

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

NORTH SHORE UNITED EDUCATORS

Involving Certain Employes of

NICOLET UNION HIGH SCHOOL DISTRICT

Case 29

No. 48540 ME-623

Decision No. 27353-B

Appearances:

Mr. Charles S. Garnier, Wisconsin Education Association Council, Northeast Regional Office, 550 East Shady Lane, Neenah, Wisconsin 54957, for North Shore United Educators.

Quarles & Brady, Attorneys at Law, by Mr. David Kern, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, for Nicolet Union High School District.

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

North Shore United Educators (NSUE) is the exclusive collective representative bargaining for a unit consisting of regular full-time and regular part-time aides, technical employes and clerical employes employed by the Nicolet Union High School District. On December 17, 1992, NSUE filed with the Wisconsin Employment Relations Commission a petition whereby it sought the inclusion into that unit of five positions and the exclusion therefrom of one. After a period of discussion with the District, on May 2, 1994, NSUE filed an amended petition, whereby it sought the inclusion of the accounting supervisor, the supervisor of student activities, the payroll clerk, and the accounts payable/receivable clerk, which action the District opposed, and the exclusion of the secretary to the business manager, to which the District agreed. Hearing in the matter was held on October 13, 1994, in Glendale, Wisconsin, before Hearing Examiner Stuart Levitan, a member of the Commission's staff. At that hearing, the parties stipulated that the payroll/personnel clerk was a municipal employe who should be included in the NSUE unit; that the position of accounting supervisor was a confidential, professional and managerial employe who should be excluded from the NSUE unit, and that, absent changed circumstances, the parties waived their right to file further unit clarification petitions alleging anything to the contrary. A stenographic transcript was made available to the parties by November 9, 1994. The parties filed briefs, the last of which was

No. 27353-B

received January 3, 1995.

The Commission, being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. North Shore United Educators, hereafter NSUE, is a labor organization with offices at 13805 West Burleigh Street, Brookfield, Wisconsin 53003.

2. Nicolet Union High School District, hereafter the District, is a municipal employer with offices at 6701 Jean Nicolet Road, Glendale, Wisconsin 53217-3799.

3. At all times material, NSUE has been the exclusive collective bargaining representative for a unit described by the parties as:

all regular full-time and regular part-time aides, technical employees and clerical employees employed by the Nicolet Union High School District, excluding confidential, supervisory, managerial and professional employees, as defined in WERC Decision No. 27353-A.

4. G. Alfred Bell is the incumbent Director of Student Activities. After service to the District as a general building aide, supervisor of the guided study program, and instructional paraprofessional in special education, he assumed his current position in January, 1989. Bell holds a license from the Wisconsin Department of Public Instruction (DPI) as a special education aide, which license is not required for his current position. He does not hold a teaching license from DPI. Bell has a Bachelor's Degree in business education. Bell is paid an annual salary of \$26,755, and is held exempt from the overtime provisions of the Fair Labor Standards Act. The "Minimum Qualifications" contained in the job description for the Director of Student Activities are:

Previous education, training, work or life experience which provides reasonable evidence of the successful performance of the various tasks listed above. Such experience may be evidenced by at least two years of related experience and a Bachelors Degree in business, public relations or other related field.

The work performed by the Director of Student Activities does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized instruction and study in an institution of higher education.

5. In his Position Description Questionnaire, Bell described as the major purpose of his position, "to monitor all student clubs and organizations; to coordinate or assist with the implementation of new student clubs/organizations; to serve as student council advisor; to assure that the clubs function within the parameters of school district policies and guidelines; to plan all activities and implement all activities on the high school social calendar." Regarding student activities, Bell reported that he spent 30% of his work year handling inquiries about student activities; seven percent on duty at student activities; six percent authorizing payment requests, resolving deficient balances and assisting with club fund-raising; six percent submitting detailed status reports to the assistant principal before and after each activity; three percent deciding what student social activities will be sponsored and otherwise planning the social calendar; three percent assisting the clubs plan their social activities to assure that the club adheres to school policies; three percent providing an adequate number of staff chaperons for each social activity; three percent submitting all work orders and facility usage requests for each activity scheduled; three percent accounting for all cash receipts; three percent overseeing lunchroom sales activities; two percent establishing which clubs will be active during the school year; two percent assigning club sponsorship for the social activities planned; two percent arranging for auxiliary police supervision, and two percent handling all activities-related projects delegated to him by the district administration, principal or assistant principal.

