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In the Matter of the Petition of	:	
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LOCAL 1749, WISCONSIN COUNCIL OF	:	
COUNTY AND MUNICIPAL EMPLOYEES,	:	
AFSCME, AFL-CIO	:	Case VIII
	:	No. 11690 ME-334
Involving Employees of	:	Decision No. 8256-E
	:	
SHEBOYGAN COUNTY (COURTHOUSE)	:	
	:	
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Mr. Alexander Hopp, Corporation Counsel for the Municipal Employer.  
Mr. Arthur Wells, District Representative, Wisconsin Council 40,  
AFSCME, AFL-CIO, for the Certified Collective Bargaining  
Representative.

The Wisconsin Employment Relations Commission having, on January 10, 1968, issued a Certification of Representatives wherein, following an election conducted by it, Local 1749, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, was certified as the exclusive collective bargaining representative of all regular full-time and regular part-time courthouse personnel employed by Sheboygan County, Sheboygan, Wisconsin, excluding elected public officials and all employees in the Institutions and Highway and Sheriff's Departments, Guidance Center, professional employees, and supervisors, and excluding clerical employees employed in the Welfare Department; and subsequently on October 8, 1969, Sheboygan County, hereinafter referred to as the Municipal Employer, having in writing, advised the Commission that an issue has arisen between it and the above named Labor Organization with respect to whether employees occupying the classifications of County Agricultural Agent, Supervisor of Tax Descriptions, Director of Civil Defense, County Planner, Building Maintenance Engineer, Register in Probate and Veteran's Service Officer

No. 8256-E

should or should not be included in the certified bargaining unit and said Municipal Employer having further requested the Commission to make a determination with regard to such issue; and the Commission, pursuant to notice, having conducted a hearing in the matter on October 30, 1969, at Sheboygan, Wisconsin, Robert M. McCormick appearing for the Commission; and the parties having filed briefs in the matter on January 14, 1970; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, and being satisfied that the employes of Sheboygan County holding the classifications of County Agricultural Agent, Supervisor of Tax Description, Director of Civil Defense, County Planner, Building Maintenance Engineer, Register in Probate and Veteran's Service Officer, are supervisors and therefore should be excluded from the bargaining unit previously certified herein;

NOW, THEREFORE, it is

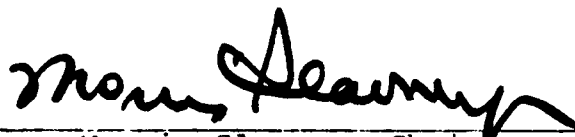
ORDERED

That the classifications of County Agricultural Agent, Supervisor of Tax Description, Director of Civil Defense, County Planner, Building Maintenance Engineer, Register in Probate and Veteran's Service Officer, in the employ of Sheboygan County, are excluded from the bargaining unit consisting of all regular full-time and regular part-time personnel employed in the Courthouse by Sheboygan County, Sheboygan, Wisconsin, excluding elected public officials and all employes in the Institutions and Highway and Sheriff's Departments, Guidance Center, Professional employes, supervisors, and excluding clerical employes employed in the Welfare Department.

Given under our hands and seal at the  
City of Madison, Wisconsin this 6th  
day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
William R. Wilberg, Commissioner

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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	:	
SHEBOYGAN COUNTY (COURTHOUSE)	:	
	:	
- - - - -	:	

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

Following an election conducted by it the Wisconsin Employment Relations Commission on January 10, 1968, certified Local 1749, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as AFSCME, as the exclusive collective bargaining representative of all regular full-time and regular part-time personnel employed in the Courthouse by Sheboygan County, Sheboygan, Wisconsin, excluding elected public officials and all employees in the Institutions and Highway and Sheriff's Departments, Guidance Center, Professional employees, supervisors, and excluding clerical employees employed in the Welfare Department. On October 8, 1969, the Municipal Employer submitted a petition for clarification of bargaining unit wherein it sought exclusion of seven positions from the bargaining unit on the basis of being supervisory, namely the classifications of County Agent, Supervisor of Tax Descriptions, Director of Civil Defense, County Planner, Building Maintenance Engineer, Register in Probate and Veteran's Service Officer. The Municipal Employer concedes that employees then occupying said position were permitted to vote in the representation election leading to certification and certain of the employees were treated as unit-employees by the parties in the application of the previous labor agreement. In the

course of hearing conducted herein, AFSCME agreed that the positions of County Planner and Director of Civil Defense were supervisory.

AFSCME contends that the bargaining unit as certified by the Commission on January 10, 1968, and the fact of inclusion in the unit of those positions occupied by employees then potentially eligible to vote in said representation election, should be controlling upon the parties under the timeliness rule set forth in Wauwatosa Board of Education.<sup>1/</sup> AFSCME argues that the Municipal Employer's petition seeking to exclude said positions is actually a decertification for the classifications in question and therefore is not timely under the rule of the above case since a collective bargaining agreement is about to be effectuated between the parties, to be effective January 1, 1970, at least through December 31, 1970, the time for reopening of the 1969 agreement having been established therein as of June 1, 1969. AFSCME further contends that the Municipal Employer is barred from seeking exclusion of said positions from the unit, since the County sought, in the course of the election hearing, the broadest participation of employees in the election including employees then occupying the aforesaid positions, the duties for which have not materially changed.

