

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS BOARD

In the Matter of the Petition of	:	
SAUK COUNTY HIGHWAY DEPARTMENT EMPLOYEES,	:	
LOCAL 360, AFSCME, AFL-CIO	:	Case I
Involving Employes of	:	No. 9675 ME-147
SAUK COUNTY, Employed in the	:	Decision No. 6762
HIGHWAY DEPARTMENT	:	
	:	

Appearances:

Mr. George Lewis, Representative, for the Petitioner.
Mr. Paul Newcomb, Corporation Counsel, for the Municipal Employer.

DIRECTION OF ELECTION

The above named Petitioner having petitioned the Wisconsin Employment Relations Board to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes, among certain employes of the above named Municipal; and a hearing on such petition having been conducted at Baraboo, Wisconsin, on May 15, 1964, by James L. Greenwald, Examiner; and during the course of the hearing the parties having stipulated to the unit appropriate for collective bargaining; and the Board having considered the evidence and being satisfied that a question has arisen concerning representation for certain employes of the Municipal Employer named above;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Board within sixty (60) days from the date of this Directive in the collective bargaining unit consisting of all employes of Sauk County, employed in the Highway Department, including the timekeeper and excluding the Highway Commissioner, the Patrol Superintendent, Office Manager, confidential secretaries and foremen, who were employed by the Municipal Employer on June 11, 1964, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether or not a majority of such employes

desire to be represented by Sauk County Highway Department Employees, Local 360, AFSCME, AFL-CIO, for the purposes of conferences and negotiations with the above named Municipal Employer on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of Madison, Wisconsin, this 11th day of June, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

Zel S. Rice II /s/
Zel S. Rice II, Commissioner

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MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

At the hearing an issue arose concerning the eligibility of two (2) grading and construction foremen, the black-top foreman, and the bridge foreman, to participate in the election. The Municipal Employer took the position such individuals are supervisors, while the Union contended that they are, at most, working foremen and, therefore, should be included in the proposed collective bargaining unit.

The Highway Department of the Municipal Employer is managed and operated by the Highway Commissioner, who is assisted in his duties by a Patrol Superintendent, and an office staff consisting of a manager, two secretaries, and the timekeeper. The Commissioner has over all responsibility for the construction and maintenance of all highways in the county. Immediately below him and the Superintendent in line of authority, and at the same level of supervision, are the shop foreman (whom the parties stipulated to be a supervisor), two grading and construction foremen, the black-top foreman, and the bridge foreman. The Department has a work force composed of 77 employes, 31 of whom are engaged in patrolling and maintaining roads throughout the county, while the remaining 46 consist of heavy equipment operators, truck drivers and mechanics engaged in the operation and maintenance of heavy equipment used in the construction of roads, and laborers engaged in the construction of bridges and the bedding and surfacing of roads, during a construction season extending from the middle of Spring to the middle of Fall each year, and then in the off season, in snow removal, and other jobs connected with the operation of the Department.

The four disputed positions in certain respects are not markedly different than the positions held by other employes.

The foremen receive \$2.05 per hour, while heavy equipment operators who might be under their supervision receive \$2.00 per hour. The foremen, like other employes, are paid over-time pay for over-time hours. They use the same washroom facilities, and are not in any other manner, connected with the surroundings in which they work, segregated from other employes. They have almost no authority with regard to hiring, firing, laying off, recalling, promoting and demoting other employes. They exercise only limited authority in these areas to the extent that they will make periodic oral reports to the Commissioner concerning any employes in their charge who are not performing their duty in a reasonably proficient manner, or are guilty of some misconduct. However, the Commissioner testified he retains full authority to discharge employes and that, normally, he would be sufficiently aware of an employe's work performance from his own personal observation to decide what disciplinary action the situation warrants without heavy reliance upon the reports and recommendations of the foremen. The only other area in which the foremen have authority with regard to an employe's employment status is the fact that they are consulted by the Commissioner in regard to any assignment of employes into or out of their crews.

Notwithstanding, the foremen have one of the prime attributes of a supervisor, they supervise and direct other employes in their work, and are responsible for the work thus performed. They direct and supervise on an average six to eight other employes throughout the year, and in all cases except one, at times supervise as many as 12 other employes. The black-top foreman operates as such only during the approximately six-month period of the construction season, and in the off season works for the Department as a night patrolman, which job does not entail any significant supervisory duties. All of the foremen, while acting as such, are responsible to the Commissioner and to the patrol Superintendent, when acting in his stead, for the quality and quantity of the work performed by the employes in their charge. They are not required to perform manual labor, but such is only incidental to their supervisory duties. In no event, would they be engaged in such physical work for a majority of their time on the job. The bridge foreman testified he performed manual labor to keep himself in good condition, and also so that he would be in a better position to judge the quantity of physical work he could reasonably demand of the employes he supervises. He estimated he performed physical work approximately 40 per cent of his working day, but it appeared that the other foremen choose to perform less manual labor. The

foremen do exercise independent judgment regarding the control and direction of the work force. They can authorize overtime hours for their crews, and in practice authorize crew members to take a day or so off work for personal business without pay. They must use their judgment in the manner in which work is to be performed, and on occasion must exercise discretion concerning the appropriate use of County employes and equipment, for example, if certain material or services might be obtained from property owners adjoining the highway right-of-way, the foreman has authority to attempt to procure them and, if need be, direct employes and equipment in the performance of work on the owner's premises in exchange for such material or service.

The factor that most seriously calls into question the foremen's supervisory status is their wage rate. The absence of a substantial differential in the instant case might suggest that the foremen lack any real responsibility for employe supervision and the work performed, but that rather such responsibilities lie in a higher echelon of supervision and that the foremen perform merely routine tasks. The Board concludes on the basis of the record that the opposite is true. In the instant case the foremen have the duties and responsibilities of supervisors, but without commensurate compensation. The Board concludes that the foremen are supervisors and, therefore, shall be ineligible to participate in the election.

Although we have determined that the black-top foremen is a supervisor, the incumbent of such position is employed as a night patrolman, a position in the proposed bargaining unit, on a regular basis, six months each year and, therefore, will be eligible to vote as a regular seasonal employe.

Dated at Madison, Wisconsin, this 11th day of June, 1964.

WISCONSIN EMPLOYMENT RELATIONS BOARD

By Morris Slavney /s/
Morris Slavney, Chairman

Arvid Anderson /s/
Arvid Anderson, Commissioner

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