

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN EDUCATION ASSOCIATION COUNCIL
Involving Certain Employees of
GATEWAY TECHNICAL COLLEGE

Case 61
No. 59678
ME-1026

Decision No. 30609

Appearances:

Attorney Laura J. Amundson, Legal Counsel, Wisconsin Education Association Council, 33 Nob Hill Drive, Madison, Wisconsin 53708-8003, appearing on behalf of Wisconsin Education Association Council and Gateway Technical Educators Association.

Michael Best & Freidrich, LLP, by **Attorneys Robert W. Mulcahy and Scott C. Baumbach**, 100 East Wisconsin Avenue, Suite 3300, Milwaukee, Wisconsin 53202-4108, appearing on behalf of Gateway Technical College.

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

On November 9, 2001, the Wisconsin Education Association Council filed a petition with the Wisconsin Employment Relations Commission seeking to clarify seven positions/employees into an existing bargaining unit of Gateway Technical College employees represented by the Association.

Hearing on the petition was held on March 12, March 19 and April 22, 2002, in Kenosha, Wisconsin by Commission Examiner Karen J. Mawhinney. During and following the hearing, the Association withdrew without prejudice its request for inclusion of the

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following five positions/employees: WMEP Field Agent, School to Work Specialist, Training and Development Coordinator, Business Development Coordinator and Employer Technology Coordinator.

The remaining two positions in dispute are the Director of High School Relations and Lakeview Employer Outreach Marketer. The College, contrary to the Association, argues the incumbents in these two positions are managerial employees who should continue to be excluded from the bargaining unit.

The parties filed briefs by August 7, 2002.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Gateway Technical College, herein the College or the Employer, is a municipal employer having its offices at 3520 30th Avenue, Kenosha, Wisconsin 53144-1690.

2. The Wisconsin Education Association Council/Gateway Technical Educators Association, herein the Association, is a labor organization representing certain College employees described as follows in the recognition clause of the parties' 1998-2001 collective bargaining agreement:

All full-time and regular part-time professional personnel working 50% or more of a regular schedule for their positions including teachers, counselors, advisors, librarians, school nurses, AODA specialists, certified teaching assistants, A-T lab assistants, aviation teacher assistants, instructional specialists, program chairpersons, but excluding supervisory, managerial and confidential employees, custodial employees and clerical employees, and all other employees.

3. The Director of High School Relations is a new year-round position at the College that the incumbent Richard Malloy has held since July of 2000. Malloy's immediate supervisor is the Vice President of the Open Learning Campus, Patrick Flanagan, whose office is located at the College Administration Center in Kenosha. Malloy's office is on the College's Racine campus.

Malloy's job description states in relevant part:

Job Summary:

The primary responsibility of the Director High School Relations is the administration of the high school relations program including youth options. The director is the liaison between Gateway Technical College and its secondary and post-secondary consortium partners. Facilitates teacher-to-teacher efforts, faculty and staff development, and in-services to enhance high school relations with the college. Responsible for budget and financial management of high school relations office.

Essential Functions:

1. Plan and organize high school recruitment including career fairs, high school staff meetings, career speakers, campus tours, and information dissemination
2. Develop marketing strategies with local high schools
3. Coordinate Gateway Technical College participation in community recruitment projects such as Technology Day, Community Days, Law Enforcement Day, and Education Days
4. Coordinate inquires and major correspondence with secondary schools
5. Facilitate career development activities; e.g., career plans, handbook, etc.
6. Assist with the development of class schedules for courses offered under youth options, youth apprenticeship, and skill coops
7. Develop and administer budget for high school relations projects; write grants, authorize expenditures of project funds, determine activities to be funded, and prepare financial reports
8. Negotiate school-to-work §38.14 Contracts with area high schools
9. Supervise the Gateway Technical College course offerings on the SWIMG network
10. Other duties as assigned

When carrying out his job responsibilities, Malloy works with the superintendents and other employees of all school districts in Racine, Kenosha and Walworth Counties. To ensure that the districts have accurate information as to the services and resources the College has to offer, Malloy assembled an information manual which he distributed to all districts.

Malloy receives requests from school districts for College services and may recommend the level of services to be provided based on the requests he receives. However, Malloy does not have the authority to commit the College to provide services. That decision is made by the appropriate College administrator or governing body.

Malloy helps with the logistical planning for a College Fair for high school students.

At the suggestion of a College administrator, Malloy has developed targeted high school student tours for each College campus and arranges for instructors and counselors to be available to promote their programs during such tours. He finalized his tour plan for each campus after meeting with the deans and provosts of the three College campuses. Malloy's role as to the tours is primarily logistical. He arranges for the instructors and counseling staff to talk to students, matches student needs and interests with appropriate personnel, and arranges for lunches or other special needs to be met.

Malloy attends meetings of the executive board of the Southeastern Wisconsin Instruction Network Group (SWING) that meets every month. SWING is a consortium of school districts that can pool students together and use interactive teaching. Malloy is the conduit for information from the College to the school districts and from them back to the College. He reports on services that may be available through the College and delivers requests from the districts for class offerings and programs.

Malloy represents the College at the monthly meetings of the Southern Lakes Alternative High School Consortium (SLAHSC). This organization consists of six school districts and operates an alternative high school helping at-risk students get a high school diploma. Malloy provides information to the Consortium on services that may be available through the College.

Malloy attends Healthy Youth Community Group and the Coalition for Youth meetings. The Healthy Youth Group is made up of Parent-Teacher Association (PTA) members from the Kenosha Unified School District as well as from some nonprofit agencies and business leaders. Malloy attends the monthly meetings to talk with parents and explain how the College fits into the community and how its outreach efforts and programs serve young people. At the request of the Provost of the Racine campus of the College, Malloy serves as a Board member for The Coalition for Youth which is made up of elected officials in Racine County, nonprofit agencies, members of the administration of the Racine Unified School District and other organizations in Racine County. Another College administrator, Ann Henderson, previously served on the Coalition for Youth Board. Malloy's primary function is to promote the image of the College and answer questions about the College and its programs.

Malloy receives administrative communications not generally available to all employees of the College and confidential e-mails that go only to administrators.

The substantial majority of the \$69,000 budget within which Mallory operates consists of his salary and fringe benefits. He has the authority to move funds within his budget between items such as mileage, travel, conference expenses and office supplies. He can approve his own expenses within reason and within the allowances of the budget. Requests for capital equipment over \$500 have to be approved by the College Provost.

Malloy will provide information to and work with his supervisor, the Vice President of the Opening Learning Campus, in the preparation of future budgets for his position. The Vice President will then present the budget to the College President's Advisory Council that ultimately approves or modifies the budget for his position.

If there is a project that needs funds beyond those in Malloy's budget, Malloy would seek other resources within the College and ask Vice President Flanagan about the merits of a project and how to fund it.

4. The Director of High School Relations does not have sufficient participation in the formulation, determination and implementation of College policy or have sufficient authority to commit the College's resources to be a managerial employee.

5. The Lakeview Employer Outreach Marketer is a new year-round position at the College that has been held by Deborah Davidson since November 5, 2001.

The job description for this position states:

Job Summary:

The primary responsibility of the Lakeview Advanced Technology Center Employer Outreach Marketer will be to promote Gateway Technical College training programs, ACT Workshop Assessment Center, and Lakeview Technology academy to local companies and schools.

Essential Functions:

1. Coordinate projects
2. Manage budget for contracts
3. Serve as marketing liaison from the Lakeview Technology Center and the ACT Center to business
4. Participate in the Chamber of Commerce and other business related organizations
5. Interact with businesses to identify their needs to develop customized course materials, courses, and programs while involving BISD training facilitators
6. Analyze profitability of new ventures and work with customers on developing long-range training initiatives
7. Assist Kenosha Unified School District in marketing the Lakeview Technology Academy to students parents and the community

Education/Experience:

1. Bachelor's degree in engineering, business or related field, master's preferred
2. Five to seven years of progressively more responsible work experience in business or industry
3. Experience working in a team environment
4. Strong customer service and organizational skills
5. Computer skills in Microsoft Windows, Word, Excel, Access and PowerPoint or equivalent

Certificate/License:

1. Employment eligibility for the United States

Working Conditions

1. Contact with the public on a regular basis
2. Visible work area/cubicle in shared office
3. Smoke-free environment

Davidson's supervisor is Greg Wright, the Associate Vice President of Lakeview Advanced Technology Center (LATC). The LATC is owned by Wis Park, Kenosha Unified School District, Gateway Technical College, Kenosha Area Business Alliance and the Kenosha County Job Center. In addition to Davidson and Wright, the LATC is staffed by a College secretary that College faculty members who teach there in the afternoons and evenings.

LATC is a high school in the mornings, and part of Davidson's job is to help Kenosha Unified School District recruit students to come to that high school. She attends open houses at middle schools to tell students about how they can take youth option courses. She meets with counselors to talk about programs at LATC.

Davidson is responsible for developing marketing materials and strategies. She distributes materials to personnel within Gateway, such as the Business and Industry Services Division, as well as to those outside the College, such as the Kenosha County Job Center and the Kenosha Area Business Alliance.

Davidson serves as the marketing chair with Leadership Kenosha, a program of the Kenosha Area Chamber of Commerce. Her role on behalf of the College is to advise the Chamber membership what continuing education opportunities are available at the College. She is a member of the Business Breakfast Briefing Solutions Program through the Kenosha County Small Business Development Center, which includes the Kenosha Area Business Alliance and the Kenosha County Job Center. This group provides educational briefings at breakfasts for local employers. Davidson markets the services of the Kenosha Area Business Alliance along with Gateway's services to the community.

Given her limited tenure at the time of hearing, Davidson has not prepared a budget for her position. She will be involved in developing the budget for her position in the future, and it is anticipated that the marketing part of the budget will be \$35,000. Davidson has the authority to move funds within her current budget between items such as mileage, travel, conference expenses and office supplies.

Davidson primarily works with businesses within Kenosha County. She meets with employers in the County to identify particular skill areas where training of employees is needed. If there is not an existing course that fits their needs, she develops a customized training program for them. If an employer is interested in contracting with the College for training services, Davidson will negotiate the terms of a Sec. 38.14 contract with the employer that specifies the cost to the employer and the services to be provided by the College. Davidson is authorized by the College to sign any such Sec. 38.14 contract and need not consult with or receive the approval of any other College employee before doing so.

6. The Lakeview Employer Outreach Marketer has sufficient authority to commit the College's resources to be a managerial employee.

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

CONCLUSIONS OF LAW

1. The Director of High School Relations is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. The Lakeview Employer Outreach Marketer is a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Director of High School Relations is included in the bargaining unit represented by the Association and the Lakeview Employer Outreach Marketer shall continue to be excluded from the bargaining unit represented by the Association.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of April, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Chairperson Judith Neumann did not participate.

GATEWAY TECHNICAL COLLEGE

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

POSITIONS OF THE PARTIES

The Association

The Association asserts that the Director of High School Relations does not formulate, determine and implement management policy at a level sufficient to warrant exclusion from the bargaining unit as a managerial employee.

Incumbent Malloy's testimony shows that at most, as a professional employee, he implements policies formulated and determined by management. He stated that he represents the College at meetings of area school district consortia or other community groups, but his role involves customer service, listening to the attendees' needs and informing them what services might be available to them. His follow-up from those meetings does not involve formulating or determining Gateway policy. Rather, his follow-up involves making sure the right people are contacted for the services requested. In this context, he acts as a middleman to contact Gateway departments to serve local organizations' needs. He does not have the authority to determine what services will be rendered or to assign or approve the use of staff time to deliver those services.

The Association argues that Malloy does not formulate or determine policy when he schedules and arranges for high school tours of the Gateway campus. He has no authority to commit resources or approve expenditures relating to tours, and the provost of the campus hosting the tour approves any expenses such as lunch for visiting students. He has no authority to formulate or determine policy with regard to continuing education courses, and his role is to listen to school administrators to find out what types of services they want.

The Association contends that Malloy does not create an original budget or have involvement with budget preparation that significantly affects the nature and effect of the Employer's operations and does not have the effective authority to commit resources in a manner that affects the nature and direction of operations. He has never created a budget and an operating budget was in place when he was hired. He did not know who developed that budget. His supervisor would have to approve the budget before it went to the Board of Administration for approval. The amounts of money that he may transfer within the pre-determined budget are *de minimis*. He has no authority to approve expenditures over \$500.

The Association concludes that the Director of High School Relations is not a managerial employee and should be included in the bargaining unit.

Turning to the Lakeview Employer Outreach Marketer position, the Association also asserts that the incumbent in this position is a not managerial employee and should be included in the bargaining unit.

Incumbent Davidson's duties are those of a professional but not managerial employee. Davidson markets the services of the College and the Kenosha Area Business Alliance but has no authority to formulate and determine policies for either of the entities. She attends meetings and open houses of the Kenosha Unified School District to market Gateway's services to high school students, but is not formulating and determining the policy pursuant to which her marketing services are delivered. Like Malloy, Davidson attends meetings of business-related community groups on behalf of the College but does not commit the College's resources at them.

While Davidson testified that she anticipates negotiating \$38.14 contracts for Gateway training services with Kenosha area employers, she had not done so at the time of the hearing. She would have no authority to approve Gateway trainers' workload for training contracts and thus no authority to commit the Employer's resources in this context. The cost of training programs is set by the Board and is not determined by the discretion of the employee marketing such programs. She also testified that she will have a role in negotiating ACT contracts allowing the community to use testing resources at Lakeview. In this capacity, Davidson may act as a professional employee marketing programs through Gateway but has no role in formulating or determining policy. While she testified that she may discount prices for ACT training programs, she admitted that the publisher providing the programs sets the amounts of potential discounts. Therefore, she only implements pre-set prices determined by an outside retailer.

The Association notes that although Davidson played a role in developing marketing materials to use in her department, she was supervised in this activity, and when the marketing plan was completed, it had to be approved by the Lakeview executive board. Like Malloy, her rate of pay reflects no premium for making policy decisions.

The Employer

The Employer contends that the Director of High School Relations is a managerial employee because his position is entrepreneurial and uses judgment and initiative to further the strategic direction of the College. Incumbent Malloy is the only recruiter for the College, and his "just do it" attitude shows he has been given the authority and responsibility of a manager by the College to take a lead role in fulfilling the College's strategic direction.

The Employer notes that Malloy is the College's sole representative in two community groups – the Health Youth Community Group and the Coalition for Youth. Previous representatives in those groups from the College include the Provost of the Racine Campus and the Dean of Student Support.

Malloy participates to a significant degree in the formulation, determination and implementation of management policy. He contacts school district administrators in order to respond to their needs. He has prepared a manual which was distributed to the districts and superintendents. After he completed the manual, he set up meetings with superintendents to distribute the manuals and review them. He also brought back the results of his meetings and began collaboratively working with the school districts to provide more services. He developed an interactive videoconference series called Talking-Tech that puts Gateway instructors and counselors from a specific career cluster into a distance-learning lab so they can talk to high school students and teachers. He moderates the program and is responsible for the logistics, including scheduling.

Malloy represents the College before the Southeastern Wisconsin Instructional Network Group (SWING) and the Southern Lakes Alternative High School Consortium (SLAHSC). He speaks for the College at executive meetings for those entities and follows up on suggestions about what needs to be done. He also sets up campus tours to promote the College and connects students with instructors. Because the College does not have a recruiting staff, campus tours are important to market and recruit for the College. Malloy's initiative in this respect significantly affects the direction of the College.

The Employer points out that Malloy has corrected misinformation in some instances. Because of Malloy's effort to correct information at a school district, the College continues to provide services to a particular high school. He also corrected several binders that were going to be distributed by an instructor in Office Systems Technology after realizing they contained critical mistakes. Malloy will have final approval before the revised binders are to be distributed.

Malloy participates to a significant degree in the formulation, determination and implementation of management policy by providing services such as planning and organizing high school recruitment, career fairs, high school staff meetings and marketing. He is also involved in working out a new market with regard to Hispanic students and services that could be provided by the College.

The Employer contends that Malloy has the authority to commit the College's resources by preparing an original budget and allocating funds for different purposes within that budget. He prepares and administers a budget of \$69,000, and it is his responsibility to make sure that budget does not go over that amount. He has the authority to spend money from within his

budget for travel expenses, office materials and printing. He can move money around within his budget without prior approval. He has to analyze his monthly financial statements and plan accordingly. The relatively low level of Malloy's budget is misleading because he coordinates events from each campus's budget rather than from one department. For example, if funding were required for luncheons or anything else related to a campus tour, Malloy would be involved in the funding of those activities that are paid by the respective campus rather than from his own budget. In order to market the College and fulfill its strategic direction, he must harness all the resources of each campus and put them to use for each event.

The Employer submits that Malloy exercises privileges normally afforded only to managers. He prepares a budget and can adjust line items within it. He is the primary contact between the College and superintendents of high schools. He sets his own priorities. He attends administrative meetings and has access to confidential e-mails sent only to administrators. He attends mandatory management training sessions. Based on the foregoing, he should be excluded from the bargaining unit on the basis that he is a managerial employee.

The Employer asserts that the Lakeview Employer Outreach Marketer is also a managerial employee.

Incumbent Davidson is the primary person in charge of marketing a product that the College has never had before, the Lakeview Advanced Technology Center (LATC) ACT testing center. Her duties include coordinating projects, managing budgets for contracts, acting as a marketing liaison for the College and providing customized training information. Davidson has the sole responsibility for developing marketing materials for LATC. She put together a marketing plan and took it before the LATC executive committee for approval. She does not need prior approval to prepare plans or to do her job as the outreach marketer.

The Employer asserts that Davidson provides services to businesses and service organizations, such as manufacturers, banks and retail stores, and she developed the means to market the LATC by direct and targeted mailings, personal visits, cold calling, referrals and attending functions. She has determined what types of businesses to contact. As a result of her efforts, the LATC staffing levels and course offerings were impacted in a positive way. Thus, her initiative affects the kind and level of services to be provided and the kind and number of employees to be used in providing services.

Davidson has the authority to negotiate and sign contracts with customers and vendors that binds the LATC. She will also have the authority to sign Sec. 38.14 contracts for customized training. Only managers have the authority to sign such contracts. She meets with employers to discuss the kind of training they want and matches their needs with the College's services. Then she negotiates a contract with the employer and signs on behalf of the College. She will negotiate the number of hours required to increase the skill level of employees, and

will determine the kind and number of College's employees to provide the services. Davidson also has the authority to negotiate and sign for training at the ACT center. She can bundle courses to provide discounted prices, based on volume and a particular company.

Because Davidson is so new to the job, she has not yet prepared her own budget but has been told she will be responsible for establishing a marketing budget. She will be attending budget and/or finance committee meetings. She has the authority to allocate funds from that budget as needed for marketing. She has the ability to move money around within her budget.

While the Association argues that five facilitator trainers who are bargaining unit members have the same duties and responsibilities as Davidson, the College asserts the Association is wrong. This position is very different and has management responsibilities that the facilitator trainers do not. Davidson has the authority to sign Sec. 38.14 contracts and the facilitator trainers do not. Further, the facilitator trainers are not responsible for any budgetary items. Their first priority is to be a teacher and they are limited to 15 hours per week of customer service, whereas Davidson is a full-time marketer. Davidson is allowed privileges normally afforded only to managers. She sets her own schedule and goals. She attends managerial meetings and receives administrative staff e-mails.

Thus, the College argues Davidson is a managerial employee.

DISCUSSION

Section 111.70 (1)(i), Stats. defines a municipal employee as:

. . . any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, **managerial** or executive employee. (emphasis added).

Because the term "managerial . . . employee" is not statutorily defined, the meaning of this statutory phrase has been developed by the Commission and the courts. When determining whether an individual is a managerial employee, the Commission and courts consider the degree to which an employee: (1) participates in the formulation, determination **and** implementation of the employer's policy; and/or (2) commits the employer's resources. MILWAUKEE V. WERC, 71 Wis. 2D 709 (1976); VILLAGE OF WHITEFISH BAY V. WERC, 103 Wis. 2D 443 (1981); KEWAUNEE COUNTY V. WERC, 141 Wis. 2D 347 (Ct. App. 1987); COUNTY OF EAU CLAIRE V. AFSCME LOCAL 2223, 190 Wis. 2D 298 (Ct. App. 1994).

When applying this definition, the Commission has concluded an employee's participation in the formulation, determination and implementation of policy must be at a "relatively high level." and that the ability to commit resources must involve allocation of

resources in a way that significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, *inter alia*, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capitol improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. VILLAGE OF JACKSON, DEC. No. 25098 (WERC, 1/88); MARINETTE COUNTY, DEC. No. 26154-B (WERC, 3/92); CITY OF RACINE, DEC. No. 29828 (WERC, 2/00).

Director of High School Relations

We conclude that Malloy is not a managerial employee.

While Malloy plays important roles communicating the services and resources the College has to offer, receiving input as to customer needs and coordinating the recruitment of students, these roles do not significantly involve the formulation and determination of College policy. Others in the College's organizational structure made the policy choice of placing greater emphasis on the College's marketing efforts to potential students. That policy choice led to the creation of Malloy's job. Thus, while Malloy plays an important role in the implementation of this College policy choice, he did not formulate or determine the College's policy. Therefore, his judgments as to how best to implement College policy in terms of marketing strategies and materials do not make him a managerial employee.

Nor does Malloy have the sufficient authority to commit the College's resources to be a managerial employee.

His ability to shift relatively small amounts of money within his budget reflects desirable flexibility given him by the College when performing his job functions but falls far short of demonstrating the requisite allocation of resources in a way that significantly affects the College's operations.

Most importantly, Malloy does not have the authority to commit the College's resources to customers. Although he may make recommendations to others within the College hierarchy as to what services should be provided by the College to meet a customer's needs, he does not have the authority to commit the College resources for those purposes.

Given all of the foregoing, we conclude Malloy is not a managerial employee.

Lakeview Employer Outreach Marketer

We conclude that Davidson is a managerial employee.

Like Malloy, Davidson's primary responsibilities involve communicating with potential customers about the services and resources the College has to offer, receiving input as to customer needs and recruiting customers. As was true for Malloy, these responsibilities do not involve Davidson in the formulation and determination of College policy at the requisite "relatively high level." Others in the College's organizational structure made the policy choice of placing greater emphasis on the College's marketing efforts to employers. That policy choice led to the creation of Davidson's job. Thus, while Davidson plays an important role in the implementation of this College policy choice, she did not formulate or determine the College's policy. Thus, her judgments as to how best to implement College policy in terms of marketing strategies and materials do not make her a managerial employee.

Like Malloy, Davidson's budgetary role and flexibility do not make her a managerial employee. Her ability to shift amounts of money between the various types of budgeted expenses that she incurs in her marketing efforts falls far short of the requisite "allocation of resources in a way that significantly affects the nature and direction of the employer's operations."

Unlike Malloy, the record does persuade us that Davidson has the authority to commit the College's resources to customers. When she negotiates and signs Sec. 38.14 contracts on the College's behalf, she will bind the College to provide certain services at a negotiated cost. Her signing authority distinguishes her from the bargaining unit employees who negotiate the terms of such contracts but who then turn said agreements over to Davidson's supervisor for his review and, if he approves, his signature.

When she signs the Sec. 38.14 contracts on behalf of the College, Davidson will effectively determine the "kind and level of services to be provided" and the "kind and number of employees to be utilized in providing services." As previously noted, this type of authority when committing an employer's resources is sufficient to establish managerial employee status. Thus, we conclude that Davidson is a managerial employee who should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 25th day of April, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Chairperson Judith Neumann did not participate.

