

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CHIPPEWA COUNTY (HEALTH
CARE CENTER)

No. 7847-B

three employees, one full-time and two part-time, while spending a substantial amount of time in performing the same duties as said employees; that the Herdsman prepares the overall work schedule for these employees; that the Herdsman also schedules all vacation and sick leave for the aforesaid employees; that the Herdsman further approves any overtime for the employees 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 employee by giving a verbal reprimand for said employee'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 responsibilities which include controlling breeding records of the livestock and directing the employees 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 employees, nor does he have the authority to discharge or suspend employees, nor does he ever promote or otherwise reward employees 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)(o)1 of MERA, and that therefore said position is occupied by a municipal employee 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

Dennis P. McGilligan
Dennis P. McGilligan, Examiner

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- 1/ 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.

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.

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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.

(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.

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 employee. 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 employees who work in the barn. In addition, the Herdsman has control of the day to day decisions affecting the employees in the barn. In that capacity, the Herdsman prepares the overall work schedule, handles all sick leave and vacation requests and authorizes over-time for the aforesaid employees. 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 employees 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 employees.

It is clear that the Herdsman's time is spent primarily supervising the activities of employees, rather than supervising the employees 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 employees, rather than supervisors, and part of the applicable collective bargaining unit.

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

By

Dennis P. McGilligan
Dennis P. McGilligan, Examiner

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- 2/ Douglas County (Highway Department) (8433-B) 7/81.
3/ La Crosse County (9841) 8/70.
4/ St. Croix County (Health Care Center) (14518) 4/76.