Regarding the student council, Bell related that he spent ten percent of his annual work time being responsible for supervising all student council general assembly meetings; two percent assuring that the council serves as a liaison between administration and student body; two percent meeting with council members weekly; two percent attending council meetings; two percent handling projects delegated to him; one percent organizing council elections; one percent supervising council members when they are assigned to him; one percent authorizing all expenditures from the council and class activity accounts; one percent assuring council members attend meetings; one percent scheduling student exchanges, and one percent attending student leadership workshops and seminars.

Regarding special duties and responsibilities, Bell related that his confidential responsibilities include making sure all student council members maintain academic eligibility, and that he has accurate information in the event that parental consent/contact is warranted. Regarding budget and financial responsibilities, he related that he bears total responsibility for developing the annual budget for student activities/social functions, namely \$7,500 for student social programs and \$10,000 for dance/student activities, and that he bears total responsibility for authorizing expenditures from all student activity accounts.

Regarding his decision-making authority, Bell related that he has full autonomy, without

even informing his supervisor, to authorize payment requests for student activity accounts, contract with entertainment vendors, and contract with other persons necessary to sponsor a student social function. He related that he has authority to act and then inform his supervisor, regarding rescheduling an activity due to conflicts or restructuring an activity due to contingencies. As an example of making recommendations to a supervisor or someone else who

then makes the final decision, he cited handling any student activity not originally scheduled or developed by him which may pose a conflict or require an adjustment because it conflicts with school district policies.

Asked what rules, instructions or procedures were available to guide or restrict his duties, Bell listed school district policies and guidelines, employe handbook, student handbook, and calendars reflecting ethnic holidays. Asked about individuals other than his immediate supervisor who provide advice/counsel, Bell identified the District Administrator, Principal, Dean of Students, who he said addressed school district policies and issues in the absence of his immediate supervisor, and the District Business Administrator. He identified the situations where he himself provides others with advice/counsel as staff/faculty club advisors and parent organizations regarding district policies on fund raising, the availability of social calendar dates, and the appropriateness of fund raising activities. Asked about what other positions are similar to his, Bell responded that there are other positions within the District that are categorized as Technical Support positions, but that these positions do not bear the same duties and responsibilities.

Regarding his supervisory responsibilities, Bell listed assign work, add or delete duties (chaperons for student social functions); plan work, establish priorities; instruct and train in methods and procedures; make hiring recommendations; make final decision on hiring, and make recommendations regarding unsatisfactory employes. He did not check preparing performance evaluation; making final decisions to terminate for cause; recommending pay changes; making promotional recommendations; making final decisions on promotions; maintaining staff personnel records, or responding to complaints and grievances.

6. Bell does not have the authority to direct that a club increase or cease activity. Only the District Administrator has the authority to refuse to charter a new club. No taxpayer funds are allocated to student clubs; the District does allocate approximately \$10,000 annually for school activities such as class dances. Bell has the authority to make disbursements from this line item. Bell enters into contracts with purveyors and facilities. Bell selects chaperons for events, and assigns and directs their activities at the events; such chaperons are usually District employes, and members of either the teacher or support staff unit. If Bell is dissatisfied with a chaperon's work, he has the authority to decline to employ the chaperon again, but has no authority to issue discipline which affects the employe's other District employment. Bell has authority to write work orders for setting up and cleaning for events which clubs and/or activities sponsor, similar to authority held by teachers. Bell participates in meetings of the District's Administrative Council and its calendar meetings, although he is not a formal member.

7. The Director of Student Activities does not exercise supervisory responsibilities in sufficient combination and degree so as to be deemed a supervisory employe.

8. The Director of Student Activities does not participate sufficiently in the formulation, determination and implementation of District policy or exercise sufficient authority to

commit the District resources so as to be deemed a managerial employe.

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

CONCLUSIONS OF LAW

1. The Director of Student Activities is not a professional employe within the meaning of Secs. 111.70(1)(L) or (1)(ne), Stats.

2. The Director of Student Activities is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., or a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER 1/

The position of Director of Student Activities is hereby included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of July, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ (See Footnote on Pages 6 and 7.)

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- 1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59(6)(b), 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(footnote continued on Page 7.)

1/ (footnote continued from Page 6.)

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

...

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

NICOLET UNION HIGH SCHOOL DISTRICT

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

POSITIONS OF THE PARTIES

In support of its claim that the subject position should be included within the bargaining unit, the Association argues as follows:

Contrary to the District's assertion, the subject position is not a professional employe, either as defined in statute or interpreted in Commission caselaw. Current statutes require a "school district professional employe" to have, as a condition of employment, a license issued by the superintendent of public instruction; while the subject employe is certified as a special education aide, the position itself has no certification requirement of any kind. And even if the employe met the statutory definition, he would still fail the Commission's test as set forth in Milwaukee Area VTAE District, which held as non-professional a similar position which actually had even more discretionary responsibility than the subject position here.

Nor is the subject position supervisory, particularly in light of the fact that the employe has never recommended the promotion, transfer or discharge of any District employe. The relevant job description makes no mention of supervisory duties, for no meaningful ones exist. Indeed, the subject position does not even have its own secretary to supervise. The assignment and direction of the work of event chaperons is de minimis in nature and does not support exclusion from the bargaining unit.

While Commission case law indicates that supervisory status can in part be determined by higher pay for added duties, the subject employe, working additional hours without overtime pay, essentially receives less pay due to his alleged professional and/or supervisory duties. In fact, while the chaperons are paid \$21.25 per event, the subject does not receive extra compensation for those events.

The subject employe clearly spends the vast majority of his time

supervising a range of school district activities involving students, but spends less than 3% of his time supervising the chaperons hired for functions. This does not satisfy the Commission's standard for supervising employes rather than supervising an activity.

While Mr. Bell is required to exercise a considerable amount of discretion and judgment in performing his duties, only a small fraction of such is directed toward the supervision of other school district employes.

Nor is the position managerial, in that Bell does not have a significant role in formulating or determining school district policy. Pursuant to statute, policy is set by the District; pursuant to practice, Bell has never appeared before the Board to help it review policies, or for any reason. Bell's position description clearly refers to his role in implementing and coordinating activities, and makes no mention anywhere of his having the authority or responsibility to determine policies or guidelines. Bell does not have the authority to shift funds from one student account to another, nor to exceed budgetary amounts without first getting approval of his supervisor and/or the District Administrator. The monies contained in club accounts are funds raised by the students themselves, and are not part of the taxpayer-financed school district budget. Even the student council itself is funded by student activity fees. As these funds are not part of the employer's budget per se, Bell's responsibility for formulating club budgets cannot be considered as committing the employer's resources as understood in Commission precedent. Further, these budgetary duties are largely ministerial, and not managerial.

While Bell has considerable responsibility for student clubs, he has no role in formulating or determining club policies. And while he has the power to establish which clubs are active during the school year, he does so by applying a set of criteria he had no role in formulating. And his decisions are appealable.

While Bell performs many valuable services for the District, he is neither a professional nor supervisory nor managerial employe, and should thus not be denied the right to obtain the advantages of membership in the collective bargaining unit.

