

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

**TEACHING ASSISTANTS ASSOCIATION,
LOCAL 3220 OF THE WISCONSIN FEDERATION OF
TEACHERS, AFT**

Involving Certain Employees of

**STATE OF WISCONSIN,
UNIVERSITY OF WISCONSIN-MADISON**

Case 647
No. 63867
SE(u/c)-21

Decision No. 31007

Appearances:

Shneidman, Hawks & Ehlke, S.C., by **Aaron N. Halstead** and **Kathleen M. Lounsbury**,
222 West Washington Avenue, Suite 705, P.O. Box 2155, Madison, Wisconsin 53701-2155,
on behalf of the Complainant.

David J. Vergeront, Chief Legal Counsel, Office of State Employment Relations, State of
Wisconsin, 345 West Washington Avenue, P.O. Box 7855, Madison, Wisconsin 53707-7855,
on behalf of Respondent.

**PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

On October 1, 2002, the Teaching Assistants Association, Local 3220 of the Wisconsin Federation of Teachers, AFT, hereinafter Complainant, filed a complaint with the Wisconsin Employment Relations Commission wherein it alleged that Respondent State of Wisconsin, through the actions of the University of Wisconsin-Madison, committed an unfair labor practice within the meaning of Sec. 111.84(1)(e), Stats., by refusing to arbitrate a grievance

No. 31007

arising under the parties' collective bargaining agreement. Thereafter, in response to the defense raised by the Respondent that the individual that is the subject of the grievance is not in the bargaining unit represented by Complainant, and that Complainant must therefore first petition the Commission for a unit clarification in that regard before proceeding to arbitration, the parties entered into a stipulation that the issues raised in the complaint and by Respondent's defense would be addressed by the Examiner in this proceeding, and that if the Examiner determined a unit clarification was necessary, he would make that unit clarification determination by issuing a proposed decision regarding that issue. Respondent thereafter filed an answer wherein it denied it had violated the State Employment Relations Act (SELRA) and asserted certain affirmative defenses.

The Commission appointed David E. Shaw, a member of its staff, as Examiner to make and issue Findings of Fact, Conclusions of Law and Order in the matter. Hearing was held before the Examiner on November 18, 2003 in Madison, Wisconsin. The parties submitted post-hearing briefs, the last of which was received on February 18, 2004.

In a decision issued this same day, the Examiner found that the parties' collective bargaining agreement provides that a dispute as to the bargaining unit status of an employee's position may only be resolved through a unit clarification proceeding before the Commission. The parties' stipulation has then been treated as a petition for a unit clarification.

Having considered the evidence and the arguments of the parties, the Examiner now makes and issues the following

PROPOSED FINDINGS OF FACT

1. The Teaching Assistants Association, Local 3220, Wisconsin Federation of Teachers, AFT, hereinafter the "TAA", or "Association" is a labor organization with its principal office located at 306 North Brooks Street, Madison, Wisconsin. At all times material herein, the TAA has been recognized as the exclusive collective bargaining representative for "all program, project and teaching assistants employed by the University of Wisconsin-Madison and the University of Wisconsin-Extension. . ."

2. The University of Wisconsin – Madison, hereinafter the "University", is an employer with its principal offices located at 500 Lincoln Drive, Madison, Wisconsin. Since 1987, Michael Rothstein has been employed by the University as the Contract Administrator for the collective bargaining agreement between the State of Wisconsin and the TAA.

3. At all times material herein, the TAA and the State have been parties to a collective bargaining agreement setting forth the wages, hours and conditions of employment for the employees in the bargaining unit represented by the TAA. Said agreement contains the following provisions, in relevant part:

ARTICLE II

Recognition and Union Security

Section 1. Union Recognition

The Employer recognizes the Teaching Assistants Association (TAA) as the exclusive collective bargaining agent for all program, project and teaching assistants employed by the University of Wisconsin-Madison and the University of Wisconsin-Extension. Nothing in this Agreement shall be construed as a grant by the Employer of exclusive jurisdiction over types of duties or work assignments to teaching, program or project assistants or to the Union.

Program assistant or project assistant (PA) means a graduate student enrolled in the University of Wisconsin system who is assigned to conduct research, training, administrative responsibilities or other academic or academic support projects or programs, except regular preparation of instructional materials for courses or manual or clerical assignments, under the supervision of a member of the faculty or academic staff, as defined in s. 36.05(1) or (8), Wis. Stats., primarily for the benefit of the University, faculty or academic staff supervisor or a granting agency. Project assistant or program assistant does not include a graduate student who does work which is primarily for the benefit of the student's own learning and research and which is independent or self-directed.

. . .

Should a dispute arise between the parties as to whether an employee(s)/position(s) is appropriately included in or excluded from the bargaining unit, the party raising the issue shall notify the other and a meeting will be scheduled within thirty (30) days in an attempt to reach agreement. If no agreement is reached, the exclusive remedy shall be that either party may request that the Wisconsin Employment Relations Commission to decide the appropriate bargaining unit status of the employee(s)/position(s) pursuant to Wisconsin Statutes.

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ARTICLE V

Appointments

Section 1. Term of Appointment

An appointment of a teaching, program, or project assistant shall be for a period up to one year. Nothing within the terms of this Agreement precludes the University from making financial support guarantees to graduate students for a period longer than one year, and such guarantees may include a teaching program, or project assistantship.

Sections 4., 5., 6., 7., 8./B., C., F., G., and 9. of this Article do not apply to hourly Project Assistant Appointments.

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Section 2. Employment Criteria

Departments that employ Teaching Assistants and Program/Project Assistants shall establish criteria for use in making appointments to Teaching Assistants and Program/Project Assistants. These criteria may include but are not limited to such factors as academic record, letters of recommendation, previous relevant experience, and factors related to the academic mission of the department.

Copies of departmental criteria shall be sent to the Union as established or revised. Established criteria will be available on request to employees.

Section 3. Letters of Appointment

All newly appointed employees shall receive a letter of appointment which specifies the employment title, experience classification (if any), appointment percentage, effective dates, salary level, length of probationary period (if any), hours of work or work assignment if known, and for eligible employees notification that insurance including health insurance and other benefits may be available and have deadlines for enrollment; the letter will also indicate a person or office to contact for information regarding benefits associated with the appointment.

In addition, reappointed employees shall receive a letter of appointment which specifies the appointment title, experience classification (if any), appointment percentage, effective dates, salary level, and hours of work or work assignment, if known.

All letters of appointment will also indicate that the employment relationship is governed by, and subject to, the provisions of a collective bargaining agreement negotiated by the Teaching Assistants Association. A copy of the current collective bargaining agreement shall accompany the letter of appointment for all newly appointed employees.