The Commission's rule in Wauwatosa Board of Education with respect to timeliness of filing petitions for representation elections presupposes that a party is attempting to raise a question of representation. However, there is no more reason to sanction in perpetuity, the inclusion in the unit of individuals who otherwise have no right to be represented for bargaining purposes<sup>2/</sup> merely because the parties agreed

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Where there presently exists a collective bargaining agreement covering the wages, hours and conditions of employment of employees in an appropriate collective bargaining unit, the petition must be filed within the sixty (60) day period prior to the date reflected in the agreement, resolution or ordinance for the commencement of negotiations for changes in wages, hours and working conditions of the employees in the unit covered by said agreement, resolution or ordinance. (8300-A) 2/68 (Aff. Dane Co. Cir. Ct., 8/68)

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City of Wausau, Dec. No. 6276, 3/63; Outagamie County Hospital, Dec. No. 6076, 8/62.

to their eligibility than it would be to allow the parties to foreclose the determination of the "craft" status of certain employees because of their previous agreement in an election hearing to the appropriateness of an overall unit which includes a "craft" in the face of a subsequent craft-severance petition by another labor organization. We reject AFSCME's contention that the Municipal Employer's petition is in effect a decertification petition for the seven classifications.

In the proceedings leading to this Commission's certification in January 1968, there was no disposition of any questions relating to the eligibility or supervisory status of employees then occupying the seven positions. Therefore, there is no reason to estop the Municipal Employer from raising the question of supervisory status on the basis of AFSCME's claim, that no substantial changes have occurred in the duties for the positions since hearing.

The Commission, in determining whether an employee is a supervisor, considers 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 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 skill 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 judgment and discretion exercised in the supervision of employees.<sup>3/</sup>

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City of Milwaukee, Dec. No. 6960, 12/64.

AFSCME concedes that John Juntunen, County Planner and James P. Smyth, Director of Civil Defense, are supervisory, and the Commission is satisfied that both individuals occupying said positions exercise such direction and control over the respective groups of employees subject to each's direction that we conclude that they are supervisors and therefore, excluded from the bargaining unit. There remains for clarification the status of five positions claimed by the Municipal Employer to be supervisory and properly excluded from the bargaining unit.

The Building Maintenance Engineer, Michael Barclay, is in charge of the cleaning and maintenance of the courthouse building and directs seventeen employees. He reports to the Parks Property and Aviation Committee of the County Board. In that capacity he is given complete discretion in the hire and discipline of employees and assigns work. Other than when an employee is absent, he performs no tasks normally handled by the employees subject to his direction. He participates in periodic meetings of department heads where general personnel and contract administration are reviewed. We conclude that the Building Maintenance Engineer is a supervisory position and should be excluded from the bargaining unit.

The County Agricultural Agent, Glenn S. Thompson, is designated a department head and is in charge of providing informal education to county residents in the areas of horticulture, agricultural production and management and community development. He directs clerical and professional staff, and has authority to hire and discipline said employees. We conclude that the position County Agricultural Agent, is a supervisory one and should be excluded from the bargaining unit.

The Veterans' Service Officer, John J. Kampmann, administers the veteran benefits and counseling program for the County reporting to the County Board. As a designated department head, he is given complete discretion in the hire and discipline of the two employees normally

subject to his direction, though at time of hearing one clerical position authorized for the department was vacant. We conclude the aforesaid position to be a supervisory one, properly excluded from the bargaining unit.

The Supervisor of Tax Descriptions Department, Mrs. Elaine Hengst, designated department head, is in charge of one full-time and one part-time employee. At time of hearing, the department had pending before the County Board, a request for authorization of one draftsman as an additional position. In her capacity she is given complete discretion by the County Board to hire and discipline the employees and directs their work. We conclude that the position, Supervisor of Tax Descriptions, is a supervisory one and should be excluded from the bargaining unit.

The Register in Probate, Mrs. Aurelia Stenske, reports to the County Judge, and normally directs the work of three employees, though at time of hearing one position was vacant. As Register in Probate, she is appointed or removed by the County Judge and performs all the statutory duties set forth in Sections 253.32 and 253.33 of the Wisconsin Statutes. She generally files and maintains all papers in connection with proceedings before the County Judge, maintains a court record and may make orders for hearing when the Judge is absent from the County. She can effectively recommend the hire of deputies, with the power of removal and hire lodged in the County Judge. We conclude that the position, Register in Probate, is a supervisory one and properly excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 6th day of April, 1970.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



William R. Wilberg, Commissioner