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In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL 40, AFSCME,	:	
AFL-CIO	:	
	:	Case 4
Involving Certain Employees of	:	No. 10306 ME-198
	:	Decision No. 7197-A
SHAWANO COUNTY (MAPLE LANE	:	
HEALTH CARE FACILITY)	:	
	:	

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54270, appearing on behalf of the Union.

Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald J. Rutlin, 408 Third Street, P.O. Box 1004, Wausau, Wisconsin 54401-1004, appearing on behalf of the County.

Wisconsin Council 40, AFSCME, AFL-CIO having, on June 1, 1984, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of employees of Shawano County (Maple Lane Health Care Facility) by determining whether the position of Laundry Supervisor should be included in the unit; and hearing on said petition having been held in Shawano, Wisconsin on August 9, 1984, before Examiner Lionel L. Crowley; and the Union having waived the filing of a brief and the County having filed its brief on September 18, 1984; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, makes and issues the following

1. That Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing employees for the purposes of collective bargaining and has its offices located c/o James Miller, 1785 Whippoorwill, Green Bay, Wisconsin 54303.

2. That Shawano County, hereinafter referred to as the County, is a municipal employer which maintains and operates Maple Lane Health Care Facility, a nursing home care facility in Shawano County, and has its offices at the Shawano County Courthouse, Shawano, Wisconsin 54166.

3. That following an election conducted by it on July 15, 1965, the Wisconsin Employment Relations Commission, herein the Commission, on July 23, 1965, certified the Union as the exclusive collective bargaining representative of certain of the County's employees in a bargaining unit described as "all employees employed by Shawano County at the Shawano County Hospital and Home, but excluding the Superintendent, matron, physician, psychiatrist, registered nurse, dentist and confidential clerical employee." 1/

4. That the instant proceeding was initiated on June 1, 1984, by a petition filed by the Union wherein it contends, contrary to the County, that the position of Laundry Supervisor, currently occupied by Betty Richards, is not managerial or supervisory in nature, and therefore should be included in the unit.

No. 7197-A

5. That the Laundry Supervisor is responsible for directing the work of two other full-time employees; that the Laundry Supervisor works from 7:30 a.m. to 3:30 p.m. and the other two employees work from 7:00 a.m. to 3:00 p.m.; that the Laundry Supervisor position has been filled by Betty Richards since its inception in 1983; that Richards spends about ninety percent of her time performing the same duties as the other employees in the laundry and does all the sewing; that Richards approves all requests for vacation and sick leave; that while Richards has been told by the Administrator that she has the authority to hire and to discharge employees, she has not hired nor disciplined any employee or recommended same; that Richards has not evaluated the performance of other employees and there have been no layoffs, overtime or a change in hours in the laundry; that Richards receives \$.10 an hour more than the other laundry employees; that Richards reports directly to the Administrator and attends staff meetings attended only by other Department Heads; that Richards, as Laundry Supervisor, sits on three committees composed of only Department Heads, including the Infection Control Committee, Budget Planning Committee and the Patient Care Policies and Procedures Committee; that Richards orders laundry supplies within the budget established for the laundry; that the laundry's budget is formulated by Richards in discussions with the Administrator; that Richards does not exercise supervisory responsibilities in sufficient combination and degree as to make her a supervisory employee; and that Richards does not possess the effective authority to commit the resources of the County in sufficient manner or degree so as to render her a managerial employee.

Upon the basis of the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

1. That the occupant of the Laundry Supervisor position is neither supervisory nor managerial and therefore is a municipal employee within the meaning of Section 111.70(1)(i) of the Municipal Employment Relations Act.

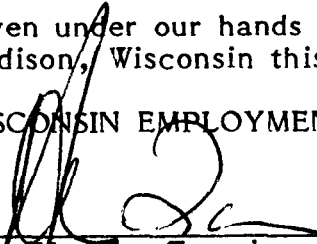
Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

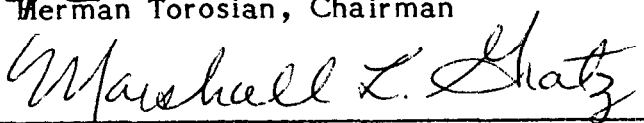
ORDER CLARIFYING BARGAINING UNIT 2/

1. That the position of Laundry Supervisor be, and the same hereby is, included in the bargaining unit described in Finding of Fact 3.

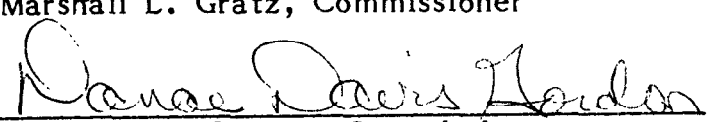
Given under our hands and seal at the City of
Madison, Wisconsin this 24th day of October, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner

2/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, (Footnote 2 continued on page 3)

file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER
CLARIFYING BARGAINING UNIT

In its petition, the Union contends that the Laundry Supervisor is neither a supervisory nor a managerial position and therefore should be included in the existing bargaining unit. The County contends that while the Laundry Supervisor performs a substantial amount of bargaining unit work, the position includes significant duties and responsibilities of a managerial and supervisory nature such that exclusion from the bargaining unit on this basis is required.

