

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Motion of :
 DISTRICT COUNCIL 48, AMERICAN :
 FEDERATION OF STATE, COUNTY AND :
 MUNICIPAL EMPLOYES, AFL-CIO, :
 Involving Certain Employees of :
 WAUWATOSA BOARD OF EDUCATION :
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Case II
 No. 8968 ME-86
 Decision No. 6219-D

ORDER AMENDING CERTIFICATION OF REPRESENTATIVES

The Wisconsin Employment Relations Board, now known as the Wisconsin Employment Relations Commission, having heretofore and on March 6, 1963, issued a Certification of Representatives in the above entitled matter, and thereafter and pursuant to a decision issued by the Dane County Circuit Court on April 4, 1967, remanding the above entitled matter to the Commission to conduct a hearing to determine whether certain classifications should be included or excluded from the certified appropriate collective bargaining unit; and such hearing having been conducted at Milwaukee, Wisconsin, on May 16, 1967, Chairman Morris Slavney and Commissioner Zel S. Rice II being present, and the Commission having considered the evidence and arguments of counsel, and being satisfied that the description of the appropriate collective bargaining unit contained in the original Certification of Representatives be amended to specifically exclude therefrom the classifications of Supervising Custodian and Supervising Custodian and Swimming Pool Operator;

NOW, THEREFORE, it is


ORDERED

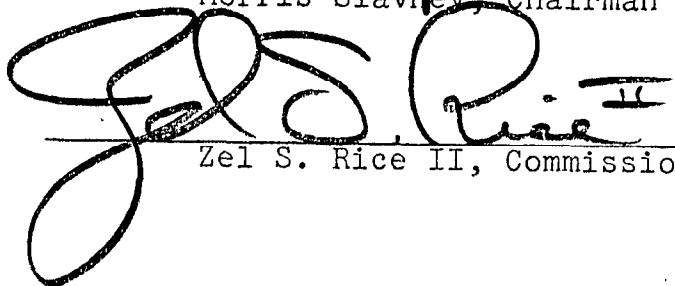
That the description of the bargaining unit as contained in the original Certification of Representatives, issued by the Commission in the above entitled matter on March 6, 1963, be amended to read as follows:

All custodial and maintenance employes of the Wauwatosa Board of Education, including the stock clerk, and all cooks, but excluding supervising custodian and supervising custodian and swimming pool operator, the electrician, carpenters, clerical employes, and all other employes, and all other supervisors, professional employes, and executives of said municipal employer.

Given under our hands and seal at the City of Madison, Wisconsin, this *21st* day of September, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Morris Slavney, Chairman


Zel S. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING
ORDER AMENDING CERTIFICATION OF REPRESENTATIVES

On January 4, 1963, the Union and the School Board filed a stipulation for a representation election with the Wisconsin Employment Relations Commission, wherein they stipulated the appropriate collective bargaining unit as follows:

"All custodial and maintenance employees of the Wauwatosa Board of Education, including the stock clerk, and all cooks, but excluding the electrician, carpenters, clerical employees and all other employees, supervisors, professional employees and executives of said municipal employer."

As part of said document the parties also stipulated to the employes eligible to participate in the election, and that said stipulation included employes who were occupying the classifications of:

- Utility Laborer Foreman
- Supervising Custodian
- Supervising Custodian and Swimming Pool Operator
- School Custodian and Swimming Pool Operator

In the election the employes selected the Union as their bargaining representative, and the Commission, on March 6, 1963, issued a certification to that effect.

On February 25, 1966, the Union filed a motion with the Commission requesting a clarification of the certification by specifically setting forth that the classifications noted above were, and are, included in the certified bargaining unit, and that it desired such action since, as averred by the Union, the School Board had refused to recognize the Union as the bargaining representative for the employes occupying said classifications. On May 26, 1966, the Commission issued an order clarifying the certification on the basis of the stipulations hereinbefore noted which were filed with the Commission, wherein the certified

collective bargaining unit was amended to specifically include the four classifications. Subsequently the School Board petitioned the Dane County Circuit Court for review of the Commission's order, and on April 4, 1967, such court remanded the matter to the Commission for the purpose of conducting a hearing upon the issue as to whether or not the four classifications should be excluded from the unit on the basis of their supervisory status. The Commission conducted such hearing on May 16, 1967.

During the course of the hearing it was disclosed that the classification of Utility Laborer Foreman has not been utilized since June, 1966, that the School Board has no intention of filling such classification in the future, and it was also disclosed that the classification of School Custodian and Swimming Pool Operator will not be used by the School Board. No testimony, therefore, was offered with respect to either of said classifications, and we make no determination with respect thereto.

There is one employe classified as Supervising Custodian. There are three employes classified as Supervising Custodian and Swimming Pool Operator. Each of said four employes perform their duties in separate schools and report to the principal of each school, except in the summer months when, during the absence of the principals, they individually report to the Supervisor of Building and Grounds. Each of the four employes is responsible for the custodial work at their respective school buildings, which contain from approximately 90 rooms to 40 rooms. The salary for both classifications is identical, ranging from \$581.17 to \$633.46 per month in a four step range. The Supervisor of Building and Grounds, who also regularly supervises approximately 14 maintenance department employes, as well as 10 Custodians, Building Responsibility in the elementary schools, is in a salary range from \$711.25 to \$786.59 per month, in a six step range. The number of employes engaged in custodial activities at each school where the classifications in issue are employed range from 9 full-time and 1 part-time employe to 3 employes. The assignment of custodial employes at each school varies from a 3-shift operation to a 2-shift operation.

The custodial responsibility is assigned by the principal of the school to the Supervising Custodian, except during the summer as previously noted, and he, in turn, makes the assignments to the custodial employes. The principal of the school exercises no direct authority over the custodial employes but always has direct contact with the Supervising Custodian except perhaps in rare unusual circumstances.

At each of the four schools, the Supervising Custodian has the responsibility for maintaining the building in a clean and sanitary condition, the responsibility for the heating of the building, the boiler

equipment, and in all schools except one (East High), the responsibility for maintaining the swimming pool facilities, which includes the taking of tests daily, the maintenance of proper water level, chlorination of the water and the cleaning process.

With respect to the general cleaning of the classrooms, the custodial employes of a school are normally assigned by the Supervising Custodian to a section of the building, and these normal assignments do not vary a great deal. However, due to special activities caused by use of the facilities of the building, such as the swimming pool, the locker room, the gymnasium and other general meeting rooms, the cafeterias, as well as classrooms, the normal cleaning assignments are changed in order that the facilities may be set up for the particular event scheduled, in order that such facilities may be cleaned up after the activity has ended, and in order that the activity would not be interrupted by normal cleaning schedules. The Supervising Custodian is notified, usually by the principal or his office, of the nature and time of the activity, and it then becomes the responsibility of the Supervising Custodian to set up for the activity, to clean up after the activity, and to see that anything else required or brought about by the activity is taken care of.

Also, during the summer months, and during the extended holidays at Christmas and Easter when schools are not in session, all custodial employes on the second and third shifts are reassigned to the day shift and the Supervising Custodian then assigns all custodial employes to tasks which are at variance with the normal cleaning schedules and procedures.

In the event of an absence of a custodial employe, the Supervising Custodian has the responsibility to reassign his work force in order to properly maintain the building or to determine which cleaning assignments can be postponed if this is necessary.

A Supervising Custodian also has the authority to assign overtime work to custodial employes when he determines that this is necessary unless it would be an overtime assignment for an extended period of time, in which case he would first obtain the approval of the principal of his school.

All Supervising Custodians are normally on the day shift, but all of them either work into the second shift period or return to the school during that period with considerable regularity, and some may come in on the third shift from time to time. If the assigning of the work force is not done orally and personally, written instructions are left for the second and third shift employes. Supervising Custodians do not receive overtime pay for overtime work. Each of the Supervising Custodians involved herein orders supplies and materials, both on an annual basis and from time to time as needed.