In opposition to inclusion of the subject position in the collective bargaining unit, the

District argues as follows:

Bell is a managerial employe because he participates in making policy decisions, in establishing and allocating the district's budget. Like all other District administrators, he attends weekly "calendar meetings," and administrative council meetings, at which policy is set. Bell participates in making policies regarding whether an activity can occur at a certain time and place; cancellations; Student Council activities. Essentially, in regard to Bell's participation in both calendar and council meetings, he takes an active role in participating in decisions that affect student activity matters.

Bell controls the budget for all student activities and the funding for all student clubs, and maintains the accounts for all cash receipts. He puts in a request with the administration for the student activities budget, usually about \$10,000. In establishing a budget for the District, Bell has as much input as anybody else in setting the budget he desires for the next year. In disbursing funds, Bell is completely in charge of the \$10,000 allocated to him, and does not require the signature of his supervisor. Essentially, he is in charge of all the parameters surrounding a particular student activity, including entering into contracts on behalf of the district.

Given the fact that Bell takes part in developing student activities budgets, allocating such funds, and overseeing the funding of all student clubs, and is solely responsible for contracting on behalf of the district, and hiring and supervising employes at these activities, it is apparent that Bell has the authority to significantly affect the nature and direction of the employer's operations, thus making him a managerial employe.

Further, given that his position involves extensive discretion and judgment and is more intellectual in nature than the work performed by classified employes, Bell should be excluded as a professional employe. His duties are clearly predominately intellectual and varied in character as opposed to routine; involve the consistent exercise of discretion and judgment; require him to

act in a professional manner; and requires knowledge of an advanced type in a field of learning that is customarily required by a prolonged course of specialized intellectual instruction. Accordingly, he should be excluded as a professional employe.

Further, Bell should be excluded as a supervisory employe, in that he effectively recommends the discipline and discharge of fellow employes; exercised his authority to direct and assign the work; supervises many employes at one time; and exercised independent judgment and discretion in his supervision of other employes. At all student activities, Bell is in complete charge, with complete direction and control over custodial and chaperon employes, and with the authority to effectively recommend them for discipline. Significantly, in completing his position description questionnaire, Bell did not check the box reading, "my job has no supervisory responsibility." While Bell cannot promote, transfer, lay off or discharge employes on his own volition, he does have complete and direct control of all individuals who take part in or work at the student activities that he has planned, giving him sufficient authority and responsibility to be found a supervisory employe.

As a managerial, professional and supervisory employe, Bell is not a municipal employe and thus must continue to be excluded from the bargaining unit.

In further support of its position, the Association states in its reply brief as follows:

Because of 1993 Wisconsin Act 16, as applied by the Commission in the Grafton case, the Commission must reject the District's contention that Bell is a professional employe. Because Bell's position does not require licensure by the DPI or the District, the position fails the statutory test of being a professional employe. Further, notwithstanding the statutory situation, Bell does not satisfy the other tests for professional status, in that his position does not require an advanced degree or training. Accordingly, Bell should be found a municipal employe and accreted to the bargaining unit.

In further support of its position, the District states in its reply brief as follows:

The Union has failed to establish that Bell should be accreted to the bargaining unit, in that it has failed to offer sufficient evidence establishing that he is not a managerial, supervisory or professional employe.

Because Bell participates in District policy-making and in allocating the District's budget, the Commission should find him a managerial employe. Commission case law illustrates that the subject employe need only participate in the formulation, determination and implementation of policy, not that the employe be solely responsible for such policies. The union mischaracterizes Bell's budgetary responsibilities as purely ministerial, when he actually has as much input as anybody else in setting the annual budget regarding the student activities account.

The Union is wrong when it argues that, because the monies in the student club accounts are not taxpayer financed, Bell is somehow not committing the employer's resources. In fact, even though club funds are not part of the tax-based school budget, these funds are raised by the students on behalf of educational activities associated with the District and should logically be regarded as part of the District's resources. Because Bell as the authority to significantly affect the nature and direction of the employer's operations with respect to student activities, and because the union's arguments are factually erroneous and lacking in evidentiary support, the Commission should find Bell a managerial employe.

Because Bell exercises extensive discretion and judgment, and his business education degree is a necessary component to his budgetary responsibilities, the Commission should find him a professional employe. The union's argument about the statutory definition of school district professional employe misapplies the law, and should be ignored.

Further, the Commission should find that Bell is a supervisor, in that a sufficient number of the indicia of supervisory status are present. The union has mischaracterized, misrepresented and misstated the facts in claiming that Bell does not have meaningful responsibility to assign, direct and discipline school district employes.

DISCUSSION

The District has raised three distinct arguments as to why the position of Director of Student Activities should continue to be excluded from the collective bargaining unit.

Regarding the issue of Bell's alleged status as a "professional employe," the parties disagree over which statutory definition is applicable herein. NSUE contends that with the passage of 1993 Act 16, Sec. 111.70(1)(ne), Stats.,^{2/} becomes the only operative definition of professional employes of school districts. The District asserts that Sec. 111.70(1)(ne), Stats., exists only to define those employes covered by a "qualified economic offer" and does not displace Sec. 111.70(1)(L), Stats.^{3/}

We find it appropriate in the circumstances of this case to analyze Bell's "professional" status under Secs. 111.70(1)(ne) and 111.70(1)(L), Stats., because the result reached is the same

2/ Section 111.70(1)(ne), Stats., provides:

(ne) "School district professional employe" means a municipal employe who is employed by a school district, who holds a license issued by the state superintendent of public instruction under s. 115.28(7), and whose employment requires that license.

3/ Section 111.70(1)(L), Stats., defines a "professional employe" in pertinent part as follows:

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; . . .

under either definition and because such an analysis will remove the need for parties to return to us when the definition of a "school district professional employe" found in Section 3794am of 1995 Engrossed Assembly Bill 150 becomes law. 4/

Under the Act 16 version of Sec. 111.70(1)(ne), Stats., an individual whose employment does not require that he or she hold a Sec. 115.28(7), Stats., license is not a professional employe. Because Bell's employment does not require that he hold such a license, he is not a "school district professional employe" within the meaning of the Act 16 version of Sec. 11.70(1)(ne), Stats.

Turning to the definition of "professional employe" found in Sec. 111.70(1)(L), Stats., we are satisfied that Bell's work meets the first three criteria of the Sec. 111.70(1)(L), Stats., definition. However, because we are satisfied that Bell's work does not require knowledge of an advanced type customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, his work does not satisfy the fourth criterion and he is not a "professional employe" within the meaning of Sec. 111.70(1)(L), Stats.

A general review of prior Commission cases concerning the meaning and application of the fourth criterion reveals a number of factors that have been given weight in the case-by-case determinations involved. As we noted in Brown County, Dec. No. 7954-F (WERC, 3/91),

. . . the statute does not require that the incumbent of a position hold a college degree for the position to be found professional. This is true because the statute defines a professional position as one that cannot be performed without knowledge of certain kind, i.e., that which is usually acquired through "a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital." In other words, the course of study is a definition of the required knowledge which is the criterion, but is not the criterion itself." It necessarily follows that some professional positions require this kind of knowledge even though the incumbent acquired it through means other than a formal program of instruction or a college degree.

Thus, in Outagamie County, Dec. No. 2143-A (WERC,

4/ Section 3794am would amend Sec. 111.70(1)(ne), Stats., to provide:

"School district professional employe" means a municipal employe who is a professional employe and who is employed to perform services for a school district.

10/86) and Sun Prairie, Dec. No. 20841-B (WERC, 10/86), cited by the County, the Commission found that although the incumbents did not possess a degree, the required knowledge was of the type customarily acquired through social work and engineering degrees, respectively and therefore satisfied the Sec. 111.70(1)(L)1.d. test.

