirements of professional employes. AFSCME emphasizes that their duties involve making major decisions regarding chronically mentally ill; assessing clients' ability to remain in community or need for hospitalization or psychiatric care, often without others' inputs. As such, the duties are predominantly intellectual and varied in character and involve discretion and judgment. AFSCME notes that the applicable job description specifies either a "BS or pertinent experience" and that incumbent Harper has a BA in social work plus two years toward his Master's. Incumbent Edlebeck has an Associate's degree in Occupational Therapy and incumbent Houle has a high school education but has previously worked at the shelter and on the crisis line for a long period of time.

We have reviewed carefully the duties listing from the job description as set forth in Finding of Fact 27, above and the testimony concerning same. We

are persuaded that the position is not professional because the work does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized study in an institution of higher learning or a hospital. In this regard we note that an advanced degree is not a job requirement and two of the three incumbents do not possess a college degree. We are further satisfied from the record that the knowledge required for the position would typically be acquired through prior experience or on the job training.

For those reasons, we conclude that the Community Support Worker positions are not professional and are properly included in the existing Courthouse unit.

#### Disputed Professional/Nonprofessional Status of Homemaker

The County and LAW rely heavily on the fact that AFSCME agreed in February of 1989 to move what were then two Homemaker I positions from its nonprofessional Courthouse unit to the professional Social Services unit. They argue that AFSCME should be bound to its written acknowledgement at that time that the Homemaker position is professional based on the statutory criteria, since there is no evidence that anything has materially changed that would convert the position from professional to nonprofessional. They assert that AFSCME's failure to produce evidence in support of its position should result in the position remaining as it currently is, treated as a professional position.

AFSCME counters that although the County requires a degree, the duties of this position are no different than the nonprofessional homemaker positions in other counties. Citing, Portage County, Dec. No. 18792 (WERC, 6/81). AFSCME further asserts that there is no evidence that there had been a material change in the nature of the position such as would have warranted the February 1989 change from nonprofessional to professional in the first place. AFSCME cites the notes prepared for the County Board's consideration regarding ratification of the Unified Services unit agreement, wherein the County identified the Homemaker and two nonprofessional positions (Social Services Aide I and Income Maintenance Assistant) as the comparable positions for the Community Support Worker and Shelter Worker rates agreed upon in the Unified Services agreement.

When we are presented with a dispute concerning the professional/nonprofessional status of a position, we are not bound to decide the case consistent with the judgments of the parties as reflected by their prior actions. See generally, City of Sheboygan, Dec. No. 7378-A (WERC, 5/89). Rather, we are required to assess the position on the basis of the record evidence concerning the nature of the work involved. The parties' prior agreements concerning the nature of that work can be but are not always reliable indications about the nature of the work itself or its statutory sufficiency to render the position involved professional.

We have reviewed the duties as described in the job description and the other limited evidence bearing on the status of the position. Based on the duties as set forth in Finding 28, the fact that the County requires that the incumbent possesses a bachelor's degree in home economics, social work or related human services field in addition to a basic understanding of human growth and development, and the aging process, and the fact that the incumbent had such a degree when hired, we are persuaded that the work involved meets the statutory professional standards. Particularly persuasive are the certification and training components of the job as described in the Division of Business Management form set forth in Finding of Fact 28.

While the Homemaker positions referred to in Portage County, cited by AFSCME were placed in a nonprofessional grouping, that was a matter that had been stipulated by the parties in that case such that there was no Commission determination involved. Dec. No. 18792 at 3, 6.

For the foregoing reasons, we are satisfied that the Homemaker position should remain among the professional employees of the County. Accordingly, the incumbent shall be eligible to vote in the election we have directed herein.

#### Disputed Professional/Nonprofessional Status of Front End Verification Specialist

The County and LAW argue that the position is professional. LAW argues that the position requires a minimum of four years preparation, two years of specialized law enforcement training and two years of general law enforcement or investigative experience. It also argues that the duties of the position require consistent exercise of discretion and judgment independent of supervisors' input, noting that the incumbents often interview applicants in their homes. The County argues that AFSCME must have known the County had placed the FEVS position in the Social Services unit when the position was created in or about September of 1988. Since AFSCME made no objection at that time, it should be bound to the placement it implicitly agreed to at that time. AFSCME has failed to produce evidence showing that the position should be

changed from professional to nonprofessional status.

AFSCME argues that the position is not professional. AFSCME notes that the FEVS and the Fraud Investigator are the only employees in the Income Maintenance Division presently treated as professional, with sixteen others holding what are undisputedly nonprofessional positions in the Courthouse unit.