The employes in both classifications spend the majority of their time in physical work. However, the greater portion of such work is not the same work which is performed by other custodial employes. The Supervising Custodians generally open the school buildings in the morning, turn on lights, check the heating, ventilating and fans and spot-check the work performed the night before. They then make special assignments to others on the day shift as required, and, except at East High School, check the heating equipment, clean nozzles and oil motors and again, except at East High School, check the swimming pool, taking tests, checking chlorine, adding chlorine, bringing water up to level if necessary, check cleanliness of pool and for foreign objects. At East High School the boilers are taken care of by two custodial employes, and it has no swimming pool activities.

The Supervising Custodian may then assist in "running the corridors", i.e., sweeping the corridors with compound to eliminate dust, clean the entranceways, check the grounds and parking lot, assist in moving partitions in the gymnasium and other rooms, provide assistance in setting up for sports activities, and other events, close most lavatory doors during lunch periods, assist in keeping cafeterias free from debris during lunch periods, change light bulbs and various other duties as required during the school day. The Supervising Custodians, while they spend an appreciable amount of time in physical activities, do not ordinarily perform the same work as do the other custodial employes, such as cleaning classrooms and other rooms in the buildings. The greater amount of their physical work is related to taking care of special items which arise during school hours.

Employment by the School Board is pursuant to civil service. Therefore, there is limited authority with respect to hiring and termination of employment. Supervising Custodians, however, have made recommendations with respect to promotions when such recommendations are sought. They have the authority to answer grievances in the first step of the established grievance procedure.

In determining whether an employe is a supervisor, the Commission considers the following factors:

1. The authority to effectively recommend hiring, promotion, transfer, discipline or discharge of employes.
2. The authority to direct and assign the work force.
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes.
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes.

5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes.
7. The amount of independent judgment and discretion exercised in the supervision of employes. 1/

Because certain conditions of employment are governed by civil service rules and regulations, the employes in the positions in question have limited authority with respect to hiring and promotion and discharge of employes. However, they can make recommendations with respect thereto. The lack of such authority, however, will not preclude the Commission from making a supervisory determination.^{2/}

The evidence supports the finding that the employes involved are authorized and do direct and assign the custodial employes, including overtime employment, except for an extended period. The Supervising Custodians make daily spot-checks of the work performed by the custodial employes and direct their attention to oversights. While the employes supervised range from ten to three, it appears that there are no other employes exercising the same supervision over the same employes. The highest rate of pay received by any of the custodians assigned the classification under the classifications in question herein is \$524.97, resulting in approximately \$110.00 less per month than the rate received by the Supervising Custodians. This pay differential is substantial. The differential and the minimum rate of Supervising Custodian as compared with the maximum rate for the custodian assigned amounts to approximately \$56 a month difference. The evidence disclosed that the differentials in pay between the two positions was not established as a result of differences in work performed by Supervising Custodians as compared to the other custodians, although the employes in question spend a minority of their time in direct supervisory activity, a majority of their time is spent in performing duties not usually performed by the other custodians.

We are also satisfied that the employes in question exercise considerable independent judgment with respect to directing and assigning the employes, changing shifts, discontinuing shifts, assigning overtime, and ordering materials. In addition, the employes in question are not on a scheduled basis but generally work more than eight hours a day, depending upon special events at their particular school, and they are not compensated for overtime.

1/ City of Milwaukee (6960) 12/64.

2/ Sauk County (6762) 6/64.

We are satisfied, from the evidence adduced during the course of the hearing, that the factors present herein are sufficient to establish that the Supervising Custodian and the Supervising Custodian and Swimming Pool Operator positions are supervisory and should, therefore, be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this *21st* day of September, 1967.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney

Morris Slavney, Chairman

Zel S. Rice II

Zel S. Rice II, Commissioner