

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO**

Involving Certain Employees of

**CITY OF MILWAUKEE**

Case 452  
No. 56954  
ME-964

**Decision No. 7310-A**

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In the Matter of the Petition of  
**MILWAUKEE DISTRICT COUNCIL 48, AFSCME, AFL-CIO**

Involving Certain Employees of

**CITY OF MILWAUKEE**

Case 453  
No. 56955  
ME-965

**Decision No. 6215-R**

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Appearances:

Podell, Ugent, Haney & Delery, S.C., by **Attorney Alvin R. Ugent**, 611 North Broadway, Suite 200, Milwaukee, Wisconsin 53202-5004, appearing on behalf of Milwaukee District Council 48, AFSCME, AFL-CIO.

No. 7310-A  
No. 6215-R

**Attorney Thomas J. Beamish**, Assistant City Attorney, City of Milwaukee, 800 City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202-3551, appearing on behalf of the City of Milwaukee.

Padway & Padway, Ltd., by **Attorney William A. Padway**, 606 West Wisconsin Avenue, 20<sup>th</sup> Floor, Wisconsin Tower, Milwaukee, Wisconsin 53203, appearing on behalf of Public Employees' Union #61, Laborers' International Union of North America, AFL-CIO, CLC.

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On November 5, 1998, Milwaukee District Council 48, AFSCME, AFL-CIO filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a Council 48-represented bargaining unit of certain City of Milwaukee employees by including therein all Sanitation Supervisors in Pay Range 4, all Equipment Operations Supervisors 1 in Pay Range 4, and all Urban Forestry Supervisors in Pay Range 4. The City opposes the petition by contending that the incumbents in the aforesaid positions are supervisors - who must continue to be excluded from any bargaining unit. Public Employees' Union #61, Laborers' International Union of North America, AFL-CIO, CLC, intervened solely for the purpose of participating in the proceedings if the Sanitation Supervisors were found not to be supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

Hearing was held in Milwaukee, Wisconsin, on March 22 and May 17, 1999, before Examiner Dennis P. McGilligan, a member of the Commission's staff. By agreement of the parties, the scope of the hearing was limited to the issue of supervisory status. A transcript was received for the aforementioned hearings on April 1, 1999 and May 27, 1999, respectively. The parties completed their briefing schedule on July 1, 2002.

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

**FINDINGS OF FACT**

1. The City of Milwaukee, herein the City, is a municipal employer that maintains its principal offices at City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202.

2. Milwaukee District Council 48, AFSCME, AFL-CIO, herein Council 48, is a labor organization that maintains its principal offices at 3427 West Saint Paul Avenue, Milwaukee, Wisconsin 53208. Council 48 is the collective bargaining representative of certain blue-collar employees of the City's Department of Public Works.

3. Public Employees' Union #61, Laborers' International Union of North America, AFL-CIO, CLC, herein Local 61, is a labor organization that maintains its principal office at 600 West Wisconsin Avenue, Milwaukee, Wisconsin 53203. Local 61 is the collective bargaining representative of certain blue-collar employees of the City's Department of Public Works.

4. The City of Milwaukee Department of Public Works (DPW) includes a Commissioner, Deputy Commissioner, and six divisions including Administrative, Infrastructure, Water Works, Sanitation, Forestry and Buildings and Fleet.

5. The DPW-Sanitation Division includes a Sanitation Services Superintendent, an Administration and Projects Manager and a Sanitation Operations Manager. The Sanitation Operations Manager supervises three Collection & Special Services Areas: North, Central and South. Each Area has two districts.

There are approximately thirty Sanitation Supervisors in the Sanitation Division. Most districts have three collection Sanitation Supervisors and two special services Sanitation Supervisors. Each collection Sanitation Supervisor supervises eight or more employees in the Sanitation Worker and Driver/Loaders classifications. Each Sanitation Supervisor supervises three or four collection crews and one or two recycling crews on a daily basis.

6. A Sanitation Supervisor's job description states in pertinent part:

**BASIC FUNCTION OF POSITION:**

Under the direction of a Sanitation District Manager, this position functions in the supervising of crews for refuse collection, recycling collection, street cleaning, snow plowing, ice control, and various other duties assigned by the Sanitation Division.

**DESCRIPTION OF JOB:** (Describe the specific duties and responsibilities of the job as accurately and completely as possible. Use additional sheet if necessary.)

**A. DUTIES AND RESPONSIBILITIES:** (Break job into component parts as you would describe it to the incumbent. Indicate the approximate percentage of time devoted to each major task or group of related tasks. List the most important duties and responsibilities first. Include responsibilities related to employee safety and affirmative action goals for management positions.)

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1. Supervise and instruct sanitation workers and drivers in proper work procedure and in maintaining collection schedules.
2. Lay out collection routes and equalize the work load among crews collection and information systems.
3. Make collection arrangements with commercial establishments.
4. Advise residents on provisions of the ordinance governing division operations.
5. Supervise activities of sanitation workers together with various pieces of equipment assigned in street cleaning, ice control, and snow removal, and any other miscellaneous activities required by the superintendent.
6. Keep records and report time on such forms as are required by the office.

**B. Name and title of immediate supervisor:** District Manager

**C. SUPERVISION RECEIVED:** (@ which work assignments and methods are outlined, reviewed, and approved by others.)

Field checks of district activities and facilities are made periodically by the district's superintendent, operations manager, administration & projects manager, and area manager. Regular supervisory checks are made by the district manager.

**D. SUPERVISION EXERCISED:**

24 Total number of employees for whom responsible either directly or indirectly.

Direct Supervision. List the number and @ of personnel directly supervised. Specify the kind and extent of supervision exercised by indicating one or more of the following: (a) assigned duties; (b) outline methods; (c) direct work in process; (d) check or inspect completed work; (e) sign or approve work; (f) make hiring recommendations; (g) prepare performance appraisals; (h) take disciplinary action or effectively recommend such.

Direct supervision of 12 to 24 driver-loaders and sanitation workers depending on duties performed. Directs operation of equipment such as packers, recycling trucks, endloaders, @, plows, sand and salt spreaders, etc. Supervises the work of county relief employees and summer youth employees.

**E. QUALIFICATIONS REQUIRED:** (the more important qualifications required for filling a vacancy – such as education, experience, knowledge, skills, and abilities, including specific physical abilities.)

High school graduation or equivalent.

At least 5 years of field experience in municipal public works activities.

Ability to deal with the public and public officials and to handle inquiries and complaints in a satisfactory manner.

Good judgment in carrying out department policies.

Possession of a valid Wisconsin motor vehicle operator's license.

**F. SUPPLEMENTARY INFORMATION:** Indicate any other information which further explains the importance, difficulty, or responsibility of the position, such as amount of budget or number and variety of items in warehouse or files, or special personality characteristics).

The welfare of all residents of a district depend a great deal upon the ability of the incumbent in this position during periods of emergency. Must be prepared to work long and irregular hours.

7. Effective Pay Period 1, 1998 Sanitation Supervisors were at Salary Grade 004 beginning at Step 7 with a biweekly rate of \$1,323.44 and an annual rate of \$34,503.96. Step 12 included a biweekly rate of \$1,542.08 and an annual rate of \$40,204.20. Sanitation Workers were at Pay Range 740 with a biweekly rate of \$1,063.36 and an annual rate of \$27,723.28. Sanitation Workers only had five steps with a biweekly rate of \$1,165.43 and an annual rate of \$30,384.43 at Step 5, the top rate. Sanitation Crew Leaders were at Pay Range 742 with the first step at \$1,097.83 biweekly and \$28,621.99 annually. The top step (5) includes a biweekly rate of \$1,229.21 and an annual rate of \$32,047.26. Driver/Loaders were at Pay Range 746 with a biweekly rate of \$1,257.50 and an annual rate of \$32,784.81 at Step 1 and with a biweekly rate of \$1,383.00 and an annual rate of \$36,056.78 at Step 5. Sanitation Supervisors do not receive overtime pay like the other employees noted above. However, unlike the other employees noted above, they do receive annual snow pay equal to 4.8% of an individual's salary, an amount updated automatically when Sanitation Supervisors receive wage increases. Sanitation Supervisors receive the snow pay no matter how many hours they spend on duties related to snow removal and other responsibilities.

8. Sanitation Supervisors personally monitor collection crews on a daily basis regarding extended breaks, progress of routes and completion of work. They move crews to equalize the workload, to help out when there is an equipment breakdown and to complete routes and work. They relay safety and other information from the district office and the downtown office to the crews. They are responsible for their employees practicing safe work procedures while performing their duties.

They exercise independent judgment and authority on a daily and weekly basis in directing and assigning work to the various Sanitation Workers and Driver/Loaders to make sure the garbage is collected and special projects like street sweeping, bulk collections, brush collections and special cleanups are completed.

9. Sanitation Supervisors respond to citizen complaints regarding garbage pickup. They also act as representatives for the Sanitation Division and oftentimes are the only Division representative at neighborhood meetings, and meetings with alderpersons and business groups. They serve as contacts with the media.

10. During salting operations, the Sanitation Supervisor supervises the Truck Drivers, Driver/Loaders, and Loader/Operators to make sure that the streets are adequately salted. The Sanitation Supervisor may get directions from management to salt or may order salting on his own initiative if conditions warrant. Sanitation Supervisors monitor conditions and may determine if the entire district needs to be salted or just a portion of the district. They make recommendations that salting start or stop, salt usage be increased or decreased, or that liquid calcium be added based on conditions in their district.

11. Sanitation Supervisors have the independent authority to issue verbal warnings and/or reprimands and written warnings. They have the authority to effectively recommend suspensions. They can send an employee home for the day for a major offense like gross insubordination or attacking a citizen. Very little discipline is triggered except by a Sanitation Supervisor's report.

Sanitation Supervisors maintain individual personnel records (hard cards) for employees they supervise wherein they report on a daily basis regarding the quality and quantity of work, attendance and attitude of permanent and probationary employees under their supervision. They also complete a document titled "Operator Efficiency and Evaluation Report" based on their observations of employees from other divisions of DPW. They have the authority to tell an employee not to do something which "wasn't right" or is in violation of the work rules.

Sanitation Supervisors sign time sheets so employees can be paid.

Sanitation Supervisors attend certain training and supervisory courses which are not available to unit employees such as reasonable suspicion testing and labor relations.

Sanitation Supervisors fill in for Division managers when they are absent due to illness or vacation.

Sanitation Supervisors approve emergency requests for use of a vacation day.

12. Sanitation Supervisors have supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

13. The DPW-Buildings and Fleet Division includes a Fleet Services Section and an Operations Section. In the Operations Section is an Equipment Operations Manager and three Equipment Operations Supervisor 1. An Equipment Operations Supervisor 1 assigns personnel and equipment to various projects.

During the summer, the Buildings and Fleet Division may have 118 or 119 employees filling driving positions on a regular basis. These employees/positions include: Truck Driver who is capable of driving a straight truck; Driver/Worker who drives and works; Special Equipment Operator who operates more sophisticated equipment like street sweepers; and Tractor Operators who operate more difficult and more complex machinery like loaders and backhoes.

Equipment Operations Supervisors 1 do not drive trucks or perform any of the laboring functions noted above. They spend most of their time in the office and only ten to twenty percent of their time in the field.

14. An Equipment Operations Supervisor 1's job description states in relevant part:

**12. BASIC FUNCTION OF POSITION:** To provide the equipment, operators and related support services required to meet the daily operational needs of various Departments, Bureaus and Agencies on a 24 hour a day 365 day a year basis.

**13. DESCRIPTION OF JOB** (Describe the specific duties and responsibilities of the job as accurately and completely as possible. Use additional sheet if necessary.)

**A. DUTIES AND RESPONSIBILITIES:** (Break job into component parts as you would describe it to the incumbent. Indicate the approximate percentage of time devoted to each major task or group of related tasks. List the most important duties and responsibilities first. Include responsibilities related to employee safety and affirmative action goals for management positions.)

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- 25% Schedule and dispatch a variety of Bureau owned and leased equipment. Staff the various equipment with trained operators on a seniority basis in compliance with union requirements.
- 20% Schedule and direct the daily activities of a trained competent staff of operators. Ensure that all aspects of their work meet established guidelines for acceptable performance. Conduct interviews and performance appraisals, provide discipline and maintain sickleave control, investigate accidents and supervise the administration of all articles of the Labor Contract.
- 15% Instruct personnel in the safe and proper operation of the various equipment and supervise driver training instructors in these duties. Develop training programs for new equipment or requirements such as commercial drivers license, remedial training reevaluation, driver recognition and safety programs.
- 15% Develop a working knowledge of our customers operational and equipment needs in order to best serve them. Anticipate seasonal operations to ensure the availability of equipment to maintain daily standards and provide emergency and special services.
- 10% Interpret and apply a host of guidelines, procedures and regulations as they impact on the assignment of operators and equipment.
- 10% Maintain a wide variety of scheduling, record keeping and documentation systems for charting work performed.
- 5% Work in conjunction with and under the direction of the Equipment Operations Supervisors II and III to develop special programs as requested by user organizations.

**B. Name and title of immediate Supervisor** William Mortag – Equipment Operations Supervisor III

**C. SUPERVISION RECEIVED:** (Indicate the extent to which work assignments and methods are outlined, reviewed, and approved by others.)

All routine duties are performed without supervision.

Non-routine duties are performed as required by Division Commitment, resulting in a coordinated effort between Supervision and Management.

**D. SUPERVISION EXERCISED:**

\_\_\_\_\_ Total number of employees for whom responsible, either directly or indirectly.

Direct Supervision. List the number and titles of personnel directly supervised. Specify the kind and extent of supervision exercised by indicating one or more of the following: (a) assign duties; (b) outline methods; (c) direct work in progress; (d) check or inspect completed work; (e) sign or approve work; (f) make hiring recommendations; (g) prepare performance appraisals; (h) take disciplinary action or effectively recommend such.

26 – Tractor Operators – a, b, c, d, e, f, g, h.

38 – Special Equipment Operators – a, b, c, d, e, f, g, h.

73 – Truck Drivers – a, b, c, d, e, f, g, h.

3 – Driver Instructors – a, b, c, e, g, h

6 – Field Service Mechanics – a, b, e, f, g, h

7 – Garage Custodians & Attendants – a, b, c, d, e, f, g, h

3 – Clerks – a, b, c, d, e, f, g, h

**E. MINIMUM QUALIFICATIONS:** (Indicate the more important qualifications that would be required for filling vacancy – such as education, experience, knowledge, skills, and abilities.)

Knowledge of the types, uses, and operation of trucks and heavy equipment. Strong communication and organizational skills required. Willingness to work long hours under stressful conditions. Should have a highly self-motivated approach to work. Experience in a modern office environment helpful. Education beyond the high-school level would be helpful.

**F. SUPPLEMENTARY INFORMATION:** (Indicate any other information which further explains the importance, difficulty, or responsibility of the position, such as amount of budget or number and variety of items in warehouse or files, or special personality characteristics.)

The appointee will work various shifts as well as being required to work weekends and holidays, overtime work will exceed 200 hours and could average 400 hours per year.

15. Effective March, 1998, the Equipment Operations Supervisor 1 was at the Salary Grade 004 with a biweekly rate of \$1,323.44 and an annual rate of \$34,503.96. At the top step, the Equipment Operations Supervisor 1 had a biweekly rate of \$1,542.08 and an annual rate of \$40,204.20. Driver/Workers were at Pay Range 247 with a biweekly rate of \$1,174.04 and an annual rate of \$30,608.90 at the lower step and a biweekly rate of \$1,301.73 and an annual rate of \$33,937.96 at the top step. Truck Drivers were at Pay Range 248 with a biweekly rate of \$1,136.73 and an annual rate of \$29,636.18 at the first step and a biweekly rate of \$1,246.40 and an annual rate of \$32,964.68 at the top step. Special Equipment Operators were at Pay Range 258 with a biweekly rate of \$1,189.76 and an annual rate of \$31,018.72 at the first step and a biweekly rate of \$1,349.09 and an annual rate of \$35,172.68 at the top step. Equipment Operations Supervisor 1's get snow pay amounting to 4.8% of their annual salary like Sanitation Supervisors as described in Finding of Fact 7.

16. Equipment Operations Supervisor 1's have the authority to effectively recommend suspension and discharge and have independent authority to send employees home for major infractions, to issue oral and written reprimands, and to sign disciplinary notices.

Equipment Operations Supervisor 1's participate in the evaluation of probationary and permanent employees.

Equipment Operations Supervisor 1's participate in the hiring process by interviewing, rating and making recommendations regarding job applicants.

Equipment Operations Supervisor 1's prepare the daily work schedules. Seniority and training play a large role in job assignments. However, if there are not enough operators for a particular piece of equipment, the Supervisor exercises discretion when determining job assignments.

Equipment Operations Supervisor 1's fill in for the Operations Manager in his absence.

Equipment Operations Supervisor 1's work with the Operations Manager to formulate prerequisites for promotional training opportunities.

Equipment Operations Supervisor 1's have the authority to require a doctor's slip if there is a question about employee use of sick leave.

Equipment Operations Supervisor 1's exercise independent judgment in allocating equipment during a snowplowing operation; they have the authority to deny vacation requests if customers' needs are not being met; they also must make decisions as to the assignment of or shifting of personnel or equipment out in the field; and they can rent expensive pieces of equipment without the Operations Manager's approval.

Equipment Operations Supervisor 1's attend management meetings with the Fleet Manager and Division Manager.

17. Equipment Operations Supervisor 1's have supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

18. The DPW-Forestry Division includes three districts: North, Central and South. Each district has an Urban Forestry District Manager, two Urban Forestry Managers and two Urban Forestry Supervisors. Each district also has one Forestry Technician, seven Crew Leaders, approximately 35 to 47 Specialists, upwards of five full-time Urban Forestry Laborers, seven or eight seasonal Urban Forestry Laborers and other general City laborers. At the low end, there are around 60 unit employees during the winter and 85 unit employees during the summer.

19. An Urban Forestry Supervisor's job description provides, in material part:

**12. BASIC FUNCTION OF POSITION:**

Assigns and supervises the daily work activities of the district necessary to accomplish the goals of DPW-Forestry. Assumes duties of Urban Forestry Manager in their absence.

**13. DESCRIPTION OF JOB** (Describe the specific duties and responsibilities of the job as accurately and completely as possible. Use additional sheet if necessary.)

**A. DUTIES AND RESPONSIBILITIES:** (Break job into component parts as you would describe it to the incumbent. Indicate the approximate percentage of time devoted to each major task or group of related tasks. List the most important duties and responsibilities first. Include responsibilities related to employee safety and affirmative action goals for management positions.)