The duties -- apparently consisting of verification of information on income maintenance applications and making referrals to the fraud investigator -- appear to involve routine mental work and not to involve a consistent exercise of discretion and judgment. The qualifications required and possessed by the incumbent fall well short of the standard set forth in l.d. of the statute. Even O'Malley admitted that his placement of the position in a professional unit was a "close call." For those reasons and because the position is similar to the Welfare Fraud Investigator/General Relief Worker held nonprofessional in Green Lake County, Dec. No. 24956 (WERC, 11/87), the position should be declared nonprofessional.

As we noted above, we are not bound by the parties' prior agreements concerning professional or nonprofessional status of positions in dispute in representation proceedings. Upon review of the duties performed and the qualifications required for the FEVS position, we agree with AFSCME that the knowledge required to perform the FEVS work is not of a type customarily acquired in the manner specified in l.d. of the statute. Rather, it appears to be knowledge customarily acquired by being trained in a law enforcement setting and working on investigations in a law enforcement setting. That is the background the County requires, and although Waugus possesses a criminal justice degree, she also had more than eight years of law enforcement experience when she was hired as the FEVS. Since the requirement of l.d. has not, in our view, been met, it follows from the foregoing that the position is not professional.

#### Disputed Professional/Nonprofessional Status of Fraud Investigator

In support of its contention that the position is professional, the County emphasizes the fact that the Fraud Investigator has historically been treated as a member of a professionals-only unit, suggesting that AFSCME is chargeable with knowledge of and acquiescence in that placement. The position description requires two years of specialized law enforcement training and five years of investigative experience. The County submits that is substantially akin to a bachelor's degree, and far from merely requiring a high school education. The County stresses the independent judgement exercised by the incumbent in the position, noting that the incumbent makes recommendations directly to the District Attorney without any intervening discussions with Social Services supervision, and that the incumbent keeps track of pertinent legislative developments affecting the Fraud program and calls them to the District Attorney's attention.

LAW also argues that the position is professional. It asserts that O'Malley testified at the hearing that in his opinion the position is professional and that that testimony stands unrebutted and hence must be credited by the Commission. For that reason and because the position has historically been included in the professionals-only Social Services unit without challenge by AFSCME over the years, the Commission should conclude that the position remains professional in status.

AFSCME reiterates basically the same arguments it advanced with respect to the Front End Verification Specialist, above. It rejects the contention that it has a burden of proof in this proceeding, noting that neither of the other parties chose to call the incumbent to testify, either. AFSCME notes that O'Malley admitted the status of this position was also a "close call" in his opinion. AFSCME argues that even though the Fraud Investigator works directly with the District Attorney and acts in something of a lead work capacity with the FEVS and Income Maintenance workers in dealing with fraud issues, the work of the position nonetheless falls short of the knowledge requirement in l.d. of the statute. What the position requires, and what the incumbent has, is an extensive background in law enforcement investigation which is not customarily acquired through specialized higher education.

Again we agree with AFSCME that the work of the position, even though it meets all of the requirements of l.a.-c., does not meet the requirements of the fourth test in l.d. of Sec. 111.70(1)(L), Stats. The County's requirements and the incumbent's qualifications are in the form of experience gained in law enforcement and investigative work settings, rather than in a specialized course of higher education of the sort required by l.d. We therefore conclude that the Fraud Investigator position is not professional.

#### Implementation of Direction and Order Clarifying Bargaining Unit

As a consequence of our disposition of the disputed positions above, the Homemaker will be eligible to vote in the election along with the positions stipulated professional, but Community Support Workers, the Front End Verification Specialist and Fraud Investigator will not.

In order to give maximum effect to the 1990 collective bargaining agreements in force at the present time in the affected units, we have ordered that the changes in bargaining unit structure and composition resulting from the directed election and from our unit clarification order herein shall take effect as of January 1, 1991. Accordingly, following the certification of results of the election, the units will remain as they are at present until January 1, 1991, though the selected representative, if any, of the new Human Services professionals unit will have the right to bargain about the wages, hours and conditions of employment of the new unit for a contract term beginning January 1, 1991, at any time following the issuance of the certification of representative in this matter.

To facilitate the conduct of the vote, the County shall forthwith prepare a revised eligibility list consistent with this decision and taking into account any changes in the identity of incumbents of the positions held herein to be included in the appropriate bargaining unit in which the election is being directed. The County shall send copies thereof to AFSCME, LAW and the Commission.

Dated at Madison, Wisconsin this 8th day of November, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

\_\_\_\_\_  
Herman Torosian, Commissioner

\_\_\_\_\_  
William K. Strycker, Commissioner