By the same token, it follows that an employer might insist an applicant for a position hold certain specialized educational credentials, but if the performance of the job duties does not require that body of knowledge, the position would not be found to be professional. In other words, an employer cannot cause a position to be professional within the meaning of the Statute by establishing educational standards which do not provide the knowledge necessary to fulfill the tasks associated with the position.

Accordingly, the Commission has considered it relevant whether the employer's published job specifications/announcement require educational attainment beyond high school graduation in an advanced and specialized field of study related to the duties of the position. For example, in Dane County, Dec. No. 10492-D (WERC, 4/85), a Specifications Coordinator position was not deemed professional, in part, because

The reference to a college degree requirement contained in the job description ["Any combination equivalent to graduation from college with a degree in business or public administration or a related field, and two years (sic) experience in the purchasing of services and supplies for a government agency"] . . . refers only to the rather broad and general fields . . . rather than to "a course of specialized intellectual instruction" such as is referred to in the statute.

Also considered relevant in that case was whether such degree requirements are firm minimums or are, instead, subject to waiver for applicants deemed to have equivalent training and/or experience. The fact that a degree requirement was subject to waiver on account of equivalent training and experience was also part of the basis for finding that the Analyst/Programmer II in Brown County, Dec. No. 11983-C, supra, was not a professional.

Another factor considered has been whether the individuals whom the employer has hired have possessed degrees when hired. Similarly, in City of Cudahy, Dec. No. 19507, supra, the Commission held a disputed position professional, in part, because the incumbent was scheduled

to receive a degree in management shortly after the hearing and had taken courses in data processing as well as receiving training from IBM in the use and operation of the City's computer.

The Commission has also found it relevant whether advanced and specialized knowledge is needed to perform the bulk of the job or only some minor portion of it. In Dane County, Dec. No. 21397, supra, the Commission's decision that the Data Base Coordinator position was not professional gave weight to testimony that "the requirement of a college degree was intended more for those times when the Coordinator functioned in the absence of the Purchasing Agent than for the bulk of the coordinator duties." In Clark County, Dec. No. 19744-E (WERC, 8/93), the Forestry Technician was held non-professional, in part, because "we do not find that the primary functions of [the] position customarily require the educational attainments [defined in Sec. 111.70(1)(L)1.d., Stats.]."

The Commission has also considered whether the record establishes that the job in question requires knowledge of the sort customarily attained in a specialized four-year degree program related to the nature of the duties of the position. For example, in City of Sun Prairie, Dec. No. 20841-B, supra, the Commission held professional a Senior Engineering Technician without a bachelor's degree in a job requiring two years towards a specialized associate degree rather than the four years or more ordinarily associated with a college degree in engineering, because the Commission was persuaded that the responsibilities of the position were the type which required knowledge of the sort customarily acquired in an engineering degree program. In Dane County, Dec. No. 21397, supra, the conclusion that the Data Base Coordinator was not professional was based, in part, on testimony that the incumbent's "training was not as deeply technical as compared to persons with a Bachelor's Degree in Data Processing."

The "Minimum Qualifications" for Bell's position are described in his job description as:

Previous education, training, work or life experience which provides reasonable evidence of the successful performance of the various tasks listed above. Such experience may be evidenced by at least two years of related experience and a Bachelors Degree in business, public relations or other related field.

Under the above-quoted analysis from Dane County, Dec. No. 10492-D and Brown County, Dec. No. 11983-C, the breadth and generality of the degree fields (i.e. business, public relations or other related field) which satisfy the "Minimum Qualifications" and the ability to substitute "work" or "training" for a degree, provide strong support for Bell's non-professional status under the fourth criterion and strongly cut against District claims that Bell's budget and allocation responsibilities require knowledge that fits the fourth criterion. Even assuming the District is correct as to the knowledge and "customary" source thereof needed for Bell's

budgetary and allocation responsibilities, our above-quoted analysis from Clark County, *supra*, would still produce a non-professional determination because these responsibilities are not the "primary" function of the position.

