

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :
DOUGLAS COUNTY :
For Clarification of a Bargaining : Case XIII
Unit Consisting of Certain Employees of : No. 11769 ME-348
DOUGLAS COUNTY (HIGHWAY DEPARTMENT) : Decision No. 8433-B
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FINDINGS OF FACT, CONCLUSION OF
LAW AND ORDER CLARIFYING BARGAINING UNIT

Douglas County having, on March 12, 1981, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of certain employees in its employ; and hearing having been held in this matter at Superior, Wisconsin on May 13, 1981, by Christopher Honeyman, a member of the Commission's staff; and the Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Douglas County, hereinafter referred to as the County, is a municipal employer, and among its functions maintains and operates a highway department; and that the County maintains its principal offices at Superior, Wisconsin.
2. That General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees, Local No. 346, hereinafter referred to as the Union, is a labor organization representing employees for the purposes of collective bargaining and has its offices at 2802 W. First Street, Duluth, Minnesota.
3. That at all times material herein the Union has been, and is, the certified collective bargaining representative of all regular full-time and regular part-time employees in the employ of the Highway Department of the County, excluding supervisory, managerial, confidential and casual employees; that at all times material herein, and since the date of certification of the Union as said bargaining representative, the position of Shop Foreman, at the Highway Department Shop, located at Superior, Wisconsin, has been included in the collective bargaining unit represented by the Union; and that the instant proceeding was initiated by the County, by a petition requesting the Wisconsin Employment Relations Commission to determine whether the present occupant of said position, Ernest Vennerstrom, is or is not a supervisor, and therefore whether Vennerstrom should be continued to be included in the bargaining unit.
4. That the employees of the County's Highway Department are employed in five shops located throughout the County, with the Main Shop located in Superior; that the Highway Commissioner is the top supervisory employe of the Department, and is assisted by a Maintenance Superintendent (also referred to as the Central Superintendent), as well as three Foremen, who are in charge of field operations under the immediate supervision of the Maintenance Supervisor; that at the Main Shop the County employs, in addition, the Shop Foreman, two Mechanics, a Welder-Mechanic, a Partsman-Mechanic, a Painter and a Janitor; that

at the outset of the work day the various Mechanics are informed by Vennerstrom as to the major work priorities of the day, if any, and if there are none the Mechanics will continue working on tasks which they have not previously completed; that on completion of assignments, they are routinely assigned new tasks; that the work atmosphere in the Main Shop is relaxed, informal, and the employees perform their duties with little supervision, however, on occasion, Vennerstrom will direct the employees; that Vennerstrom receives and responds to service calls on the department radio and processes paper work relating to equipment and supplies, obtains price quotations, and coordinates certain field activities with other parties who may be affected by Highway Department work projects; that Vennerstrom, unlike the remaining employees in the Main Shop, does not wear coveralls, but street clothes; and that Vennerstrom's rate of pay is greater than most of the employees in said Shop, although approximately equal to that of the premium mechanics.

5. That the "job description" relating to the Main Shop Foreman does not set forth any authority to hire, promote, transfer, discipline, or discharge any employee, or to effectively recommend such action; that on one occasion Vennerstrom assigned overtime work to employees, who, in turn refused to perform same; that Vennerstrom reported such incident to the Maintenance Superintendent, who issued disciplinary letters to the employees; that subsequent to such incident Vennerstrom was advised that he possessed the authority to assign such overtime work and to discipline employees for failure to perform same; that Vennerstrom receives calls from employees who cannot report to work because of illness or other excuses, and he excuses employees who leave work because of illness or other valid excuses; that Vennerstrom maintains time records and approves vacations based on work schedules; and that the duties and responsibilities exercised by Vennerstrom with respect to the employees employed in the Superior Highway Shop are not in sufficient combination and degree to warrant the conclusion that Vennerstrom, as Shop Foreman of the Main Shop of the Highway Department, is a supervisory employee.

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

CONCLUSION OF LAW

That the occupant of the position of Shop Foreman at the Douglas County Highway Shop, located at Superior, Wisconsin, Ernest Vennerstrom, is 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 Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

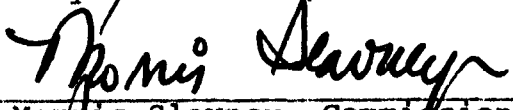
That the position of Shop Foreman at the Douglas County Highway Shop, located at Superior, Wisconsin, presently occupied by Ernest Vennerstrom, continues to remain in the Highway Department collective bargaining unit presently represented by General Drivers, Dairy Employees, Warehousemen, Helpers and Inside Employees, Local No. 346.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

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

In this proceeding the County requests the Commission to determine that the position of Shop Foreman at the County's Highway Department Shop at Superior is that of a supervisor, and therefore should be excluded from the Highway Department collective bargaining unit represented by the Union. Said position has been included in the bargaining unit since the certification of the Union as the bargaining representative, following an election conducted by the Commission in April, 1968. During the course of said election, in which the employees in the unit were afforded the opportunity to select the Union (then identified as Local 288), or a rival organization, AFSCME Local 246, or no organization, for the purposes of collective bargaining, the agent of the Commission conducting the balloting challenged the ballots cast by both the Superior Shop Foreman, as well as by the Construction Foreman, apparently on the basis of their job titles. Prior to the certification of the results of said election, both labor organizations and the County agreed that said positions should be included in the unit, and therefore the challenges were withdrawn. Said Shop Foreman position has been included in the unit since the date of certification.

The County bases its petition on alleged changes occurring in the Superior Shop within the last year. There is no formal job description for the position, although the County did describe certain experiences and duties requisite to the position in a Notice of Vacancy dated June 19, 1979. According to that description, required experience and duties include:

1. Experience and knowledge of the general operation of the shop.
2. Familiarity with keeping necessary shop files and records; the daily work sheets for the shop and office.
3. Making proper charges and credits in the proper categories on parts and supplies; keeping records of inventories.
4. Purchasing parts and supplies for the various pieces of equipment of the Department after consulting with the Highway Commissioner.
5. Assigning the shop work, as well as the repairs and servicing of equipment in the field.
6. Promoting and stressing safety at all times.
7. Being familiar with the prices of many parts and supplies.
8. Cooperating with the Patrol Superintendent and Highway Commissioner in determining priorities of equipment to be repaired.
9. Doing service and mechanical work both in the shop and in the field, if the need becomes necessary.

In order to determine whether a position is or is not supervisory within the statute's meaning, the Commission considers the following: 2/

2/ St. Croix County (Health Care Center), Decision No. 14518, 4/76;
Amery Joint School District No. 5, Decision No. 15793-A, 4/78.

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other 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 skill or his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or 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 judgment and discretion exercised in the supervision of employes.

In a case which in any one of these factors taken alone is less than clearcut, we also consider whether, taken together, they are significant in combination and degree 3/ to warrant a conclusion that the position is, on balance, supervisory.

In this case the Shop Foreman is involved in directing and assigning the work of six employes. He serves as a focal point for time records - receiving calls when employes are unable to report to work and keeping time slips which account for the number of hours each employe works; he also makes decisions about work hours--approving early release from work when appropriate, assigning overtime and making decisions about vacation schedules. A review of the shop foreman's duties, as discussed above, reveals that his time is primarily spent supervising the activities of employes, rather than supervising the employes themselves. Significant is the absence of supervisory authority to effectively recommend the hiring, promotion, transfer, and discipline or discharge of employes. In this regard, while Vennerstrom was of the opinion that he had authority to recommend discipline, the Highway Commissioner testified that if he received a shop foreman's recommendation to discipline an employe, he would not immediately impose discipline upon such employe as recommended, but would first investigate the matter personally.

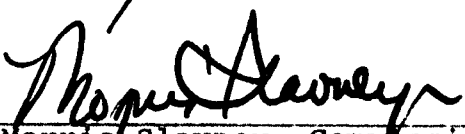
3/ Amery Joint School District No. 5, Decision No. 15793-A, 4/78.

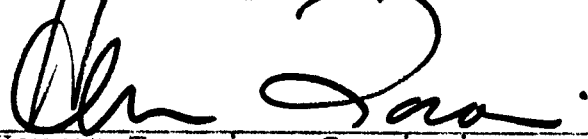
Based upon the above, the Commission concludes that Vennerstrom is not a supervisor but rather a working foreman, and, therefore, remains included in the collective bargaining unit represented by the Union. 4/

Dated at Madison, Wisconsin, this 28th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Gary L. Covelli, Chairman


Morris Slavney, Commissioner


Herman Torosian, Commissioner

4/ See attached names and addresses of persons who appeared before the Commission who are considered parties for the purposes of review under Section 227.16, Stats.

Appearing on behalf of Douglas County:

Mr. Michael J. Burke
Attorney at Law
Mulcahy & Wherry, S.C.
409 South Barstow
Eau Claire, Wisconsin 54701

Appearing on behalf of the Union:

Mr. Harold Brown
Vice President
General Drivers, Dairy Employees,
Warehousemen, Helpers & Inside
Employees, Local No. 346
2802 W. First Street
Duluth, Minnesota 55800