

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
In the Matter of the Petition of

DOOR COUNTY HIGHWAY  
DEPARTMENT EMPLOYEES  
LOCAL 1658, AFSCME, AFL-CIO

Involving Certain Employees of

DOOR COUNTY  
(HIGHWAY DEPARTMENT)

Case 1  
No. 34532 ME-007  
Decision No. 7859-A

-----  
Appearances:

Mr. Harvey Malzahn, Jr., County Board Chairman, Door County, Door County Courthouse, 138 South 4th Street, Sturgeon Bay, Wisconsin 54235, appearing on behalf of the County.

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

On January 17, 1985, Door County Highway Department Employees, Local 1658, AFSCME, AFL-CIO having petitioned the Wisconsin Employment Relations Commission to clarify a certified bargaining unit consisting of all nonclerical and noncraft employees of the Door County Highway Department to determine whether the positions of Conveyor Bailer Operator 1/ and Assistant Manager, Door County Cherryland Airport, should be included in said bargaining unit; and a hearing having been held in the matter on February 22, 1985, at Sturgeon Bay, Wisconsin, before Examiner Deborah A. Ford, a member of the Commission's staff, and a stenographic transcript having been made of the proceedings and submitted to the Examiner on March 6, 1985; and the filing of briefs having been waived by both parties; and the Commission having considered the evidence and the positions of the parties and being satisfied that a ruling on alleged supervisory status can and should be made at this time, but that the instant record needs to be supplemented before the Commission can determine whether there is a basis for the clarification order requested herein; and the Commission being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the Door County Highway Department Employees, Local 1658, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having offices at Manitowoc, Wisconsin.

2. That Door County, hereinafter referred to as the County, is a municipal employer, having its offices at the Door County Courthouse, Sturgeon Bay, Wisconsin.

3. That in Door County (Highway Department), Dec. No. 7859 (WERC, 2/67), the Commission certified the Union as the exclusive collective bargaining representative of the following employees of the County:

---

1/ At hearing, the parties stipulated to include in the unit the recently created position of Conveyor Bailer Operator, and further stipulated to dismissal of the Union's petition as regards that position.

All regular full-time and regular part-time employees of the Door County Highway Department, excluding clerical employees, craft employees and supervisory employees.

4. That the Union, on January 17, 1985, initiated the instant proceeding by the filing of a petition requesting the Commission to include the position of Assistant Manager, Door County Cherryland Airport, in the above-described unit.

5. That Airport employees are not currently represented by any labor organization for purposes of collective bargaining; that there are three other labor organizations which currently represent Door County employees in the Sheriff's Department, Ambulance Service and the Social Services Department; and that the remaining Door County employees work in the Courthouse, Library and Unified Services Board and are unrepresented.

6. That the Airport Manager and Assistant Manager are the only full-time, year-round employees employed by the Door County Airport; and that the County seasonally employs three persons during the summer months in the parks and one person during the winter months at the Airport.

7. That the position of Assistant Manager is currently occupied by Barbara Ann McQueen; that McQueen has been employed by the County since 1980 and has held the position of Assistant Manager since 1983; that as Assistant Manager, McQueen's duties include grounds maintenance, snow removal, snow plow operation, equipment maintenance, cleaning of park facilities, grass cutting and mowing, pruning, hauling trash, tree planting, occasional airplane refueling, and a small amount of paper work; that during the summer, McQueen spends approximately 50% of her time in the parks performing manual labor; and that, as a general rule, 90% of McQueen's time is spent on the maintenance of the grounds, equipment or property.

8. That although McQueen is present during prospective employee interviews, the interviews are conducted by the Airport Manager with little input from McQueen; that she does not hire, fire, discipline, promote, demote employees or effectively recommend same; that McQueen is designated as crew leader during the summers but does not significantly assign work, grant time off or sign timecards; and that McQueen does not exercise supervisory authority in sufficient combination and degree to make her position supervisory in nature.

9. That McQueen has access to personnel files but is not involved in labor relations matters; and that McQueen's access to personnel files alone is not sufficient to render her position confidential in nature.

10. That the Airport is under the control of the County Board's Airport and Parks Committee, whereas the Highway Department is under the control of the County Board's Highway Committee.

11. That there are two separate operating budgets for the County's Airport and Parks functions.

#### CONCLUSIONS OF LAW

1. That the occupant of the position of Door County Cherryland Airport Assistant Manager is neither a supervisor nor a confidential employee, and is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. That the instant record does not provide a sufficient basis upon which to determine whether it is proper in the circumstances to unconditionally order inclusion of that position in the bargaining unit described in Finding of Fact 3.

#### ORDER 2/

1. That on the basis of the parties' stipulation and request noted in footnote 1, above, the Union's petition for an order clarifying bargaining unit to include the Conveyor Bailer Operator in the above-noted unit is hereby dismissed.

---

2/ (Footnote 2 on Page 3)

- 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, 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.

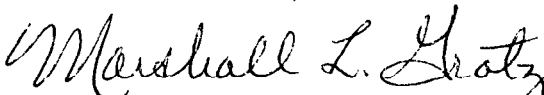
2. That the instant petition is hereby held in abeyance pending further hearing as regards the propriety, in the circumstances, of unconditionally ordering inclusion of the position of Assistant Manager, Door County Cherryland Airport in the bargaining unit described in Finding of Fact No. 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 14th day of May, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

DOOR COUNTY (HIGHWAY DEPARTMENT)

MEMORANDUM ACCOMPANYING  
FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

The Union seeks an order unconditionally including the position of Assistant Airport Manager in the existing certified unit of nonclerical Highway Department employees.

POSITIONS OF THE PARTIES

Through its lines of questioning at the hearing, the County appears to be taking the position, contrary to the Union, that the disputed position should remain excluded from the unit on the grounds (1) that the incumbent is a supervisor or confidential employee (and hence not a municipal employee); and (2) that the position is outside the Highway Department so as to be outside the jurisdiction of the County Board's Highway Committee.

The Union argues that the position in question is held by a municipal employee and that the Commission should unconditionally order it included in the existing unit because it shares a strong community of interest with the employees in the existing Highway Department unit.

DISCUSSION

Dispute as to Municipal Employee Status

Evidence was adduced concerning whether McQueen's position is supervisory and/or confidential in nature. We conclude that it is neither and that, instead, McQueen is a municipal employee within the meaning of MERA.

Section 111.70(1)(o)1, Stats., defines a supervisor as follows:

. . . 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 the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgement.

In the course of its interpretation of this definition, the Commission has developed the following criteria for consideration when determining 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 skills or for his 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 spends a substantial majority of his time supervising employees;

7. The amount of independent judgement exercised in the supervision of employees. 3/

Not all of the above criteria need be present before a finding of supervisory status will be made. Rather, the presence of a number of the factors in significant combination and degree will be deemed sufficient evidence of supervisory status. 4/

In the instant case, examination of the record reveals that McQueen does not effectively recommend hiring, discharge, discipline or transfer of employees and that any authority she possesses to direct and assign work is minimal and of a routine nature. Moreover the work force which McQueen would direct if found to be a supervisor is small and seasonal. McQueen spends the vast majority of her time performing work of a manual nature as opposed to supervisory tasks. Under these circumstances, the Commission does not find that the above-noted criteria are present in sufficient combination and degree to warrant the conclusion that McQueen is a supervisor within the meaning of MERA.

With regard to possible confidential employee status, the record reveals only that McQueen has access to certain personnel files at the Airport. Such access, alone, is not sufficient to warrant the conclusion that hers is a confidential employee position. 5/

Accordingly, we have formally concluded that McQueen's position is neither supervisory nor confidential and that she is, instead, a municipal employee under MERA.

Dispute as to Propriety of Inclusion in Highway Unit

There remains, however, the question whether it is appropriate in the instant circumstances to grant the Union's request for an unconditional order including the Airport Assistant Manager position in the existing certified unit of Highway Department employees.

The unit described in the certification is expressly limited to a sub-group of Highway Department personnel. The instant position is outside of the Highway Department. It is therefore not a mere accretion within the nonclerical Highway Department employee group. Rather, a modification of the bargaining unit description would be necessary to encompass McQueen's position in that unit. The parties have treated this position as outside the existing unit both before and after it became nonseasonal in March of 1983.

Even if there is a strong community of interest between the disputed position and the nonclerical Highway Department employees in the existing unit 6/, there is nonetheless a serious question whether it would be proper to include the position in the instant unit without a vote in an appropriate unit of employees. If, for example, the instant position is but one of several currently unrepresented municipal employees holding nonprofessional, noncraft, nonclerical positions in County employment, then granting the Union's petition could become the first in a series of proceedings to expand the instant unit to include more and more of those employees, all without benefit of a representation election in an appropriate unit. That consideration has led the Commission to refuse to conduct an election

---

3/ Waushara County (Health Department), Dec. No. 21422 (WERC, 2/84); Dunn County, Dec. No. 21198 (WERC, 11/83).

4/ Ibid.

5/ City of Milwaukee (Police Department), Dec. No. 11971-D (WERC, 6/81).

6/ The instant record contains evidence of certain similarities in duties and working conditions between Highway Department employees and the position in dispute here. However, the record also reveals that the disputed position and the nonclerical Highway Department employees have separate supervision, different headquarters work locations and a history of bargaining that has been limited to the nonclerical Highway Department employees, even after the position in question became nonseasonal in March of 1983.

among less than all residual professional or nonprofessional employees of an employer where a union seeks to obtain representation rights for only a segment of the remaining unrepresented employees. 7/

Thus, depending on a number of factors--including the numbers and nature of the other municipal employee positions in County employment that are currently unrepresented--it may be that the Commission would condition AFSCME representation of the Assistant Manager position on its standing an election in either a County-wide blue-collar unit, or a unit of nonclerical Airport, Parks and Highway Department employees, or a residual unit of all currently unrepresented nonprofessional employees of the County, etc. The record as it presently stands is not sufficient to permit the Commission to determine such questions.

The instant record does not indicate the Union's position concerning its willingness to stand an election in a combined Airport and Highway unit, or in a residual unit of unrepresented nonprofessional employees of the County. Nor does the record clearly indicate the numbers or nature of the other unrepresented municipal employee positions of the County. Without the further information noted above, we consider the record an insufficient basis on which to decide whether to grant the Union-requested order over the County's objections.

However, in anticipation of the possibility that the parties may be able to resolve this dispute informally on the basis of our determination of the supervisory/confidential issue alone, we have formally issued our decision to that extent. The parties are free to mutually agree upon the limited expansion of the unit sought herein by the Union. Absent such an agreement between the parties, this matter shall be held in abeyance pending further hearing as regards the above matters.

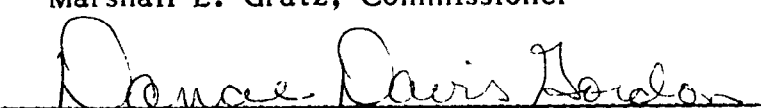
Dated at Madison, Wisconsin this 14th day of May, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

---

7/ See, e.g., Madison Schools, Dec. No. 14508-C (WERC, 2/83).