We turn now to the issue of Bell's purported status as a managerial employee.

The Legislature has excluded "managerial employees" from the definition of "municipal employees," but it has not provided a statutory definition of the former term. Section 111.70(1)(i), Stats. Instead, it has left to the Commission the case-by-case development of precise meaning to define those individuals whose relationship to management imbues them with interests significantly at variance with those of other employees.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individuals possess the authority to commit the employer's resources, either by exercising significant authority in the establishment of an original budget or by allocating funds for different program purposes within an original budget. 5/

For an individual to assume managerial status based on participation in program and policy, such involvement must be "at a relatively high level of responsibility." 6/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided, or the kind and number of employees to be used in providing services. 7/

In Amery School District, Dec. No. 15794-D (WERC, 8/89), we found the positions of Community Education Coordinator and Computer/Gifted and Talented Coordinator to be managerial. The Community Education Coordinator provided over 30 educational, training, recreational, cultural and/or athletic programs and services for community members, outside the regular school curriculum. The incumbent also worked with the area technical college and the area campus of the University of Wisconsin system, contacting potential instructors, setting tentative schedules, and determining course offerings. The incumbent also had the authority to transfer funds between line accounts within her budget. Both the Community Education Coordinator and the

5/ Milwaukee v. WERC, 71 Wis.2d 709 (1976); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp, 1984).

6/ Village of Jackson, Dec. No. 25098 (WERC, 1/88); Portage County, Dec. No. 6478-C (WERC, 10/87); Door County (Courthouse), Dec. No. 24016-B (WERC, 8/88).

7/ Village of Jackson, *supra*; Forest County, Dec. No. 17528-B (WERC, 6/85); Jackson County, Dec. No. 17828-B (WERC, 10/86); City of Whitewater, Dec. No. 24354 (WERC, 3/87).

Computer/Gifted and Talented Coordinator attended weekly meetings of the District's policy-making administrative team, which included the District Administrator, the three building principals, the assistant high school principal and the supervisory social worker. The Computer/Gifted and Talented Coordinator was responsible for changes in class scheduling, curriculum content and equipment purchases, including the responsibility for establishing the curriculum and activities for the gifted and talented program. In explaining why the positions were managerial, we noted that the administrative team was second only to the Board of Education itself in setting district-wide policy; that in expanding the community education activities, and in her other activities, the coordinator had the ability to hire individuals without prior approval, the ability to initiate community education programs, and the independent authority to set fees for such programs; that, in addition to having considerable input into budgetary matters affecting her department, the Computer/Gifted and Talented Coordinator was responsible for the content and scope of the programs, empowered to make decisions which significantly impacted on the nature of the programs provided to the students. Clearly, the role of these positions in setting educational policy far exceeds Bell's.

In Northland Pines School District, Dec. No. 27154 (WERC, 2/92), we rejected the employer's claim of managerial and supervisory status for the positions of Student Assistance Program Coordinator and Gifted and Talented Coordinator, while agreeing with the employer's managerial claim for the position of Curriculum/Computer/Grant Coordinator. As with Amery Schools, the facts and our analysis in this case are useful in evaluating the issues now before us.