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4. Thomas Pedroni, hereinafter Pedroni, is an individual currently residing at 243 West 1140, North Logan, Utah. Pedroni received a Master's Degree in Curriculum and Instruction from the University of Wisconsin-Madison in December of 2001 and was enrolled in the Ph.D. program in Curriculum and Instruction at the University. Pedroni had completed his doctoral coursework in 1999.

5. The University hires its students to work in various capacities in the various departments and research centers. Student employees fall into three categories: Teaching Assistants (TA's), Program or Project Assistants (PA's) and Student Hourly. TA's and PA's make up the bargaining unit represented by Complainant. Student Hourly employees are not included in the bargaining unit, however, there are "hourly" PA's, who are included in the bargaining unit.

PA positions at the WCER are generally posted on a bulletin board on the ground floor of the Educational Sciences Building and on the WCER website. The postings set forth the qualifications, which includes graduate student status, and a description of the work to be performed. Pursuant to the parties collective bargaining agreement, TA's and PA's are issued a letter of appointment when hired which includes the stipend to be paid and the duties and responsibilities of the position. The parties' agreement also sets forth the minimum annual amounts to be paid for TA's and PA's, and also provides for hourly paid Project Assistants. All TA's and PA's are graduate students at the University and PA positions must be approved before they can be filled by a department and are generally posted.

A "Person Appointment Request Form" is completed for the hiring of Student Hourly employees which sets forth the amount of the stipend to be paid in terms of an hourly wage, whether the position is "student hourly", information about the position, duties, whether a degree is required and the qualifications being required, if stated. The form also identifies the "Principal Investigator" or "Project Director" who is approving the hiring. Both as to a PA and to a Student Hourly position, the student is required to complete a "Student Academic Year Enrollment Verification" on which it is indicated whether the position is PA or Student Hourly and whether the individual is a graduate student. The form is then forwarded to the University's Business Services office.

For at least the past 16 years, it has been the practice at WCER, and the University, to make the determination of whether a position is to be a PA position or Student Hourly based upon whether a degree is required to perform the tasks in the research project. If a degree is not required and/or clerical duties are involved, the position will be considered Student Hourly and the process for hiring and appointing a Student Hourly will be followed.

The University issues an annual "Student Employment Wage Plan" which sets forth the specific minimums and maximums for Student Hourly employees. The wage plan also establishes three levels of job classifications with the specific wage amounts for each: Basic, Intermediate and Advanced. The 2001-2002 Student Employment Wage Plan included the following descriptions of the three levels and wage rates for each:

Basic Level

Work is done under close supervision; procedures are well established; employees are not usually required to make decisions which are not enumerated in well defined policies and procedures.

Examples of this type of work:

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Routine clerical work such as Library Page, simple filing, incidental typing, routine data entry, messenger work, duplicating machine operation, reading room attendant, desk clerk.

Intermediate Level

Work that requires, for a major portion of the time, some independent judgment or initiative; and/or requires special knowledge, skills or abilities; and/or requires a major amount of heavy physical exertion; and/or involves adverse hours or working conditions; and/or involves supervisory responsibilities for an activity of limited size.

Examples of this type of work:

Typing or data entry that requires some decision making.
Routine word processing.
Clerical work such as Library General Bibliography Searcher, or schedulers for human research projects.
Stenographic work involving taking and transcribing dictation.

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Advanced Level

Work that requires, for a major portion of the time, advanced specialized knowledge, skills, or abilities; or involves supervisory responsibilities for large or complex activities, usually involving a number of concurrent activities.

Examples of this type of work:

Advanced word processing.
Technical typing and foreign language typing.
Library special bibliography searcher.
Library public catalog information assistant.

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UW-Madison
Student Hourly Rates

August 19, 2001 through August 17, 2002

<u>Level</u>	<u>Minimum</u>	<u>Maximum</u>
Basic:	\$6.75	\$10.05
Intermediate:	\$7.35	\$10.95
Advanced:	\$8.05	\$18.50

6. In August of 1999 Pedroni became employed by the University as a Teaching Assistant (TA) in the Department of Curriculum and Instruction and continued in that position through the Spring semester of 2003.

7. In July of 2001, Pedroni was hired by Professor Nystrand to do orthographic (verbatim) transcription of audiocassettes. A "Person Appointment Request Form" was completed and indicated Pedroni was hired as a Student Hourly at \$15.00/hour for the period July 30, 2001 – August 15, 2001. Pedroni did not receive a "Letter of Appointment" for the position. Pedroni worked 7 hours during that period. Professor Nystrand offered Pedroni a PA position and to roll the 7 hours of transcription work into the position. Pedroni rejected the offer as he wanted the pay for the transcription work in addition to the stipend he would

receive in the PA position. Pedroni believed at the time that all PA or TA positions were salaried.

8. On or about September 17, 2001, Pedroni contacted a PA at the Wisconsin Center for Education Research (WCER), Youl-Kwan-Sung, regarding employment doing transcription work. WCER is a research center that is part of the University's School of Education conducting research on aspects of elementary education. Pedroni had heard about the position through a friend and arranged to meet on September 18, 2001 with Sung, who was a PA working for Professor Sharon Derry on the Secondary Teacher Education Project (STEP). Pedroni and Sung were well acquainted with each other's experience and education, as they had the same academic advisor, shared mutual friends, had taken some of the same courses, and were in the same weekly reading group. When they met to discuss the position, Sung explained the transcription work to Pedroni, telling him that he would be using "TRANSANA", a transcription software, to transcribe digital audio/visual (MPG files) related to the STEP project. Sung told Pedroni that he was hired and that he would be paid \$16.00/hour for his transcription work. Sung also introduced Pedroni to several other people and explained their roles on the project and what Pedroni's relationship to them would be. One of those individuals was Nancy Calamari, another PA on the STEP project.

There was no posting for the position, and when Pedroni was hired, he did not receive a "Letter of Appointment" for the position; rather, a "Person Appointment Request Form" was completed which indicated he was being hired as a Student Hourly at a stipend of \$16.00/hour. Pedroni also completed a "Student Academic Year Enrollment Verification" form on which he indicated under "Appointment Type" that it was "Student Hourly", rather than "TA" or "PA". The "Person Appointment Request Form" also stated, in relevant part:

**IF A NEW POSITION OR REVISED DUTIES, INCLUDE A DETAILED
JOB DESCRIPTION AND LIST QUALIFICATIONS ON BACK.**

SUPPLEMENTARY INFORMATION: Transcriber for audio/video classroom footage for use in the on-line learning STEP project. Will transcribe full audio text for data collection and storage purpose. Final cut video segments are then produced for use on our instructional website.

DUTIES: Transcribe audio from A/V segments using transcription equipment and coding according to Jeffersonian conventions. The text from the classroom video will be plugged into a web tool that allows us to index and perform multiple searches for the purpose of video editing.