Section 111.70(1)(o)1 of MERA defines the term "supervisor" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees. 3/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 4/ Even though an employee may spend a

3/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Augusta School District, Dec. No. 17944 (WERC, 7/80); Cornell School District, Dec. No. 17982 (WERC, 8/80); Eau Claire County, Dec. No. 17488-A (WERC, 3/81).

4/ Lodi Jt. School District, Dec. No. 16667 (WERC, 11/78); City of Lake Geneva, Dec. No. 18507 (WERC, 3/81); Eau Claire County, Dec. No. 17488-A (WERC, 3/81); Waushara County (Health Department), Dec. No. 21422 (WERC, 2/84).

majority of his/her time doing non-supervisory duties, the Commission has determined that he/she is supervisory where sufficient responsibilities and authority of a supervisor are present. 5/

A review of the record indicates that the duties and responsibilities of the Laundry Supervisor, currently occupied by Betty Richards, do not include the necessary factors in such combination and degree to warrant the conclusion that the position is supervisory. The evidence establishes that Richards spends the vast majority of her time performing laundry duties. Richards does not determine the work schedule and has not evaluated the performance of any employees. The record indicates that Richards is paid only \$.10/hour more than other laundry workers, which may be attributed to her sewing responsibilities rather than to supervisory responsibilities. The record also reveals that while she has been told she has authority to hire and fire, that she has not hired or disciplined anyone nor effectively recommended such action. The evidence establishes that Richards supervises an activity, the laundry, and not employees. Although Richards approves vacation and sick leave requests, the County's policies are so clear that these functions are ministerial and do not call for a significant amount of independent judgment and discretion. Based on the totality of factors herein, the Commission finds that the Laundry Supervisor is not a supervisory employee within the meaning of Sec. 111.70(1)(o)(1), Stats.

Turning to the alleged managerial status of the Laundry Supervisor position, we have consistently held that in order for an employee to be found to be a managerial employee, said employee must participate in the formulation, determination, and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. 6/ With respect to the authority to commit the municipal employer's resources, we have held that this power involves the authority to establish an original budget or to allocate funds for differing purposes from such a budget. The power must not be merely ministerial such as the authority to spend money from a certain account for a specified purpose. 7/

The record indicates that Richards attends monthly staff meetings and is assigned to three committees whose members are Department Heads. The evidence reveals that Richards' participation in such meetings relates to program problems regarding the operation of the laundry such as procedures with respect to handling laundry for infection control. The record does not establish that Richards had any participation in the formulation, determination and implementation of the County's policy with respect to operation of the Health Care Facility to any significant degree. Her input merely relates to program procedures and are not substantial enough for Richards to be found to be a managerial employee.

The record indicates that while Richards had input into the budget and expended sums for supplies in the laundry, these sums were within amounts established for such supplies and it is concluded that her authority in this respect is ministerial and that managerial decisions with regard to the budget remain with the Administrator. Her budget input appears to involve projections of current fixed expenses or anticipated equipment replacements, and it must be concluded that she does not participate in the budget process to any significant degree. 8/ We therefore conclude that the Laundry Supervisor is not a managerial employee.

5/ City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82); School District of Montello, Dec. No. 17829-B (2/82).

6/ Oneida County, Dec. No. 9134-D (WERC, 7/83); Green County, Dec. No. 16270 (WERC, 3/78); City of Wausau, Dec. No. 14807 (WERC, 7/76); Shawano County (Maple Lane Health Care Facility), Dec. No. 20996-A (WERC, 1/84).

7/ Ondossagon School District, Dec. No. 19667 (WERC, 6/82).

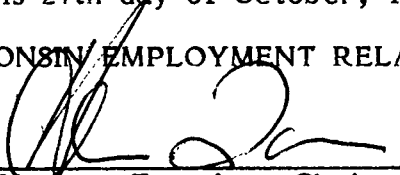
8/ Kewaunee County (Highway Dept.), Dec. No. 21344, (WERC, 1/84); Waushara County (Health Dept.), Dec. No. 21422 (WERC, 2/84).

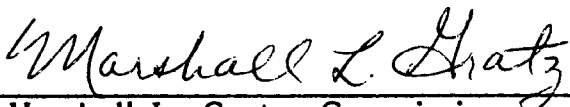
Even when all of the Laundry Supervisor's duties are taken in combination they are insufficient to establish that the position is either supervisory and/or managerial and we have therefore included the position in the unit.

Dated at Madison, Wisconsin this 24th day of October, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner