# STATE OF WISCONSIN

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# BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
CHIPPEWA COUNTY (HEALTH CARE CENTER)	:	Case II No. 11127 ME-277 Decision No. 7847-B
Involving Certain Employes of	:	
CHIPPEWA COUNTY (HEALTH CARE CENTER)	:	
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#### Appearances:

 Carroll, Parroni, Postlewaite, Anderson & Graham, S.C., Attorneys at Law, 419 South Barstow Street, P.O. Box 1207, Eau Claire, Wisconsin 54702, by <u>Mr. Thomas J. Graham</u>, appearing on behalf of the County.
Mr. <u>Guido Cecchini</u>, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 470 Garfield Avenue, Eau Claire, Wisconsin 54701, appearing on behalf of the Union.

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

Chippewa County having on November 6, 1981 filed a petition requesting the Wisconsin Employment Relations Commission to clarify a bargaining unit of its employes, represented by Chippewa County Health Care Center Employees, Local No. 2236, WCCME #40, AFSCME, AFL-CIO, by determining whether the position of Herdsman should be excluded from said unit; and a hearing on said petition having been conducted in Chippewa Falls, Wisconsin on May 6, 1982 by Dennis P. McGilligan, an examiner duly appointed by the Commission to conduct said hearing and issue a final decision in accordance with the provisions of Section 227.09(3)(a), Stats.; and the parties having filed briefs by July 15, 1982; and the Examiner having considered the evidence and briefs of the parties, and being fully advised in the premises, makes and issues the following

#### FINDINGS OF FACT

1. That the Chippewa County (Health Care Center), hereinafter referred to as the County, is a municipal employer and has its offices at Chippewa Falls, Wisconsin.

That the Chippewa County Health Care Center Employees, Local No. 2236, 2. WCCME #40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 470 Garfield Avenue, Eau Claire, Wisconsin.

That the Union is the certified exclusive bargaining representative of certain of the County's employes employed in a bargaining unit described as all employes of the Chippewa County Health Care Center, excluding the superintendent, the assistant superintendent, registered nurses, licensed practical nurses, the farm manager, Engineer I, office clerical personnel, social workers, professional employes and supervisors.

4. That the instant proceeding was initiated on November 6, 1981 by a petition filed by the County, wherein it contends, contrary to the Union, that the position of Herdsman, currently occupied by Tom C. McElroy, is supervisory in nature, and therefore should be excluded from said unit.

5. That the County operates a farm as part of its operations; that said farm encompasses approximately 535 acres of which about 250 acres of corn and up to 70 or 80 acres of oats are raised for feed; that on said farm over 200 head of cattle are raised of which 90 cows are milked; that also on said farm the County raises pigs; that at present the County employs six persons at the farm including three full-time, two part-time and one limited term employe and that in addition to the aforesaid employes, work relief personnel are assigned to tasks at the farm as well as residents of the Health Care Center.

6. That the Herdsman is primarily responsible for the employes in the barn and the milking duties; that in said capacity the Herdsman directs the work of three employes, one full-time and two part-time, while spending a substantial amount of time in performing the same duties as said employes; that the Herdsman prepares the overall work schedule for these employes; that the Herdsman also schedules all vacation and sick leave for the aforesaid employes; that the Herdsman further approves any overtime for the employes in the barn; that the Herdsman exercises the above authority under the general direction of the Farm Manager and the Farm Committee; that the Herdsman has on one occasion disciplined an employe by giving a verbal reprimand for said employe's tardiness; that the difference in pay between the Herdsman and the farm laborers who work under his direction is \$1.04 per hour; that said difference in pay is because of the Herdsman's knowledge and responsibilites which include controlling breeding records of the livestock and directing the employes in the breeding of the livestock and directing all activities of the farm in the absence of the Farm Manager; that the Herdsman has never participated in the hiring process or terminated any employes, nor does he have the authority to discharge or suspend employes, nor does he ever promote or otherwise reward employes for their work performance and that the Herdsman does not have the authority to effectively recommend or effectuate any of the above actions.

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

# CONCLUSION OF LAW

That the incumbent in the position of Herdsman at the farm, in the employ of Chippewa County, does not exercise duties or responsibilities in sufficient combination and degree so as to constitute a supervisor within the meaning of Section 111.70(1)(0)1 of MERA, and that therefore said position is occupied by a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

## ORDER CLARIFYING BARGAINING UNIT

That the position of Herdsman be included in the bargaining unit described in Finding of Fact 3. 1/

Dated at Madison, Wisconsin this 18th day of August, 1982.

By <u>Dennis P. Mc (illigun</u> Dennis P. McGilligan, Examiner

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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, 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.

(Continued on Page 3)

I/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

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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.

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(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 The 30-day period for serving and filing a petition under this rehearing. 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.

### CHIPPEWA COUNTY INSTITUTIONS, II, Decision No. 7847-B

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

In its petition, the County contends that the Herdsman should be excluded from the bargaining unit as a supervisory employe. The Union alleges that the position should not be excluded because the Herdsman does not possess sufficient supervisory authority but rather functions as a "lead person". In this regard the Union argues that what little supervisory duties the Herdsman performs are at the direction of the Farm Manager as well as the Farm Committee.

It is clear from the record that the Herdsman spends the major part of his work day performing duties similar to those of other employes who work in the barn. In addition, the Herdsman has control of the day to day decisions affecting the employes in the barn. In that capacity, the Herdsman prepares the overall work schedule, handles all sick leave and vacation requests and authorizes overtime for the aforesaid employes. However, the record indicates that the Herdsman's authority noted above is subject to the general directives of the Farm Manager as well as the Farm Committee. The Herdsman is paid more than other employes who he works with but the record supports a finding that this is because of his knowledge and responsibilities as a good farmer rather than as a supervisor.

The Herdsman also has issued a verbal reprimand on one occasion. Significant however, in the Examiner's opinion, is the absence of any authority by the Herdsman to hire, promote, terminate, suspend or discharge employes.

It is clear that the Herdsman's time is spent primarily supervising the activities of employes, rather than supervising the employes themselves. It is also clear that the Herdsman possesses only minor supervisory authority. Based on same, the Examiner finds it reasonable to conclude that the Herdsman is not a supervisor, but rather a working foreman; and therefore, that said position belongs in the bargaining unit. 2/ Such a conclusion is consistent with other decisions by the Commission wherein a Herdsman 3/ and an Assistant Farm Manager 4/ who worked primarily in the care of cattle were found to be employes, rather than supervisors, and part of the applicable collective bargaining unit.

Dated at Madison, Wisconsin this 18th day of August, 1982.

By <u>Winnie P. Mcbill journ</u> Dennis P. McGilligan, Haminer

4/ St. Croix County (Health Care Center) (14518) 4/76.

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No. 7847-B

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<sup>2/</sup> Douglas County (Highway Department) (8433-B) 7/81.

<sup>3/</sup> La Crosse County (9841) 8/70.