DEGREE REQUIRED:

QUALIFICATIONS: Experienced academic transcriber. Must know Jeffersonian convention. Study of educational psychology helpful.

Derry signed the form as the Principal Investigator on STEP. Derry is also the Project Director and in charge overall of the project. Professor Derry is a professor in the School of Education's Educational Psychology department, and also does grant work through WCER. It has been Derry's practice to hire both graduate students and undergraduates to do transcription work as Student Hourlies.

Pedroni's prior experience as a transcriber included working on his own transcriptions, some informal work for individuals, one year for Wisconsin Telecommunications Relay System transcribing conversations in real time to allow hearing impaired, speech impaired and visually impaired individuals to use the telephone system, and the transcription work for Professor Nystrand. Pedroni had also taken a doctoral level course on discourse analysis from Professor Gee, which included addressing practical and theoretical issues regarding transcription as a component of research and discourse analysis. Discourse analysis involves the analysis of verbal and non-verbal elements of communication. In Professor Gee's course, Pedroni also learned Jeffersonian convention, a notation system for transcription used in research to report verbal and non-verbal nuances of speaking, as well as visual characteristics of the speaker. Pedroni had also previously taken coursework in educational psychology in pursuing an earlier undergraduate degree he received from Tulane University in 1996.

It does not require a college degree to learn the Jeffersonian convention, nor is it such that only a graduate student would know how to use it. The individual Pedroni replaced in September, 2001, and who had been using the Jeffersonian convention in the transcription work, was an undergraduate student who had been hired as a Student Hourly. A degree was not required for the position when Pedroni was hired into the position.

9. Pedroni worked 1.25 hours on September 18 and 1.25 hours on September 21, 2001 for Professor Derry. While Pedroni received assignments and instructions from Sung as to what he was to do, e.g., what data to select, Calamari was his immediate supervisor and was responsible for approving his timesheets in that capacity. Pedroni worked an additional 8 hours in the position between the Fall of 2001 until March of 2002. Pedroni was given a short video clip to transcribe in January of 2002 from Sung and told the transcription needed to be "100% perfect". At the instruction of Calamari, Pedroni reported those hours as 8 hours worked on March 5, 2002. The transcription work Pedroni performed during that period was primarily to transcribe the words that were spoken and Pedroni was not required to utilize the Jeffersonian convention in this work.

10. In early April, 2002, Pedroni was contacted by Andrew Garfield, who had been hired in March of 2002 as the Video Production Manager at WCER for Professor Derry,

regarding doing transcription work for Professor Derry. At that time, WCER only had one transcriber working there, an undergraduate student, Jamie Olson. Olson informed Garfield about Pedroni when he complained he needed more transcribers. No new "Person Appointment Request Form" was completed for Pedroni at this time, and he continued to receive \$16.00/hour for his work, as Garfield had been informed by Calamari that this was what Pedroni was paid. Pedroni was informed by Garfield that all they wanted was a lot of transcription as fast as possible. Both Derry and Pedroni considered this to be a new job at WCER.

Pedroni received training on April 15, 2002, from David Wood, an Associate Researcher at WCER, in the use of TRANSANA for approximately two hours. Two hours is the maximum amount of time Wood normally spends on training someone on TRANSANA, and the training is the same for graduate students or undergraduates. Pedroni also met with Garfield and Calamari and was given instructions in the protocol to be followed and what they wanted him to do. This consisted of instructions as to what to do if more than one person is speaking at a time, how to designate who was speaking, and he was told who would be using his work. Garfield directly supervised Pedroni at this point. Olson had been hired in February of 2002 and was already performing the transcription work Pedroni would be doing. Olson was hired as a Student Hourly, and had been trained in, and was using TRANSANA. Other undergraduate students, as well as a graduate student, Sameer Deshpande, were subsequently hired as Student Hourlies to do the same transcription work. No qualifications were listed on the "Person Appointment Request Form" completed for those students' hires, as well as the form completed for the hire of Olson. The form for Deshpande and an undergraduate student who was hired, Calvin, stated as duties "transcription of data from MPG materials for use in educational research project." The work was basically to type the words that were spoken and noting who was speaking, and Pedroni did not utilize the Jeffersonian convention in performing this work. At times, PA's and Research Assistants, as well as Professor Derry, were called upon to assist with transcription work on the STEP project.

11. On May 17, 2002, Pedroni was called at home by Garfield, and informed that he was terminated. In the course of attempting to challenge his termination, Pedroni was informed by the University's representatives that he had no rights under the collective bargaining agreement between the State and the Association, because he had been employed in his position at WCER as a Student Hourly, and therefore was not covered by that agreement. Pedroni subsequently sought the assistance of the Association to grieve his termination under the agreement. In the course of doing so, on June 13, 2002 the following second step grievance was filed on Pedroni's behalf, asserting, in relevant part:

Describe the grievance – state all facts, including time, place of incident, names of persons involved:

Mr. Pedroni was hired on April 9, 2002, by Mr. Garfield to do transcription work. He was inappropriately classified as a Student Hourly instead of a Project Assistant (Violation of Article II, Section 1.)

On May 17, 2002, Mr. Pedroni was terminated without just cause (Violation of Negotiating Note #5.)

Relief sought:

1. Reclassify position as Project Assistant.
2. Compensation for work hours lost due to termination.
3. Return to transcription job at same pay and hours.
4. Formal apology letter from WCER.

12. Subsequent to his termination from his position at the WCER, Pedroni was issued a "Letter of Appointment" on July 5, 2002 as a PA in the University's Department of Educational Psychology to do transcription work similar to the work he had performed at the WCER.

13. The State refused to process Pedroni's grievance to arbitration on the basis that his was a Student Hourly position, and therefore he was not covered by, and had no rights under, the agreement between the State and the Association.

On October 1, 2002, the Association filed a complaint with the Wisconsin Employment Relations Commission, wherein it alleged that the State had committed an unfair labor practice by refusing to proceed to arbitration on Pedroni's grievance. In response, the State raised as affirmative defenses that where there is a dispute as to a position's bargaining unit status, the exclusive procedure under the parties' agreement for resolving such a dispute is a unit clarification determination by the Commission, and that Pedroni's position was not included in the bargaining unit covered by the parties' agreement, and therefore, he had no rights under that agreement.

Prior to hearing on the unfair labor practice, the parties entered into the following stipulation regarding the manner in which to proceed:

STIPULATION

WHEREAS, the Complainant, the Teaching Assistants Association, Local 3220, WFT, AFT (the "TAA"), has filed a complaint with the Commission, alleging that the Respondent, State of Wisconsin, UW-Madison (the "University"), engaged in prohibited practices by refusing to arbitrate a grievance alleging that Thomas Pedroni was fired without just cause, and

WHEREAS, the University alleges, in response to said Complaint, that the position in which Pedroni was employed at the time of his termination was not covered by the parties' collective bargaining agreement, and that said agreement requires that the TAA file a petition for unit clarification in order to resolve that issue before the parties proceed to grievance arbitration, and

WHEREAS, the TAA disputes that it is required to petition for unit clarification as a condition precedent to arbitrating Pedroni's discharge,

NOW THEREFORE, subject to the Commission's order approving same, the parties stipulate to have the Commission's Examiner, David Shaw, hear the TAA's prohibited practices complaint and the unit clarification issue in the same proceeding and, further, stipulate to have the Examiner issue a final decision on both issues, subject to any right to normal Commission review.

