

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
AFT-WISCONSIN LOCAL 4019, AFT, AFL-CIO
Involving Certain Employees of
WISCONSIN INDIANHEAD TECHNICAL COLLEGE

Case 85
No. 64894
ME-1145

Decision No. 31747

Appearances:

William Kalin, Business Representative, AFT-Wisconsin, 6659 East County Road "B", South Range, Wisconsin, appearing on behalf of AFT-Wisconsin Local 4019, AFT, AFL-CIO.

Victoria L. Seltun, Weld, Riley, Prenn & Ricci, Attorneys at Law, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin, appearing on behalf of Wisconsin Indianhead Technical College.

FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

On June 10, 2005, AFT-Wisconsin Local 4019, AFT, AFL-CIO, hereinafter Union, filed a petition with the Wisconsin Employment Relations Commission seeking to have the Commission add certain employees to an existing Union bargaining unit of employees of Wisconsin Indianhead Technical College, hereinafter WITC or College.

As initially filed, the Union sought inclusion of the incumbents in the positions of Professional Development Specialist, ITV Specialist, Business Analyst, Student Services Enrollment Specialist, Web Manager, Assistant Director, Financial Aid, Research Specialist, Student Services Financial Specialist, College Advancement Associate, Administrative Instruction Services, and Human Resources Associate, Benefits. Prior to hearing in this matter, the parties reached agreement with regard to the unit status of all positions/incumbents other than College Advancement Associates.

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Hearing as to the College Advancement Associates was held in Shell Lake, Wisconsin on January 18, 2006, before Commissioner Susan J.M. Bauman serving as Hearing Examiner. The College, contrary to the Union, asserts that the Associates are managerial employees. The parties filed written argument and the record was closed on April 4, 2006 when the parties advised the Examiner that reply briefs would not be filed.

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

FINDINGS OF FACT

1. Wisconsin Indianhead Technical College is a municipal employer with principal offices located at 505 Pine Ridge Drive, Shell Lake, Wisconsin. The College educates students and operates campuses in Ashland, New Richmond, Rice Lake and Superior for that purpose.

2. AFT-Wisconsin Local 4019, AFT, AFL-CIO, is a labor organization with a mailing address 6659 East County Road "B", South Range, Wisconsin that serves as the collective bargaining representative of a unit of College employees described in the most recent Union/ College contract as:

. . . all regularly employed full-time and part-time employees who are classified as office, clerical and technicians; excluding management staff, instructional staff, and those employees employed in the Human Resources office; and also excluding any employee with supervisory, confidential and managerial responsibilities, for the purpose of collective bargaining with the Board on wages, hours, and conditions of employment.

3. The College employs four College Advancement Associates (CAA), one on each campus. The 2005 salaries for the four CAAs were \$19,644, \$20,172, \$19,104, and \$20,172. Each works 1,200 hours per year,

The most recent position description of the College Advancement Associate (CAA) dated October 2000 states as follows:

JOB FUNCTION:

Under the supervision of the Campus Administrator, the College Advancement Associate is responsible for planning and implementing college and regional foundation development programs and activities involving internal and external constituents of the college. The position is also responsible for coordinating services and activities that promote employer hiring of WITC graduates and alumni.

JOB RESPONSIBILITIES:

1. Coordinate a comprehensive alumni program to encourage alumni involvement with the college and to promote a positive image of the college in the community.
2. Develop and maintain annual budget for the Alumni Association and approve financial transactions.
3. Develop and implement college-wide and regional foundation fund-raising programs for the college.
4. Promote the WITC Foundation scholarship program and coordinate scholarship award selection for the campus.
5. Identify and implement strategies to enhance employer hiring of WITC graduates and alumni.
6. Coordinate recognition and award programs sponsored by the WITC Foundation.
7. Articulate and promote the mission and goals of the WITC Foundation to a variety of internal and external constituents.

A May, 2003 job posting for a College Advancement Associate stated, in pertinent part, as follows:

Applications are presently being accepted for the position of College Advancement Associate at Wisconsin Indianhead Technical College-New Richmond. The position is responsible for planning and implementing WITC Foundation development programs and activities involving internal and external constituents of the college; and coordinating services and activities that promote employer hiring of WITC graduates and alumni. Work schedule is 1200 hours per year scheduled over 52 weeks.

MINIMUM QUALIFICATIONS

Core Abilities

WITC seeks to employ individuals with talent, commitment, enthusiasm, strong interpersonal skills and the ability to:

- Assess own learning and progress toward established personal and professional goals.
- Demonstrate creativity, critical thinking, and problem-solving skills.
- Communicate effectively in personal and group settings.

- Contribute to a diverse, respectful, and inclusive working and learning environment.
- Effect change and demonstrate flexibility and positive leadership.
- Acquire and apply technology to working and learning.

Education/Training and Experience

1. Two years post-secondary education in marketing, communications, or related field required.
2. Ability to organize details, and work independently.
3. Ability to make presentations to internal and external groups.
4. Experience in fundraising, resource development, and/or alumni relations preferred.
5. Experience working with volunteer organizations preferred.

The October 2000 position description and May 2003 job posting announcement accurately summarize the CAA job responsibilities.

4. College Advancement Associates do not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the College's resources to be managerial employees.

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

CONCLUSION OF LAW

The incumbents in the position of College Advancement Associate are not managerial employees within the meaning of Sec. 111.70 (1)(i), Stats. and therefore they are municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The College Advancement Associates shall be included in the bargaining unit represented by the Union as described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of July, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

WISCONSIN INDIANHEAD TECHNICAL COLLEGE

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER**

In *MILWAUKEE V. WERC*, 71 Wis. 2d 709, at 716 (1976), the Wisconsin Supreme Court affirmed the Commission's definition of managerial employees as:

. . . those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources.

The Court went on to discuss why the policy component of the Commission's managerial definition was consistent with the Municipal Employment Relations Act. The Court stated at 717 the following:

The exclusion of management personnel, as well as certain other categories, such as supervisors and executives, indicates that not all municipal employees are to have the benefit of dispute resolution through collective bargaining. However, the ability of a certain category of employees to effectuate and implement management policy does not necessarily indicate that they should be precluded from protection by the statute. The definition that has been formulated by WERC effectively distinguishes those categories of employees whose interests are shared by persons engaged in a managerial capacity from those categories who are otherwise employed. By defining the managerial exclusion so as to encompass those who formulate and determine policy, as well as implement it, WERC formulated a definition which is consistent with the purposes of the Act and the legislatively expressed intent to exclude managerial employees.

Thus, it is clear that to be a managerial employee based on one's policy role, the employee must "formulate and determine policy, as well as implement it." Thus, for instance, applying this policy test for managerial status in *EAU CLAIRE COUNTY V. WERC*, 122 Wis. 2d 363 (1984), the Court of Appeals concluded that a register in probate was not a policy-based managerial employee because the circuit court had final approval over all of the position's activities.

Lastly, it is important to emphasize that not all policy determinations qualify an individual as a managerial employee. Consistent with the purpose of the managerial exclusion as one which serves to distinguish individuals whose interests are distinct from those employees in the bargaining unit, policy making must be at a "relatively high level" to warrant managerial status. *TAYLOR COUNTY, DEC. NO. 24261-E (WERC, 7/97)*.

As noted above, the second path to managerial employee status involves the effective authority to commit the employer's resources. In *KEWAUNEE COUNTY V. WERC*, 141 Wis. 2d 347, at 355, (1987), the Court of Appeals affirmed the Commission's determination that "effective authority to commit the employer's resources" at a managerial level means possessing:

. . . the discretionary power to determine the type and level of services to be provided and the manner and means by which those services will be delivered.

and involves:

. . . determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services.

Here, the College argues that the mix of the CAAs' policy and resource authority warrants a determination that they are "managerial employees" who therefore should continue to be excluded from the bargaining unit.

As to the policy component, the record is clear that the CAAs play a very significant role in the implementation of policy. However, as the above-quoted *MILWAUKEE* and *KEWAUNEE* decisions make clear, it is the determination of policy at "relatively high level" which is the distinguishing hallmark of a managerial employee. After a careful review of the record, we are satisfied that it is the College Board, the Alumni Association Board, and the WITC Foundation Board that make the managerial level policy determinations – not the CAAs.

One of the three areas of primary CAA responsibility is to encourage employers to hire College graduates. The managerial level policy determination as to this responsibility was to create a position with a graduate hiring role. *GATEWAY TECHNICAL COLLEGE*, DEC. NO. 30609 (WERC, 2/03). The CAAs did not make that determination. Thus, the CAAs' implementation of that policy determination – while very important – does not make them managerial employees.

The second CAA primary responsibility is to serve as staff for the Alumni Association. The managerial level policy determination as to this responsibility was to create such an Association and determine its role in the context of the College's mission. The CAAs did not make these policy determinations. Thus, the CAAs' implementation of the Association's role – while again very important – does not make them managerial employees.

The third CAA primary responsibility is to serve as staff for the College Foundation. Here, the managerial level policy determination as to this responsibility was to create the Foundation and determine its role in the context of the College's mission. The CAAs did not make these policy determinations. While the CAAs make policy recommendations to the Foundation Board, it is the Board that serves as the policy makers. It is also noteworthy that

managerial policy status is derived from policy making for the College and that the Foundation is a separate entity from the College. Thus, the CAAs' implementation of the Foundation's role – while again very important – does not make them managerial employees.

Turning to the CAAs' authority to commit resources, the College cites to the discretion CAAs exercise in determining how undesignated gifts to the Foundation are used. This discretionary authority is of a type that could rise to determining the "level of services" to be provided by the College through use of the Foundation's resources. However, because the "type of services" to be provided has already been determined by others and the record does not establish the amount of the undesignated monies over which the CAAs have discretion, this resource authority does not establish managerial authority.

The College also points to the CAAs' ability to make emergency loans to students, to budget and spend monies for alumni relations activities, and to recommend the purchase of computer software. As noted earlier, to confer managerial status, resource authority must involve:

. . . the discretionary power to determine the type and level of services to be provided and the manner and means by which those services will be delivered.

and :

. . . determining the services required, the number of persons necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services.

As to expenditures for loans and software, the discretion exercised and the amounts involved does not rise to a level indicative of managerial status. As to the CAAs' budget and expenditure role with the Alumni Association, it is clear they have substantial influence. However, the monies in question are not from the College. Thus, as was true for the CAAs' policy role as to the Foundation, because it is the link to the College's resources that is critical to the basis for the managerial exclusion, this influence is not a sufficient basis for concluding that the budgetary and expenditure role warrants managerial status.

Lastly, the College points to the CAAs' role on a campus management team. While this team plays a significant role in budget development and makes certain operational decisions, the CAA activity identified in the record as to management team membership involved the recommended purchase of software. In our view, this type of resource involvement falls far short of that necessary to establish managerial status.

Given all of the foregoing, we conclude that the CAAs are not managerial employees.

Contrary to the College's arguments, our result is consistent with our decisions in DANE COUNTY, DEC. NO. 15696-B (WERC, 2/03); VERNON COUNTY, DEC. NO. 13805-J

(WERC, 4/04); MONROE COUNTY, DEC. NO. 30037-B (WERC, 11/01) and GATEWAY TECHNICAL COLLEGE, DEC. NO. 30609 (WERC, 4/03). In DANE COUNTY, the employee found managerial had resource allocation authority over a large budget which effectively determined employer service priorities. The CAAs' authority falls far short of that level of authority. In MONROE COUNTY, the individuals found to be managerial independently made decisions and resource choices that determined the level, manner, and means by which significant services would be provided. As discussed earlier, the CAAs' authority does not rise to that same level. In GATEWAY TECHNICAL COLLEGE, the individual found to be managerial had independent authority to bind the employer to contracts which committed the employer to provide a "kind and level of service" to customers. This level of resource allocation far exceeds that of the CAAs. Finally, in VERNON COUNTY, in what the Commission termed a "close call," the employee found managerial had both long-term and day-to-day policy and resource impact on the employer's human services department. While important, the CAAs' policy and resource role in the functioning of the College is not at this same level.

Dated at Madison, Wisconsin, this 28th day of July, 2006.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