The Student Assistance Program (SAP) Coordinator, Lyons, administered the district's Student Assistance Program; was responsible for evaluating the Alcohol and Other Drug Abuse curriculum and for seeing that it was presented properly; presented a two-day in-service training for teachers of the curriculum; attended faculty meetings; attended Board meetings three times annually to give updates on the program; selected volunteers to be co-facilitators, and coordinated the SAP volunteers who she did not formally evaluate, but among whom she did choose "core team" members, which responsibility gave her the authority to reject or terminate volunteers, and chaired the district's Student Assistance Steering Committee, giving her input into the formulation of SAP policy and the primary responsibility for implementing that policy. Lyons also could contract with district secretaries to work directly for her, at District expense, outside their normal work year, which authority also gave her the ability to terminate the arrangement, at her discretion, if Lyons deemed the work unsatisfactory. In rejecting the employer's claim of supervisory status, we explicitly noted that Lyons' authority to terminate the temporary secretarial service was not relevant, in that, while performing the temporary duties, the secretary was considered an independent contractor, rather than an employe of the District. As supervisory status must be based on the supervision of employes, supervision of an independent contractor does not suffice. 8/ We also rejected the District's theory by noting that Lyon's evaluative and assignment authority over the

8/ Jackson County, Dec. No. 17828-B (WERC, 10/86).

volunteer status of District employees in the student support groups did not affect their regular jobs in the District. Similarly, Bell's supervisory and assignment authority, to the extent that it affects District employees at all, only extends to their non-employment duties; Bell cannot take any action, or effectively recommend same, that affects their status as a District employee. We further found that Lyons's involvement in the formulation, determination and implementation of District policy was not at a sufficiently high level to warrant a finding of managerial status. We cannot find Bell's involvement to be at a higher level.

The Curriculum/Computer/Grant Coordinator, Burchby, had a wide range of duties, including assessing the curriculum, and developing a plan to meet the District's needs with regard thereto, including state mandates, implementing programs to meet those needs and coordinating a systematic ongoing evaluation. She also assessed the other District needs, and sought grants to fill those needs, wrote the applications, ensured the District met requirements, monitored and administered grants received, and evaluated their effectiveness. She was also responsible for developing classes about computers, determining the best software and hardware, and effectively made recommendations on purchases and service contracts. She also attended all Board meetings to report on the curriculum and all administrative staff meetings; participated, with the High School Principal, in developing a test and interviewing applicants for her secretarial position, and made, with the principal, a joint recommendation for hire. In our discussion, we focused on these aspects of her duties, all of which substantially surpass Bell's.

The Amery and Northland Pines cases set forth the parameters of the kinds of school district positions which are and are not managerial. It is clear that the subject position now under review is substantially closer in policy-making authority to the position of the Northland Pines SAP Coordinator than the Amery positions, and does not meet the test of managerial status. Further, given the established constraints on the use of District funds, and that the clubs raise their own funds, we do not find Bell's budgetary authority sufficient to establish managerial status either. Bell develops the student activities budget within existing District guidelines and does not have independent authority to move funds between accounts or to exceed budgeted amounts.

We turn now to supervisory status, already partially addressed above.

The statutory and case law format for evaluating a claim of supervisory status is clear and well-settled. The factors on which we focus are as follows:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of

persons exercising greater, similar or lesser authority over the same employes;

4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employes;
5. Whether the supervisor is supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and
7. The amount of independent judgement exercised in the supervision of employes. 9/

We have already briefly touched on the weight we give to a subject position's effective authority to hire, discipline and discharge ancillary positions such as chaperons and temporary clerical help. There is little difference between the temporary secretarial position referenced in Northland Pines and the chaperons referenced here. As the Northland Pines subject position did not acquire supervisory status by her power to hire the secretary, neither does the subject position here acquire same by its power to hire and not hire chaperons.

Bell does not meaningfully supervise any District employes. While Bell can write work orders for custodial and other support activities, so, too, can bargaining unit members. His authority to direct and assign the work crews or chaperons is occasional, and clearly not sufficient to establish supervisory status.

The position of Director of Student Activities is an important one which requires discretion, judgment and skill. It is not, however, a position which meets our statutory or case law tests of professional, managerial or supervisory employes. Accordingly, the position is appropriately added to the NSUE bargaining unit.

Dated at Madison, Wisconsin this 28th day of July, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

9/ City of Shell Lake, Dec. No. 27878 (WERC, 11/93).

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner