

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

DISTRICT NO. 10, INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERS

Involving Certain Employees of

RACINE COUNTY

Case 4

No. 51685 ME-734

Decision No. 7911-B

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., by Ms. Marianne Goldstein Robbins, Suite 202, 1555 North Rivercenter Drive, Milwaukee, Wisconsin 53212, for the Union.

Long and Halsey Associates, by Mr. Victor J. Long, 8338 Corporate Drive, Suite 500, Racine, Wisconsin 53406, for the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT

On October 14, 1994, District No. 10, International Association of Machinists and Aerospace Workers filed a petition requesting the Wisconsin Employment Relations Commission to determine whether the Deputy Register of Deeds should be included in a bargaining unit of Racine County employes represented by District No. 10. Hearing in the matter was held on February 21, 1995, in Racine, Wisconsin, before Hearing Examiner Debra L. Wojtowski of the Commission's staff. A stenographic transcript was prepared by March 8, 1995. The parties submitted post-hearing briefs by March 22, 1995. Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. District No. 10, International Association of Machinists and Aerospace Workers, AFL-CIO, herein the Union, is a labor organization which has its offices at 1650 South 38th Street, Milwaukee, Wisconsin 53215.

No. 7911-B

2. Racine County, herein the County, is a municipal employer which has its offices located at Racine County Courthouse, 730 Wisconsin Avenue, Racine, Wisconsin 53403.

3. In Decision No. 7911-A, the Commission certified the Union as the exclusive bargaining representative for the following unit:

"all employes of Racine County employed at the Racine County Courthouse and office clerical employes located outside of the Courthouse in the Self-Development and Training Program, Social Service Department, Highway Administration, County School Office, Mental Health Clinic and County Extension Office, excluding professional social workers, attorneys, department heads, Chief Deputy Clerk of Courts, Register in Probate, Assistant Maintenance Supervisor, Assistant Administrator of the Welfare Department, Sheriff's deputies, and all supervisors and craft employes"

4. On October 14, 1994 the Union filed a petition with the Commission to clarify the bargaining unit described in Finding of Fact 3, above, by including the position of Deputy Register of Deeds. The County opposes the inclusion of the position on the grounds that it is supervisory.

5. Formerly, the position of Deputy Register of Deeds was in the bargaining unit. The position became vacant upon the death of the incumbent in February of 1994, and in May of 1994 the County changed the job description and took the position out of the bargaining unit.

6. The job description for Deputy Register of Deeds states:

#### DEPUTY TO REGISTER OF DEEDS

##### Basic Function

To assist the Register of Deeds in the daily administration of the office and carry complete authority and responsibility in the registrar's absence.

##### Duties and Responsibilities

1. Advise staff on statutes affecting all records recorded or filed in the Register of Deeds office. This includes issues of recordability, indexing, public inquiry and searching along with eligibility of certification.
2. Maintain the Standard Operating Procedures Manual for the

Register of Deed's office.

3. Assist register in training of staff.
4. In conjunction with the register, distribute workload assignments to clerical staff and assist them in arranging their work schedules as necessary.
5. Proof clerical output for neatness and accuracy.
6. Prepare daily deposit.
7. Oversee billing and collection of all "Accounts Receivable".
8. Proofing of real estate documents after scanning and Grantor/Grantee input is complete.
9. Input of Real Estate, Vital Statistics or UCC's as necessary.
10. Perform other tasks as assigned by the Register of Deeds.

#### Supervision Exercised

Under direct supervision of staff, as assigned by the Register of Deeds.

#### Supervision Received

Receives supervision from the Register of Deeds

#### Qualifications

1. Associate degree in management or related field and one (1) year experience in managing people.
2. Experience in the operation of personal computer.
3. Working knowledge of 'Q & A' or "WordPerfect" and Lotus 1-2-3 very desirable.
4. Read and recognize a complete legal description of real estate.
5. Passing typing score of 60 net w.p.m.
6. Requires prompt and regular attendance on the job.

7. Peggy Erickson became the Deputy Register of Deeds in June of 1994. Erickson was initially hired into the Register of Deeds office as a clerk typist in May of 1991, was afterward promoted to account clerk, and remained in that position until her promotion to Deputy. She

reports to Mark Ladd who was appointed Racine County Register of Deeds on January 12, 1994.

8. In addition to the Register of Deeds and the Deputy Register of Deeds, there are six full-time employes in the office of Register of Deeds, as well as three employes hired for a special project through a temporary agency for data entry input after 5:00 p.m.

9. The Register informed Erickson, shortly after her hire, that she had the independent authority to discipline and discharge employes. There has been only one disciplinary incident in the office since Erickson became Deputy. In that case, the Register met with an employe and gave her an oral warning; the Deputy was present, as well as Kate Luedtke, a Union representative. The discipline occurred after Erickson advised Lund of a problem with employe absenteeism. The documentation of the oral warning was given and signed by the Register. Erickson recommended to the Register to proceed with discipline, although she did not specifically recommend an oral warning. At the time of her recommendation, neither Erickson nor Ladd, the Register, had much familiarity with the County's system of progressive discipline and research was undertaken by the Register with the personnel department.

Before making her disciplinary recommendation, Erickson had several conversations with the employe about the absences, but did not link them to job-related consequences and generally reassured her about her continued employment and offered support. Although the Deputy and the employe discussed productivity, the employe did not understand these conversations with Erickson to be discipline and instead took them to be expressions of friendship or concern. In some instances, the conversations were initiated by the employe.

10. Since Erickson has been the Deputy Register of Deeds, there has only been one employe hired in the Register of Deeds office. The Register of Deeds, Mark Ladd, interviewed the candidates; Erickson was not present. After the interviews, Erickson reviewed his interview notes and application materials and discussed them with the Deputy. Erickson commented on the applicants' characteristics and various personality issues as to how an applicant might mesh with existing staff, but was not asked to and did not make a recommendation to the Register as to which applicant to hire. The position was offered to various applicants according to Ladd's preferences.

11. Most of the time, the six employes in the Register of Deeds office have regularly assigned tasks that do not require additional explanation or assignment. Part of the work involves waiting on members of the public and there is a regular rotation of employes assigned to the front counter. Occasionally, when it is busy, Erickson asks for volunteers to help out, and if there are none, assigns an employe to assist with the counter work. The office remains open during the lunch hour and for that time, the Deputy is also responsible for insuring that there is coverage for the counter; this occasionally requires shifting employes' regularly scheduled lunch hours when someone is absent.

12. The Register of Deeds office does not presently do formal employe performance

reviews. The Register has informed Erickson that he wishes to commence reviews and that he wants to have her input because she has more daily contact with the staff. The Register will be scheduling the reviews, drafting them and meeting with the employees.

13. Erickson shares the authority to grant time off for sick days or vacation with the Register. When employees request time-off and the Register is present, Erickson directs the employees to check with him. When he is not present, she checks the office calendar and both of the Register's calendars to determine if there is a conflict and, if there is not, she allows the employee to take the time off. Department employees follow a standard procedure to schedule their vacations and complete a form; such requests are granted routinely.

14. The majority of Erickson's time is spent doing bargaining unit work. For approximately an hour every day she meets with the Register to discuss the day's workload and issues such as whether someone needs to be first back-up at the counter because of absences, and whether there is coverage over the lunch hour for the counter. Erickson also spends some time most days answering questions and training employees to do their work, such as proofing, which involves checking legal property descriptions for errors. Erickson also trained employees and answered work-related questions when her predecessor Chris Chap-Williams was Deputy Register of Deeds and Erickson was an account clerk. After the death of the former Deputy, Erickson was the only employee who knew how to perform proofing, a type of bargaining unit work, and therefore continued to train employees before she applied for the position of Deputy. In Erickson's absence, senior clerk Sandra MacDonald, a bargaining unit member, also answers other employees' work related questions.

15. The Register of Deeds office employs three individuals from Manpower, a temporary agency, after 5:00 p.m. to scan records from microfilm into the computer system. The Register has told these employees to call Erickson at home if they have any problems. When they have a problem with the computer, the Deputy tries to resolve it over the telephone. The Register has also told Erickson that she is to check the needed supplies for the project and, if they are too low in her judgement, to call Manpower and cancel the request for temporary employees that day; Erickson has done this on three occasions.

16. Prior to Erickson's hire into the position and before the position description was redrafted, the position of Deputy Register of Deeds in the bargaining unit pay scale was Grade 6. Erickson was hired into the unrepresented pay scale as the Deputy at a Grade 9. The Grade 9 pay scale exceeds the Grade 6 scale by \$0.64 per hour at the low end and by \$3.33 per hour at the high end.

17. Peggy Erickson, the occupant of the position of Deputy Register of Deeds, does not exercise supervisory responsibilities in sufficient combination and degree to be deemed a supervisory employee.

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

CONCLUSION OF LAW

The Deputy Register of Deeds, currently Peg Erickson, is not a supervisor within the meaning of Sec. 111.70(1)(o), Stats., but rather is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Deputy Register of Deeds is hereby included in the bargaining unit described at Finding of Fact 3, above.

Given under our hands and seal at the City of Madison, Wisconsin, this 13th day of November, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

James R. Meier /s/  
James R. Meier, Commissioner

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(Footnote 1/ appears on the next page.)

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- 1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(Footnote 1/ continues on the next page.)

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(Footnote 1/ continues from the previous page.)

(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. 227.57 upon which petitioner contends that the decision should be reversed or modified.

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(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.

RACINE COUNTY

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

POSITIONS OF THE PARTIES

The County contends that the job description granting the Deputy Register of Deeds direct supervision of the staff, coupled with the Register's grant to her of complete authority to assign work and discipline employees, accurately reflects the current supervisory role of the Deputy and that these functions consume 60% of her time. The County also notes that the Deputy reviewed applications and interview notes and therefore had significant input into the Register's only hiring decision made during her tenure. The County asserts that Erickson has been responsible for disciplining employees on an informal basis and has also effectively recommended the only formal disciplinary action taken during her tenure. In addition, she has also been working to create a performance evaluation procedure with the Register in which she will be significantly involved. The County states that she is responsible for training and scheduling, including determining when individuals come in to work, what days they work, and how long they work. They allege that there is no one exercising greater, similar or lesser authority over the employees in the Register of Deeds office than the Deputy and that the Deputy's level of pay, which is higher than other bargaining unit members, is primarily due to her supervisory role.

The Union notes that the position of Deputy Register of Deeds was formerly a bargaining unit position and that during the last contract negotiation, bargaining unit wages and benefits were established for the position, but its unit status was left open. When that position became vacant the County redrafted the job description, changed the wages and benefits and removed the position from the bargaining unit. Subsequently, the Union filed this petition requesting that the Commission place the position in the bargaining unit.

The Union maintains there is no evidence that the Deputy Register of Deeds has the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. The Union cites cases which support its assertion that any apparent grant of such authority, absent its exercise, is merely speculative and does not warrant a finding that an employee is supervisory. The Union maintains that Erickson is predominantly engaged in bargaining unit work and, while conceding that her responsibilities include some employee training and assignment of duties, argues that these responsibilities are minimal, shared with other bargaining unit members, and that at most these responsibilities are indicative of lead worker status.

DISCUSSION

The issue we must determine in this case is the supervisory status of the position of Deputy Register of Deeds, currently occupied by Peggy Erickson. In determining whether a position is

supervisory in nature, the Commission has consistently considered 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 employes supervised, and the number of persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes; and
7. The amount of independent judgement exercised in the supervision of employes. 2/

The Commission has also held that not all of the above factors need to be present, but if a sufficient number of those factors appear in any given case, they will find an employe to be a supervisor. 3/

Although glimpses of supervisory authority occasionally appear with respect to the Deputy's position, they are obscured for the present by her supervisor's retention of the department's supervisory reins in key areas, such as employe hiring and employe evaluations. While these are areas apparently open to discussion between the Register of Deeds and his Deputy, it seems clear they are not areas in which the Deputy has been granted any authority to operate independently or even make effective recommendations.

In fact, the bulk of any supervisory authority remaining to the Deputy appears to require little, if any, independent judgment.

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2/ Douglas County, Dec. No. 7834-A (WERC, 12/94).

3/ Village of Stoddard, Dec. No. 27358 (WERC, 8/92).

In a sense, it is as if the Deputy position has merely had a "supervisory-trainee" component added to its list of regular duties. This may well be worth additional compensation, but does not justify the position's exclusion from the bargaining unit on the grounds it is supervisory.

More specifically, as to the Deputy's disciplinary authority, in the one disciplinary situation that has arisen, the Deputy effectively recommended discipline. Erickson brought her concerns to the Register regarding an employee's absences and the resulting staff morale problem, suggesting that it was time to take some disciplinary action. While the Deputy effectively recommended that some discipline occur, the Commission notes that it was the Register who reviewed the personnel policies, determined that an oral warning was appropriate, issued the oral warning, and drafted and signed written documentation of the warning, although the Deputy and a Union representative were present at the time it was delivered. It is also noteworthy that the Deputy's job description makes no reference to disciplinary authority.

Given the foregoing, it is apparent that the Register has retained and will exercise significant disciplinary authority.

In the only instance of hiring since she became Deputy, Erickson did not play a significant role. After he independently screened the applications and interviewed the candidates, the Register reviewed his interview notes and application materials with her. The Deputy was not asked to and did not make any hiring recommendation after seeing the applications and the Register's interview notes, and the Register thereafter offered the position to the candidates according to his preferences.

There have been no promotions made during the Deputy's tenure.

The employees have well-defined assignments and routines that require little variation. Although Erickson keeps track of the work flow and reassigns employees to cover the counter when it is busy, the availability of the Register, the Deputy's daily meetings with him, and her referral of employees to him for time off requests, all suggest that the independent judgment she exercises is limited. Erickson answers questions, provides training and computer support, but is predominantly engaged in office tasks. The fact that the Deputy also answered work-related questions and performed training prior to her assumption of the Deputy position, supports the Union's argument that these activities arise out of her knowledge of the work, rather than her supervisory role.

The County indicates that Erickson is responsible for supervising the Manpower employees who work after 5:00 p.m. The Register has instructed these employees to call the Deputy at home when they have questions. She has received numerous calls at home and the record indicates they relate to problems the Manpower employees have with the computer. In this regard, the Deputy acts as a resource person to help them solve computer problems. When the Register is absent, the Deputy also determines whether there are enough supplies for the Manpower employees to come to

work and is authorized to use her judgment in this regard. However, in this, as in other matters, the Deputy acts as a conscientious aide to the Register, permitting him to concentrate on administrative tasks while her practical authority is circumscribed. We further conclude her superior knowledge of the work and her oversight of the work-flow is the primary reason she is in a pay grade which is minimally higher at the start and several dollars higher at the end than other unit employes.

There is no persuasive evidence to support the County's assertion that the Deputy has control over the days or hours employes work. These are set as Monday through Friday from 8:00 a.m. to 5:00 p.m. by the County. Although overtime is occasionally assigned, the Deputy does not authorize overtime. In practice, she approves time-off, such as sick time or emergency days, only when the Register is not present.

The record does not support the County's assertion that no one in the Register of Deeds office exercises greater, lesser, or the same supervisory authority than the Deputy. The Register works essentially the same hours as the Deputy and has retained and exercised significant supervisory authority. The Register's testimony about evaluations is illustrative of his retention of control. The Register testified that there is currently no system of employe evaluation in the Register of Deeds office. The Register wishes to create an evaluation procedure and plans to seek the Deputy's input; however, it is the Register who will create the procedure, draft the evaluations, and meet with the employes.

We are further persuaded that when the Register is out of the office, the Deputy's supervisory authority does not increase in any significant way.

The County contends that the Commission has found supervisory status in a number of cases based on facts analogous to those here. While the cases cited by the County may have factors that are similar, in each case the responsibilities, taken as a whole, indicate a significantly greater degree of supervisory authority.

Thus, in Nicolet Area Technical College, Dec. No. 23366-C (WERC, 3/93), Directors of five departments were significantly involved in hiring, transfer, promotion, evaluation and the direction of their subordinates and served as the first step in the grievance procedure. In the City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82) library unit heads effectively recommended hires and transfers, and independently evaluated employes. In Douglas County, Dec. No. 7831-A (WERC, 12/94), the Office Manager found to be supervisory effectively recommended the hiring of three employes, independently directed the work force and had independent authority to grant or deny leave requests. In the City of Marshfield, Dec. No. 25700-A (WERC, 10/92), Sergeants who were shift commanders had the authority to relieve officers from duty and effectively recommend suspensions, evaluated probationary employes and determined whether they should be retained. Their equal status with the Chief of Police in the hiring process was found especially significant. Eau Claire County, Dec. No. 10445-G (WERC, 7/94), involved an Office Manager and a Deputy County Clerk who were significantly involved in the hiring process, had

substantial disciplinary authority including the ability to effectively recommend discharge, could effectively recommend that an employe be retroceded, and were responsible for the first grievance step.

Of special note, and in contrast with the case at hand, is the significant degree of involvement most of these employes had in the hiring process. Also notable is the general autonomy of the employes found to be supervisors. In three of the cases cited, the supervisor was the top staff person for the shift or the department or the work site. 4/

Given all of the foregoing, we conclude that, on balance, Erickson does not possess sufficient supervisory authority in such combination and degree so as to warrant a finding that her position is supervisory within the meaning of Sec. 111.70(1)(o)1, Stats.

Dated at Madison, Wisconsin this 13th day of November, 1995.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairperson

Herman Torosian /s/  
Herman Torosian, Commissioner

James R. Meier /s/  
James R. Meier, Commissioner

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4/ Librarian unit heads in City of Madison (Public Library), *supra*; Directors in Nicolet, *supra.*, and Sergeant/Shift Commanders in City of Marshfield, *supra.*