Dated this 13th day of May, 2003.

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Attorneys for Respondent

The Examiner modified the stipulation to provide for a "proposed decision" should he determine it was necessary to decide a unit clarification. Both parties subsequently assented to that change.

In a decision issued this same day in the unfair labor practice case (Case 530), the Examiner concluded that the parties' agreement required that where there is a dispute as to the bargaining unit status of an employee or position, the exclusive procedure for resolving such a dispute is a unit clarification proceeding before the Commission.

14. The transcription work Pedroni was hired to do on the STEP project at WCER, both in September of 2001 and April/May of 2002, did not require him to exercise his judgment as to what data he should record or as to the system he should use to record such data or as to how such data was to be used. The qualifications for the position did not require that the person hired be a graduate student, nor were they such that only a graduate student would possess them. The work Pedroni was hired to perform, and did perform, in his position at WCER, was essentially clerical in nature, and therefore constituted a "clerical assignment".

15. Pedroni was properly classified as a Student Hourly in his position doing transcription work at WCER.

Based upon the foregoing Proposed Findings of Fact, the Examiner makes the following

PROPOSED CONCLUSION OF LAW

Thomas Pedroni's position doing transcription work at the Wisconsin Center for Education Research from September of 2001 until his termination in May of 2002 was properly classified as Student Hourly, and does not meet the definition of "Project Assistant" set forth in Sec. 111.81(15m), Stats., and in Article II, Sec. 1, of the parties' agreement, as the work he was hired to perform, and did perform in that position, constituted a "clerical assignment" and is expressly excluded from that definition. Therefore, the position would not properly be included in the bargaining unit represented by the Teaching Assistants Association.

Based upon the foregoing Proposed Findings of Fact and Proposed Conclusion of Law, the Examiner makes and issues the following

PROPOSED ORDER

The position held by Thomas Pedroni doing transcription work at the University of Wisconsin-Madison's Wisconsin Center for Education Research is not included in the bargaining unit of Teaching Assistants, Project Assistants and Program Assistants represented by the Teaching Assistants Association.

Dated at Madison, Wisconsin, this 30th day of July, 2004.

David E. Shaw /s/

David E. Shaw, Examiner

STATE OF WISCONSIN
(UNIVERSITY OF WISCONSIN-MADISON)

MEMORANDUM ACCOMPANYING PROPOSED FINDINGS OF FACT,
PROPOSED CONCLUSIONS OF LAW AND PROPOSED ORDER

The Association filed a complaint alleging that the University had committed an unfair labor practice by refusing to proceed to arbitration on the grievance of Thomas Pedroni. The University raised as affirmative defenses that it refused to proceed to arbitration on the basis that Pedroni's position at WCER was a Student Hourly position, and therefore not included in the bargaining unit covered by the Association's collective bargaining agreement with the State, and that Pedroni thus had no rights to enforce under that agreement; and that where the parties have a dispute as to the bargaining unit status of a position, the exclusive procedure under the parties' agreement for resolving such a dispute is a unit clarification proceeding before the Commission, which remedy the Association had not previously pursued.

The parties then entered into a stipulation to have the Examiner hear and decide both the unfair labor practice charge and the unit clarification, if it was found that the latter proceeding was required. The stipulation was subsequently amended to provide that if the Examiner concluded a unit clarification was required, the unit clarification would be issued as a "proposed" decision, allowing the parties the opportunity to submit their respective positions, and supporting argument, on whether the Examiner's proposed decision should be adopted by the Commission. The Examiner having concluded in the unfair labor practice that the parties' agreement does provide that disputes regarding the bargaining unit status of a position are to be resolved exclusively in a unit clarification proceeding before the Commission, he has proceeded to make and issue the instant proposed decision regarding the bargaining unit status of Pedroni's position at WCER at the time he was terminated from that position.

Association

The Association takes the position that Pedroni's position with WCER as an "academic transcriber" satisfies the definition of a Project Assistant in Article II, Section 1, of the parties' agreement, and therefore was properly included in the bargaining unit covered by that agreement.

The Association cites the qualifications stated in the September 18, 2001 "Person Appointment Request Form" completed for Pedroni's hire and signed by Professor Derry, the Principal Investigator on the STEP project, of "experienced academic transcriber. Must know Jeffersonian convention. Study of educational psychology helpful." Pedroni was hired as a transcriber on the STEP project and worked under Derry's direction, as evidenced by the fact

that she signed Pedroni's time sheet as his "supervisor." Pedroni learned academic transcription through his enrollment in a course on discourse analysis taught by Dr. James Gee. The course dealt "explicitly with practical and theoretical issues around transcription as a component of research and discourse analysis." Pedroni learned the use of Jeffersonian convention in that course. Jeffersonian convention for transcription is a "particular method of transcribing that has received some prominence in the research community." Jeffersonian transcription involves recording the nuances of speaking, such as intonation, pitch, rate of speaking and other verbal characteristics, as well as a number of other non-verbal characteristics, such as gestures, facial expressions, duration of pauses, etc.

At no time after he started with WCER in September of 2001 did anyone from WCER tell Pedroni that the project no longer required the qualifications Professor Derry had specified on the "Person Appointment Request Form". Rather, in performing his work, he has called upon his training and experience as an academic transcriber. As an academic transcriber on the STEP project, Pedroni would look at a pool of data, including all elements of social interaction present on a videotape, and from that data would use his discretion to select the relevant portions according to the research protocol. Derry admitted that when Pedroni was hired in September, it was not the case that they were only requiring "meatball" transcription. While in the position, Pedroni was required to perform translation where a "100 percent perfect transcript" was needed. Derry hired other non-academic transcriptionists to work at STEP; however, unlike the position filled by Pedroni, these were filled by undergraduate students and included no qualifications whatsoever regarding transcription.

The Association asserts that the position into which Pedroni was hired at WCER was a Project Assistant position within the meaning of Article II, Section 1, of the agreement. The facts demonstrate that (1) Pedroni was a graduate student enrolled in the University of Wisconsin System; (2) he was assigned to conduct research or other academic or academic support projects; (3) he worked under the supervision of a member of the faculty; and (4) it was primarily for the benefit of the University or faculty member.

There is no dispute that Pedroni was a graduate student at all relevant times. His status as a graduate student is important, not only because it is a prerequisite to inclusion of his position in the bargaining unit, but because of the distinction Professor Derry made between what he was expected to do and what she later expected of undergraduate students hired to do transcription. As opposed to the qualifications that were required when Pedroni was hired, there were no qualifications stated for any of the undergraduate students who were hired to do transcription while Pedroni was with WCER and after he was terminated.

Pedroni was hired to perform assignments involving work that either was in itself research, or which, alternatively, constituted an academic project or academic support project. Pedroni testified that in the courses he took with Dr. Gee, he was taught that "transcription. .

.(was) a component of research and discourse analysis.” Such transcribing involves not only typing words, but an analysis of the “social interactions between an individual or a group of individuals together” including verbal and non-verbal elements. Thus, there is credible evidence in the record supporting a finding that an academic transcriber, who is hired to use the Jeffersonian convention, is actually engaged in research when he must sort data for the purpose of determining which portions of that data will be used, and how, in the final transcribed product. In the alternative, or in addition, Pedroni was hired to, and did perform, work that comprised an academic project or support of an academic project. The best evidence of WCER’s intention upon hiring Pedroni is reflected in the “Person Appointment Request Form” signed by Derry, which described the work to be performed and the duties in the position. Derry clearly hired Pedroni to generate, from raw audio and video data, a product that could be used on the STEP website, which was the central focus of the entire project. Thus, Pedroni was hired to perform the work of an academic transcriber, the work of which, in itself, constituted research, or in the alternative was plainly supportive of an academic project, STEP, directed by Professor Derry.

Pedroni worked under the supervision of a member of the faculty, as Professor Derry was the Principal Investigator and Project Director for the STEP project. Derry is a professor in the University’s Department of Educational Psychology and therefore is “faculty” within the meaning of Article II, Section 1. Derry directed the STEP project into which she hired Pedroni and, as the record demonstrates, was Pedroni’s supervisor.

There is no dispute that the work Pedroni performed was for the benefit of the University and Professor Derry and the two granting agencies, and there is no claim that the work Pedroni performed was primarily for his own learning and research.

University

The University takes the position that the positions held by Pedroni doing transcription work at WCER, both in September of 2001 and April of 2002, were properly classified as Student Hourly.

The University asserts that there is a formal process used for hiring PA’s. The position is posted on a bulletin board and on the WCER website. The advertisement indicates it is a PA position, the nature of the research related duties, and that a graduate student is sought. After a student is selected for a PA position, a letter of appointment, required under the parties’ agreement, is sent to the student, which specifically describes the nature of the duties for the PA position. This process is distinguished from the process for hiring Student Hourly positions. For the latter, there is no posting necessary, and when it is used, the advertisement is far less comprehensive in terms of what is required. Jerome Grossman, the Director of Business Services at WCER for the past 16 years, testified that since he has been in the

position, students hired for transcription work have been hired as Student Hourly, and that some of those were graduate students. The determining factor as to whether the hire is a Student Hourly or a PA, is whether a degree is required for the work. No degree is required for transcription work. This was confirmed by Michael Rothstein, the University's Contract Administrator for the TAA agreement.

The University asserts that the issue in this case is whether the duties assigned to and performed by, Pedroni were "research, training, administrative responsibilities, or other academic or academic support projects or programs" or were "manual" or "clerical", as the latter are excluded as PA work. It is clear from the facts that the duties are not PA duties, but are Student Hourly. This is true both as to the duties Pedroni was hired to perform in September of 2001 and the duties he was hired to perform in April of 2002.

Pedroni was hired to do transcription work by Professor Nystrand as a Student Hourly at the rate of \$15.00 per hour and the work was orthographic transcription. Pedroni was knowledgeable regarding the distinction between Student Hourly and PA duties, as evidenced by his negotiating with Professor Nystrand regarding a possible PA position. When he was hired for the September job with Professor Derry, he completed the "Student Academic Year Enrollment Verification" form for that year and indicated that he was "Student Hourly", not "PA". He was also aware that he would be paid \$16.00 per hour, a rate very close to what he had been paid for simple transcription of audio tapes by Professor Nystrand. Additional indicia that the work was Student Hourly is the fact that he was given assignments by PA's. Pedroni testified that he was given assignments by PA's Sung and Stampen on the STEP project. In the normal "pecking order" PA's do not give other PA's assignments. Thus, the assignments by PA's to Pedroni reflects he was not at the same level as those individuals. Equally significant is that those PA's did not do transcription work, but had someone else do it.

Additionally, while the qualifications on the "Person Appointment Request Form" call for knowledge of Jeffersonian convention, Pedroni was not asked to use this knowledge. According to Pedroni, the transcription work he did in September, and later in 2001 into early 2002, was basically orthographic. While the Association points to the qualifications in contending the duties were PA, the overwhelming evidence is that the duties were Student Hourly.

Further, there was no credible evidence to counter that submitted by the University that the determining factor is that a degree is required for duties to be PA, nor is there any evidence that a degree was required for these particular duties. The qualifications stated on the form do not indicate that a degree is required, and it is uncontradicted that Pedroni's predecessor for the September, 2001 job was an undergraduate student. Even Pedroni testified that a degree is not required to perform the Jeffersonian convention when transcribing, and

further acknowledged that a degree was not required for the “study of Educational Psychology”.

Pedroni’s contention that he was an “experienced academic transcriber” is disingenuous. Prior to being hired by Derry, he had not been paid for doing Jeffersonian transcription. The only instances of transcription work for which he received compensation were the orthographic transcription he did for Professor Nystrand and the telephone conversations he transcribed for the Wisconsin Telecommunications Relay System. These hardly qualify as academic transcriptions. Further, Pedroni’s description of what constitutes an academic transcriber did not apply to the work he did. The instructions he received had nothing to do with the objectives of the research project, and there was no filtering process. He was told to type what he heard, just as a secretary would be instructed. Nor could he be described as “experienced”, as there is nothing in the record that indicates he had any prior academic transcription experience. Even if the qualifications would be PA work, the work Pedroni was actually called upon to complete did not require the use of those qualifications, but was essentially straight transcription work.

Next, the University asserts that the duties in the Spring of 2002 represented a different Student Hourly job from the duties in September of 2001. Derry testified that she discontinued using Jeffersonian convention shortly after Pedroni was hired in September of 2001, and went to what she described as “meatball” transcription work, i.e., just type what you hear. With this approach and the protocol related by Garfield, there was no need for an “experienced academic transcriber” with knowledge of the Jeffersonian convention and the study of Educational Psychology. It was quantity versus quality. In Professor Derry’s mind, everyone knew that the Spring job was a new job. This was confirmed in two ways. According to Pedroni, there were different protocols in September and in the Spring. In addition, Pedroni went to a day-long orientation in the Spring because they would be using TRANSANA, which he had not used prior to that time. It is uncontradicted that both graduate and undergraduate students were hired and trained to use TRANSANA in the Spring, one being Jamie Olson, an undergraduate hired in February of 2002. The training on TRANSANA was the same for both graduate students and undergraduate students. Pedroni conceded that the work he did in the Spring was not according to the Jeffersonian convention because that was not the stated protocol. Both Woods, lead developer for TRANSANA and an associate researcher at WCER, and Fassnacht, the original writer of TRANSANA, testified that the transcription reflected in the example of the transcription Pedroni did in the Spring (Respondent Exhibit 4) was simple transcription work that one would give to a secretary to do. The fact that there was no “Person Appointment Request Form” for the Spring job is not significant. According to Rothstein, the customary practice is that once a Student Hourly is hired, he/she is kept in the system, even if they leave the job. Then, when the person is hired again as a Student Hourly, the employee can proceed to work immediately, only having to sign and turn in time sheets. Thus, even if one adopts Pedroni’s concept of an “experienced academic transcriber”, his

actual duties in the spring of 2002 did not rise to that level. The protocol was simply type what you hear, and there is nothing in the record indicating that he was advised of the research objectives or what the research team was looking for. There is nothing to even indicate that he met with the research team.

It is also uncontradicted that the transcription work done by Pedroni in the Spring did not require a degree, as evidenced by the fact that Jamie Olson, an undergraduate, had been doing the same transcription work using TRANSANA as a Student Hourly employee since February of 2002. Pedroni conceded that Olson was doing work similar to what he was doing. Further, Garfield posted for additional students to do transcription work and in the advertisement stated it was transcribing from audio/videotape. At least two students were hired as Student Hourly employees, Deshpande and Calvin, the former a graduate student, the latter an undergraduate. Thus, just as in the previous job with Professor Derry, the duties actually performed by Pedroni in the Spring of 2002 were not PA, but most certainly were Student Hourly. Pedroni conceded that the Spring transcription work was orthographic, and individuals knowledgeable in this type of transcription have confirmed that it was nothing more than secretarial transcription.

Even if the September and Spring work are considered the same job, it remains that it was Student Hourly work because of the duties actually performed by Pedroni. There is no evidence that WCER ever treated transcription work of any kind as PA work. Conversely, there is an abundance of uncontradicted evidence that WCER treated all transcription work as Student Hourly work. Even if one assumed the qualifications for the position were PA work, the inescapable fact is that none of the transcription work Pedroni actually did involved any of those qualifications. There was never any use of Jeffersonian convention, rather, the protocol was to simply type the words you hear. While Pedroni tried to evade the question, it is clear from his testimony that the transcription work he did approached, if not in fact was, orthographic. While the record contains several examples of orthographic transcription work Pedroni did, there is absolutely nothing other than orthographic in the record. There is nothing to show that his transcription work entered into realm of research.

A claim that Pedroni was paid \$16.00 per hour indicates he was paid to perform high-level PA work, is without foundation. Pedroni was paid \$15.00 per hour to do simple orthographic transcription for Professor Nystrand. A dollar per hour increase is inconsistent with this contention. Further, an undergraduate was hired at \$18.00 per hour to do transcription/translation of Spanish research materials. Thus, the work he actually performed was clerical, i.e., Student Hourly.

The testimony of both Derry and Grossman indicates that the transcription duties of the type performed by Pedroni were consistently treated as Student Hourly by WCER. Additionally, Rothstein, who has a campus-wide viewpoint, testified that the type of

transcription duties performed by Pedroni were Student Hourly. There is also the consistency of how transcription work is treated generally and the process in this particular instance. It is uncontradicted that with respect to WCER, transcription is Student Hourly work done by graduate and undergraduates for pay between \$9.00 and \$18.00 per hour. There is no entry on the “degree required” blank on the “Person Appointment Request Form”, including the form that Pedroni filled out for Professor Nystrand. Pedroni was paid \$15.00 to \$16.00 per hour for the work, which is well within the range of Student Hourly. The process utilized in this case and in other Student Hourly transcription situations is contrasted with that used for PA work. There was no posting done, as was done for the two PA positions with WCER, there is no reference to a graduate student, as there is in those postings, and the type of work advertised for the two PA positions did not include transcription work, but was research-oriented, the successful candidate being expected to conduct experiments and analyze data, as directed, and to contribute intellectually to experimental design and publication results. Those were clearly PA duties, compared to simple verbatim secretarial transcription. Further, there was no letter of appointment in Pedroni’s instance, as there are with other WCER PA appointments. The consistency of how WCER treated transcription duties over the years is a measuring stick for whether those duties are PA or Student Hourly. Without exception, WCER treated transcription duties as Student Hourly.

Also, while it is not a necessary element, it is clear that Pedroni knew his work was Student Hourly. Pedroni was hired by Professor Nystrand as Student Hourly for simple transcription work of audiotapes. He acknowledged that he may have been told that he was Student Hourly. However, Pedroni knew that he was being paid \$15.00 per hour for that work and that when he was offered the PA position with Professor Nystrand, he knew he was better off to have the hourly work separate from the PA work. When he was hired by Professor Derry, he filled out the “Person Appointment Request Form” and indicated in his own handwriting that it was Student Hourly. When he asked, he was told the Student Hourly box applied to him, and his pay with Professor Derry was nearly the same as for the Student Hourly work with Professor Nystrand. Also significant is that at no time until after he was terminated, did he question whether the work was Student Hourly or PA. He never applied for a PA position, nor did he ever state to Professor Derry that he wanted a PA position with her, or complained that the work he was doing was PA work.

Finally, the University asserts that the Association has failed to produce any credible evidence as to what type of work is PA work. There are only self-serving statements from Pedroni that what he did was PA work. Even if Pedroni had the qualifications stated in the “Person Appointment Request Form” for a position with Professor Derry, he never needed to draw on any of those qualifications for his work there. The Association fails to cite any example of Pedroni’s transcription work at WCER that met the qualifications on the “Person Appointment Request Form”. The best the Association can do is point to an e-mail requesting Pedroni perform certain transcription work and indicating that a perfect transcript was

required. There is nothing that establishes “perfect transcription” as PA level work. A secretary is perfectly capable of producing perfect transcription without any of the qualifications listed on the “Person Appointment Request Form”, as can also be said of an undergraduate student. One has only to listen and type carefully and proofread. Additionally, the Association has not pointed to any “vocal intonations” or “other special mark-ups” that Pedroni did in his work. To the contrary, the record only contains examples of orthographic, straight verbatim transcription that Pedroni did while at WCER, both in September of 2001 and Spring of 2002. Contrary to the Association’s claim that Pedroni “called upon his training and experience as an academic transcriber” in performing his work at WCER, all he did was simple verbatim transcription work that undergraduates also did. If undergraduates, without a degree, without Professor Gee’s course, and without Pedroni’s alleged experience, were doing the same transcription work as Pedroni, it is clear that his training and experience were not necessary to do the work. Examples of Pedroni’s transcription work that are in the record contain no examples of an analysis of social interactions or verbal or non-verbal elements that Pedroni described in explaining the Jeffersonian convention and its role in discourse analysis, nor were there any examples of his use of Jeffersonian transcription. It is unlikely that had Pedroni done transcription work other than simple verbatim, that he would not have touted it in his testimony or produced examples. The fact that he did not speaks volumes.

The University concludes that there is no credible evidence that demonstrates Pedroni did anything other than straight verbatim transcription. It is the work that he did, not the work he thought he could do, that is the critical factor.

Association Reply

The Association first asserts that the University makes numerous factual assertions unsupported by any citation to the record, and that therefore, the Examiner should disregard those assertions, unless the same facts have been cited by the Association with citation to the record, or the Examiner is prepared to comb the transcript and exhibits himself to determine which assertions are actually a part of the record. The Association also lists a number of assertions by the University that it alleges cite to parts of the record that offer no support for the assertions. Given the inconsistency between the factual assertions the University makes and the actual testimony in those portions of the record cited as support, the Association asks that all such assertions be disregarded. The Association also asserts that the University makes a number of factual assertions as to which credible contradictory evidence exists. Examples of the foregoing include assertions that Pedroni was knowledgeable about the distinction between Student Hourly and PA hourly; that Pedroni’s instructions had nothing to do with the objectives of the research – there was no filtering process; that there is nothing in the record that he was advised about the research objectives; that there is nothing to indicate that a degree or higher learning was required; that Pedroni “charged” \$16.00/hour; and that Pedroni’s work was simply rote conversion of spoken words to text.

The Association also disputes the assertion that Pedroni was employed in two separate positions with WCER, one commencing in the fall of 2001 and the second in the spring of 2002. There is nothing in the record evincing a “second hiring” as alleged by Professor Derry, and there was no documentation provided. While the WCER did hire additional transcriptionists in the Spring of 2002, Pedroni was not one of them.

The Association asserts that it has demonstrated that Pedroni met all four prongs of a Project Assistant under Article II, Section 1, of the agreement. The University has raised an issue as to only the second and third criteria, that is, that he was assigned to conduct research or other academic or academic support projects and that he worked under the supervision of a member of the faculty or academic staff. The preponderance of the evidence supports the conclusion that in fact, Pedroni’s position met those criteria. Pedroni was hired and assigned to conduct research or other academic, or academic support projects. There is credible, undisputed, evidence in the record supporting a finding that an academic transcriber hired to use the Jeffersonian convention is actually engaged in research when he must sort data for the purpose of determining which portions of that data will be used, and how, in the final transcribed product. In the alternative, or in addition, Pedroni was hired to, and did perform work that comprised an academic project or support of an academic project. The best evidence of WCER’s intention upon hiring Pedroni is reflected in the “Person Appointment Request Form” Derry signed, stating the duties of the position. Derry clearly hired Pedroni to generate, from raw audio and video data, a product that could then be used on the STEP website, the central focus of the entire project.

The University makes much ado about the various tasks that Pedroni was asked to perform while working at WCER, that virtually ignores the task that he was hired to perform. The agreement is clear that it is the position that the employee is “assigned to” that determines whether he is a member of the bargaining unit. Thus, even if the Examiner were to find that some of the work performed by Pedroni was clerical, Pedroni should still be found to be a member of the bargaining unit because he was “assigned to conduct research, training. . .or other academic or academic support projects or programs.” If the Examiner were to adopt the University’s position that an employee, assigned to a bargaining unit position, can lose his status as a member of the unit simply by performing some non-bargaining unit work, this would create an enormous loophole for an employer. Any time the University wanted to terminate the employment of a Union member, it would only have to first assign the member to perform some non-bargaining unit work and then claim that he was no longer protected by the agreement, thus allowing it to effectively avoid ever facing a just cause proceeding. Similarly, it could circumvent the protections of the agreement simply by assigning the individual to perform work other than that which he/she was hired to perform. To allow this, would make every employee and position subject to the whim of the employer regarding what tasks will be assigned.

The evidence is that Pedroni worked under the supervision of a member of the faculty. Derry was the Principal Investigator and Project Director for the STEP project, and is a professor in the University's Department of Educational Psychology. Derry directed the project into which she hired Pedroni and further was Pedroni's supervisor, as evidenced by the payroll records she signed as such. The University ignores this evidence and argues that others also allegedly assigned work to Pedroni. However, this does not detract from the undisputed fact that Derry also was Pedroni's supervisor. The agreement does not require that the faculty member be the sole supervisor.

The Association requests that the Examiner find that Pedroni's position was within the bargaining unit it represents.

DISCUSSION

It is noted that the definition of a "project assistant" in Article II, Sec. 1, of the parties' agreement is identical to the statutory definition in Sec. 111.81(15m), Stats. The definition of a "project assistant" is

a graduate student enrolled in the University of Wisconsin system who is assigned to conduct research, training, administrative responsibilities or other academic or academic support projects or programs, except regular preparation of instructional materials for courses or manual or clerical assignments, under the supervision of a member of the faculty or academic staff, as defined in s. 36.05(1) or (8), Wis. Stats., primarily for the benefit of the University, faculty or academic staff supervisor or a granting agency. Project assistant or program assistant does not include a graduate student who does work which is primarily for the benefit of the student's own learning and research and which is independent or self-directed.

As the parties recognize, the issues are: (1) Whether Pedroni was "assigned to conduct research. . .or other academic or academic support projects or programs, except. . .clerical assignments, and (2) whether he was working under the supervision of "a member of the faculty or academic staff. . ."

The University also asserts that Pedroni was hired twice by WCER; the first time in September of 2001, and the second time in April of 2002, and that the qualifications that applied to the first hire did not apply to the second hire. While no new "Person Appointment Request Form" was completed in April of 2002, it appears from Rothstein's testimony that this is not unusual. It also appears that Derry, Garfield, and Pedroni himself considered this to be a new job, distinct from the job he was originally hired for. Derry testified she viewed that to be the case. (Tr. p. 201). While Pedroni testified no one told him the qualifications first

required were no longer needed, he also testified that Garfield instructed him to “pretty much type the words that are present.” (Tr. p. 110). Garfield testified that he did not think he gave Pedroni much more instruction than that they needed a lot of transcription done as fast as possible (Tr. p. 206). Perhaps the best evidence Pedroni himself viewed this as a different job from the one he was hired for in September is the grievance he subsequently filed regarding his termination, wherein it stated, “Mr. Pedroni was hired on April 9, 2002, by Mr. Garfield to do transcription work. He was inappropriately classified as a Student Hourly instead of a Project Assistant.” Thus, it appears that neither Derry nor Pedroni considered the work in April and May of 2002 as merely a continuation of the job he was hired for in September of 2001. Therefore, it is questionable that the qualifications required for the first job carried over to the second.

With regard to the issue of whether Pedroni was assigned to conduct research or other academic or academic support projects, the “Person Appointment Request Form” completed when Pedroni was hired into the position at WCER (Complainant Exhibit 1) sets forth a description of the job and its duties:

SUPPLEMENTARY INFORMATION: Transcriber for audio/video classroom footage for use in the on-line learning STEP project. Will transcribe full audio text for data collection and storage purpose. Final cut video segments are then produced for use on our instructional website.

DUTIES: Transcribe audio from A/V segments using transcription equipment and coding according to Jeffersonian conventions. The text from the classroom video will be plugged into a web tool that allows us to index and perform multiple searches for the purpose of video editing.

While the Respondent does not concede those duties constitute PA work, it does attempt to distinguish those duties from the work Pedroni actually performed. In that regard, the Association disputes the Respondent’s attempt to define Pedroni’s position, and thus his bargaining unit status, by the work he was asked to perform, as opposed to the work he was hired to perform. A resolution in this regard is not necessary, however, as there does not appear to be a substantive difference between the duties listed on the Person Appointment Request Form and the transcription work he actually performed for WCER. Except for not having to use the Jeffersonian convention in the transcription work he did for WCER, Pedroni transcribed the audio from audio/visual classroom segments for data collection and storage purposes for use in the STEP project; the duties stated on the form. 1/ Contrary to the

1/ The duties listed on Pedroni’s “Person Appointment Request Form” are similar to those listed on the same forms for Desphande and Calvin (both hired as Student Hourlies): “transcription of data from MPG materials for use in educational research projects.”

Association's assertions, neither the duties listed on the form, nor those actually performed by Pedroni required him to sift through the data and to exercise his discretion as to what data he would transcribe, as to the manner in which he was to record the data, or as to how it would be used in the final product. It appears from Pedroni's own testimony that the protocol he was told to follow was to type what he heard on the audio portion of the classroom segments, what to do when more than one person was talking at a time, to note the length of pauses, and, as to some work, to be perfectly accurate. This was the case both as to the work he performed in the Fall of 2001 and in the Spring of 2002 for Professor Derry. There were no examples of Pedroni's work offered that indicated otherwise. Also, Pedroni testified that the Jeffersonian convention notation was not part of the protocol in either case. (Tr. 103-104).

The record also indicates that the work Pedroni performed in the Fall of 2001 had previously been performed by an undergraduate student and that the work he performed in the Spring of 2002 was also being done by undergraduate students following the same protocols he had been instructed to follow, which despite Pedroni's attempt to make them seem more involved, were to essentially to type the words that were spoken as fast as possible. While a degree requirement may not be dispositive in and of itself, it is indicative of the level of sophistication of the work to be performed. Pedroni also testified that PA's and Research Assistants on the STEP project, as well as Derry herself, were called upon to help out at times with the transcribing. There is nothing in the record to indicate these individuals possessed any special skills in this regard. In contrast with Pedroni, the work was only incidental to their primary duties.

The Association makes much of the qualifications listed on the Person Appointment Request Form, essentially asserting that these are qualifications only a graduate student with Pedroni's type of background would possess. However, assuming *arguendo* those qualifications applied to the April job, the record indicates otherwise. With regard to knowing the Jeffersonian convention, while Pedroni learned the use of that notation system in a doctoral level course, he acknowledged that a degree was not required and that, "Probably a five year old could learn it." (Tr. 100). As to "study of educational psychology", Pedroni testified that his coursework in that area was for what appears to be an undergraduate degree he earned in 1996. As far as being an "experienced academic transcriber", Pedroni met that qualification primarily on the basis of the transcription work he had done for himself in his graduate level work. Although he gained this experience as a graduate student, it appears from the record it is possible to gain such experience at the undergraduate level. The Person Appointment Request Form listing this qualification indicated a degree was not required, and the individual Pedroni replaced had been an undergraduate.

Pedroni's rate of pay (\$16.00/hour), while higher than the other students performing transcription work at the WCER, is within the hourly rates for "advanced level" work under the University's "Student Hourly Wage Plan" for 2001-2002, i.e., \$8.05 (minimum) to \$18.50 (maximum). Regardless of whether he was in fact an "experienced" academic transcriber, Pedroni was hired as such, and paid more than the other less experienced transcribers. The work itself would also appear to fit within the category of work "Technical Typing" listed as an example of "advanced level" work.

Pedroni's subsequent appointment to a PA position in the University's Department of Educational Psychology to do transcription work, similar to that which he performed at the WCER, is certainly inconsistent with how such work was treated at the WCER, as well as the University's position in this case. However, while this is troubling in that respect, the Examiner does not find this sufficient to overcome the other evidence in this case, which establishes that the level of skills and independent judgment Pedroni was required to apply in performing the work he was hired to do in his position at the WCER were not such that it would place the work outside the realm of a "clerical assignment". Further, while an employee's personal view of whether his/her position is properly in or out of a bargaining unit is not dispositive, it is apparent that Pedroni did not consider himself to be a PA while doing the transcription work at the WCER. Pedroni testified that, prior to his termination, he believed that all PA's were salaried. Pedroni was obviously aware that he was being paid on an hourly basis, and he had not objected to or questioned his status in this regard. He also knew he did not receive a "Letter of Appointment" for the position. He had also completed the required "Student Academic Year Enrollment Verification" form when he was hired in September of 2001 and under the "Appointment Type" section, he checked the box for "Student Hourly", rather than the boxes for "PA" or "TA".

In sum, the record indicates that most of the students hired to do transcription work at WCER by Derry have been undergraduates, and that they have essentially done the same work Pedroni did, i.e., - orthographic transcription - typing the words that were spoken. All of these students were hired as Student Hourlies, including Pedroni and another graduate student, Sameer Deshpande. The work does not require exercising judgment as to what is to be transcribed or noted in the transcription, as they are told by those doing the research what to transcribe, what, if anything, is to be noted beyond the spoke word, and whether a notation system, such as TRANSANA or the Jeffersonian convention, is to be utilized. The work therefore is essentially clerical in nature, albeit an advanced level of clerical work, and is expressly excluded from PA work. Therefore, Pedroni's position was properly classified as Student Hourly.

Having reached the above conclusion, it is not necessary to determine whether Pedroni was working under the supervision of a faculty member or academic staff within the meaning of Sec. 111.81(15m), Stats., and Article II, Section 1, of the parties' agreement.

Dated at Madison, Wisconsin, this 30th day of July, 2004.

David E. Shaw /s/

David E. Shaw, Examiner

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