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- 5 Assumes authority, responsibility, and duties of Urban Forestry Manager in their absence.
- 10 Organizes and routes crews for all daily operations.
- 50 Supervises field crew activities to include assessment of work quality, productivity, adherence to work rules and safe work procedures.
- 5 Provides workforce related information needed to prepare estimates on work to be done within the district.
- 5 Provides on-going training at work sites to insure safe, knowledgeable and efficient job performance.
- 5 Responsible for daily equipment and tool security.
- 10 Investigates and resolves routine citizen and aldermanic service requests.
- 5 Provides workforce related information needed to prepare daily and biweekly work progress, safety, pesticide, training, and accident reports.
- 5 Supervises field crew response to snow removal and emergency conditions. Subject to emergency callout 24 hours a day.

**B. Name and title of immediate Supervisor:** Urban Forestry Manager

**C. SUPERVISION RECEIVED:** (Indicate the extent to which work assignments and methods are outlined, reviewed, and approved by others.)

Responsibilities defined in general by Urban Forestry District Manager. Daily work priorities are established in cooperation with the Urban Forester. Independent decision making is required.

**D. SUPERVISION EXERCISED:**

\_\_\_\_\_ Total number of employees for whom responsible, either directly or indirectly.

Direct Supervision. List the number and titles of personnel directly supervised. Specify the kind and extent of supervision exercised by indicating one or more of the following: (a) assign duties; (b) outline methods; (c) direct work in process; (d) check or inspect completed work; (e) sign or approve work; (f) make hiring recommendations; (g) prepare performance appraisals; (h) take disciplinary action or effectively recommend such.

- 1 – 10 – Urban Forestry Crew Leaders (a, b, c, d, e, f, g, h)
- 20 – 45 – Urban Forestry Specialists (a, b, c, d, e, f, g, h)
- 1 – 15 – Urban Forestry Laborers (a, b, c, d, e, f, g, h)
- 0- 5 – Municipal Equipment Operators (a, b, d, d, e, f, g)

**E. QUALIFICATIONS REQUIRED:** (Indicate the more important qualifications required for filling a vacancy – such as education, experience, knowledge, skills, and abilities, including specific physical abilities.)

Bachelor Degree in arboriculture, horticulture, or urban forestry desired.  
Minimum of five years experience with Forestry, three of which with supervisory responsibility.  
Pesticide certification.  
Valid driver's license.

**F. SUPPLEMENTARY INFORMATION:** (Indicate any other information which further explains the importance, difficulty, or responsibility of the position, such as amount of budget or number and variety of items in warehouse or files, or special personality characteristics.)

This position requires an individual who is well organized and possesses a high level of technical competence, administrative abilities and interpersonal skills.

20. Effective March, 1998, Urban Forestry Supervisors were at the Salary Grade 004 beginning with a biweekly rate of \$1,323.44 and an annual rate of \$34,503.96. The top step for Urban Forestry Supervisors included a biweekly rate of \$1,542.08 and an annual rate of \$40,204.20. City Laborer/Seasonals were at Pay Range 205 with a beginning biweekly rate of \$874.54 and an annual rate of \$22,904.77 and a top biweekly rate of \$1,072.37 and an annual rate of \$27,958.20. Urban Forestry Specialist Trainees were at Pay Range 210. Their beginning biweekly rate was \$934.29 and annual rate was \$24,358.28. Their top biweekly rate was \$1,093.32 and annual rate was \$28,504.38. City Laborer regulars were at Pay Range 220. They were paid at the low end \$1,030.53 biweekly and \$26,867.36 annually. At the top step they were paid \$1,131.46 biweekly and \$29,498.75 annually. Urban Forestry Laborers were at Pay Range 230 and paid \$1,049.00 biweekly and \$27,133.90 annually at the first step and \$1,155.22 biweekly and \$30,118.23 at the top step. Urban Forestry Specialist were at Pay Range 245 with a biweekly rate of \$1,123.33 and an annual rate of \$29,286.80 at the beginning step and a biweekly rate of \$1,241.90 and an annual rate of \$32,378.09 at the top step. Urban Forestry Crew Leaders were at Pay Range 260 with a beginning biweekly rate of \$1,199.43 and annual rate of \$31,270.83 and a top biweekly rate of \$1,349.42 and annual rate of \$35,181.29. Like the other supervisors noted above, Urban Forestry Supervisors receive snow pay in the amount of 4.8% of their salary.

21. Urban Forestry Supervisors can independently issue verbal or written reprimands and effectively recommend more serious discipline. They can resolve minor grievances informally. They can send an employee home for the day for serious offenses. They sign disciplinary notices.

Urban Forestry Supervisors have some input into the daily work schedules and assignments. They decide what is planted in the boulevards. They give out certain assignments on a day-to-day basis. They supervise up to seven crew leaders. They may change what crews are doing and transfer crews around to get the work done. They also reassign employees based on equipment breakdowns, parking problems, and the weather. They make sure employees have the right functioning equipment. They can direct crew leaders and crews to get back to work. They have the authority to determine whether or not to plant a replacement tree, to remove a tree because of its health, and to make sure pruning and stump removal proceed in the proper manner.

Urban Forestry Supervisors do not do the same work as the employees they supervise. They make sure the work is done and done properly, working usually through the crew leaders. They spend more of their time in the office working on the computer, completing paperwork and interacting with citizens. They give direction on what things need to be done and how they should be done.

Four times a year, Urban Forestry Supervisors sit in on management meetings where they are asked for their input on a number of topics relating to the operation of the Division.

Urban Forestry Supervisors have the authority to grant personal days, approve sick leave, authorize overtime and schedule make up time. (Make up time is generated during inclement weather days when employees may be sent home.) They have to decide how many employees will be allowed off work at any particular time for vacation.

Urban Forestry Supervisors are responsible for seeing that probationary and permanent employees do their job efficiently, effectively and safely and participate in the evaluation of probationary and permanent employees as well as sign evaluations.

Urban Forestry Supervisors are involved in the weekend call-out procedure and may carry a cell phone and beeper in order to respond to storm related damage. In performing these functions, they may call out personnel to respond to various needs such as a tree down, a broken branch or an emergency that is occurring with the street sweep or irrigation system. They decide how best to respond to a situation. They make sure this work is completed.

Urban Forestry Supervisors participate in supervisor/management training such as reasonable suspicion testing. They can initiate such tests.

22. Urban Forestry Supervisors have supervisory duties and responsibilities in sufficient combination and degree to be supervisors.

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

### **CONCLUSION OF LAW**

The incumbents in the positions of Sanitation Supervisor, Equipment Operations Supervisor 1, and Urban Forestry Supervisor, all in Pay Range 4, are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore are not 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 positions of Sanitation Supervisor, Equipment Operations Supervisor 1 and Urban Forestry Supervisor, all in Pay Range 4, shall continue to be excluded from any bargaining unit.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

**CITY OF MILWAUKEE**

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

**DISCUSSION**

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is the following:

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

When interpreting this statutory language, we consider the following factors:

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

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above-noted factors need to reflect supervisory status for us to find an individual to be supervisory. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

### **Sanitation Supervisors**

As set forth in Finding of Fact 11 above, the record establishes that a Sanitation Supervisor has the authority to: (1) issue verbal warnings and written reprimands; (2) effectively recommend more severe forms of discipline; (3) send employees home for one day for major infractions; (4) trigger discipline by reporting misconduct to upper management; and (5) evaluate probationary and permanent employees.

As noted in Findings of Fact 6, 8 and 10, the record also establishes that a Sanitation Supervisor also has the authority to independently direct and assign work to employees under his/her supervision.

In addition, as noted in Finding of Fact 7, a Sanitation Supervisor receives a higher rate of pay than the employees they supervise and we conclude that pay differential reflects their supervisory status.

The record also indicates that a Sanitation Supervisor spends a substantial majority of his/her time supervising employees. Findings of Fact 8 and 10.

Given the foregoing, and particularly in light of a Sanitation Supervisor's authority to discipline and to direct and assign the work force, and the fact that they spend the majority of their time independently supervising employees to ensure that garbage is collected and streets are plowed and salted, the Commission concludes that Sanitation Supervisors are supervisors who therefore must continue to be excluded from any bargaining unit.

### **Equipment Operations Supervisor 1**

As set forth in Finding of Fact 16 above, the record indicates that an Equipment Operations Supervisor 1 has the authority to: (1) issue oral and written reprimands; (2) effectively recommend suspension and discharge; (3) send employees home for major infractions; and (4) sign disciplinary notices. As also set forth in the aforesaid Finding of Fact, an Equipment Operations Supervisor 1: (1) participates in the evaluation of probationary and permanent employees; (2) has some ability to assign work; (3) participates in the hiring process by interviewing, rating and making recommendations regarding job applicants; (4) helps to formulate prerequisites for promotional training opportunities; (5) exercises

independent judgment in allocating equipment during a snowplowing operation; and (6) can deny vacation requests if customers' needs are not being met.

In addition, while Council 48 correctly notes that Buildings and Fleet Division Workers get paid overtime and an Equipment Operations Supervisor 1 is not, we note that an Equipment Operations Supervisor 1 gets snowpay amounting to 4.8% of their annual salary whether it snows a little or a lot. As noted in Finding of Fact 15 above, an Equipment Operations Supervisor 1's wage rate is more than that of the employees he/she supervises, and we conclude that pay differential reflects their supervisory status.

Given the foregoing, and particularly in light of the authority to discipline or effectively recommend discipline, participation in the hiring process and the evaluation of employees, the Commission concludes that Equipment Operations Supervisor 1's are supervisors who therefore must continue to be excluded from any bargaining unit.

### **Urban Forestry Supervisor**

As set forth in Finding of Fact 21 above, the record indicates that an Urban Forestry Supervisor has the authority to: (1) issue verbal or written reprimands; (2) effectively recommend more severe forms of discipline; (3) send employees home for the day for more serious offenses; (4) resolve minor grievances; and (5) sign disciplinary notices.

As set forth in the aforesaid Finding and in Finding of Fact 19, Urban Forestry Supervisors direct and assign work to the employees and act independently in carrying out their job duties and responsibilities. They do not perform the same work as the employees they supervise and work independently in carrying out their job duties and responsibilities.

Finding of Fact 21 also indicates that the Urban Forestry Supervisors have the authority to grant personal days, approve sick leave, authorize overtime and schedule make up time. They participate in the evaluation of permanent and probationary employees. They are responsible for weekend call-out procedures in response to storm-related damage. They sit in on management meetings where they are asked for input regarding the operation of the Division.

As set forth in Finding of Fact 20, Urban Forestry Supervisors are paid at a higher rate of pay than the employees they supervise and we conclude that pay differential reflects their supervisory status.

Based on the foregoing, and in particular in light of an Urban Forestry Supervisor's authority to discipline, to direct and assign the workforce, to grant leave time and to make

decisions independently, the Commission concludes that Urban Forestry Supervisors are supervisors who therefore must continue to be excluded from any bargaining unit.

When making our determination, we have considered and rejected Council 48's position that the employees in question are lead persons - not supervisors. Our rejection is based on our determination that, contrary to Council 48's assertions, said employees do effectively recommend and independently impose discipline, spend a considerable amount of time supervising employees, and participate in the evaluation of employees. They also have broad authority for assigning duties, and exercise a significant amount of independent judgment and discretion in their supervision of employees. Primarily for these reasons, the Commission concludes that these employees are supervisors - not lead persons.

Dated at Madison, Wisconsin, this 19th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner