

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
WISCONSIN COUNCIL OF COUNTY AND :  
MUNICIPAL EMPLOYEES NO. 40, AFSCME, : Case 3  
AFL-CIO and its affiliated Local 576-B : No. 48281 ME-605  
Involving Certain Employes of : Decision No. 8932-H  
ST. CROIX COUNTY :  
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Appearances:

Mr. Michael J. Wilson, Representative at Large, AFSCME Council 40,  
583 D'Onofrio Drive, Madison, Wisconsin 53711, appearing on behalf of  
the Union.

Weld, Riley, Prenn & Ricci, S.C., by Mr. Stephen L. Weld, 715 South  
Barstow Street, P.O. Box 1030, Eau Claire, Wisconsin  
54702, appearing on behalf of the County.

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

On September 21, 1992, Local 576-B, AFSCME, AFL-CIO filed a unit clarification petition requesting that the Service Technician employed by St. Croix County be included in the courthouse bargaining unit. In a February 24, 1993 hearing before the Commission's Examiner Christopher Honeyman, the parties addressed other issues raised by other pending petitions, and this matter was subsequently rescheduled for hearing on July 30, 1993. The Union representative originally scheduled to appear at the hearing was unable to do so, and the County agreed to keep the record open in the event that the Union subsequently wished to offer additional evidence. A transcript was made, the County filed a brief, and the Union filed a brief and a reply brief, but did not request an opportunity to present further evidence. The record was closed on January 11, 1994.

The Commission has considered the evidence, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO and its affiliated Local 576-B, herein the Union, are labor organizations which have their principal offices c/o Michael J. Wilson, Representative at Large, 583 D'Onofrio Drive, Madison, Wisconsin 53711.

2. St Croix County, herein the County, is a municipal employer which has its primary offices at the St. Croix County Courthouse, Hudson, Wisconsin 54016.

3. The Union and the County are parties to a 1991-93 collective bargaining agreement under which the Union is the exclusive bargaining representative of the following bargaining unit:

All full-time regular courthouse employes of St. Croix County, including the St. Croix County Communications Center telecommunicators and the St. Croix County Sheriff's Department jail clerks, excluding elected officials, Sheriff's Deputy secretary and supervisory employes.

4. During 1992 and 1993, St. Croix County constructed a new courthouse on the outskirts of Hudson, Wisconsin. Upon its completion in early 1993, a number of departments previously located at the former courthouse at 911 Fourth Street, Hudson, were relocated to the new courthouse. At the same time, the Service Technician was relocated from the County's Health Care Center in

New Richmond, Wisconsin, to the new courthouse facility.

5. For some years up to early 1992, the County maintained two primary facilities, the Hudson courthouse and the New Richmond Health Care Center. Each of these facilities had its physical plant under the supervision of a Facilities manager, and two satellite sites in Hammond and Baldwin were under the supervision of the Hudson Facilities Manager. About the end of 1992, the Facilities Manager in New Richmond retired, and the County decided to reorganize its use of positions upon this occasion. The County advertised for and filled a position newly designated as Service Technician, initially located at the New Richmond facility. David Best was hired in or about May, 1992 as the Service Technician, and occupied the position at all material times thereafter. At New Richmond, Best was placed in charge of four maintenance mechanics, one housekeeping aide, two custodians, and one summer seasonal employee. Initially he worked four days per week at New Richmond and one day per week at Hudson, and spent approximately forty percent of his time performing heating, air conditioning and related work at the County's various facilities. The remainder of his time was spent assigning work to the New Richmond employees and in other office and construction-related work. During the course of 1992-93, Best's workload changed. Initially, this change involved spending substantial amounts of time serving as the County's primary construction supervisor involved with contractors building and finishing the new courthouse. About May, 1993, the courthouse was completed, and the County then moved most of its administrative offices to that facility. At the same time, the Service Technician's position was relocated to that facility, and Best's work functions were once again altered.

With this change, the County's Facilities Department was headed by a single Facilities Manager, Ralph Robole, and Service Technician Best was assigned as his assistant. Both work out of the same offices at the Hudson courthouse. A maintenance mechanic at the New Richmond site was promoted to lead worker to head that group of employees; and the Hudson site also has a lead worker, two maintenance mechanics, four custodians, and summer seasonal help. The two sites in Hammond and Baldwin employ only part-time casual labor.

Service Technician Best works collaboratively with Facilities Manager Robole in deciding what work should be performed by which employee, and Best spends a significant percentage of his time assigning such work. No employees have been transferred, laid off, discharged or seriously disciplined since Best's employment. Best has issued oral warnings. Best has participated in the hiring process by serving as a member of an interview panel along with the Assistant Personnel Director, Human Services Director, and the Facilities Manager. Each member had an equal vote regarding the candidate to be hired. Best regularly replaces Robole when Robole is absent, which for various reasons is a frequent occurrence, and in Robole's absence Best has the same authority as Robole. Best has approved overtime and time off requests, and while other employees in the department are paid overtime at time and one-half, Best is not. Best attends management and department head meetings, and makes frequent purchases, but all of these are from existing accounts. Best does not have authority to transfer monies from one account to another or to establish County policies. Best did, however, design the first budget which the Facilities Department at New Richmond had ever had. At the time of the hearing, the highest paid lead worker in the department was paid at an hourly rate corresponding to an annual amount of \$25,152.00. Best was paid an annual salary of \$37,003.20, and Robole was paid an annual salary of \$41,932.80.

6. David Best exercises supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employee.

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

#### CONCLUSION OF LAW

The occupant of the position of Service Technician in the Facilities Department of St. Croix County, currently David Best, is a supervisory employee within the meaning of Sec. 111.70(1)(o)(1), Stats., and therefore is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law,

the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

1/

The bargaining unit set forth in Findings of Fact 3 above is clarified by the exclusion of the Service Technician.

1994.

Given under our hands and seal at the City of  
Madison, Wisconsin this 25th day of March,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

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1/ Footnote found on page 4

1/ Pursuant to Section 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by 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.

(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.

. . .

(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.  
St. Croix County

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

At the hearing, the County contended that the Service Technician was a supervisory as well as managerial employee, and in the alternative that the position was a craft position not suitable for inclusion in the same bargaining unit as other non-craft employees. In its brief, the County made no reference to the "craft" contention, and we view that contention as withdrawn.

The Commission considers the following factors in determining whether a position is supervisory in nature:

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/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 2/

The record demonstrates that the Service Technician's functions are only partly identified accurately in the job descriptions prepared for the position.

The Union understandably challenges the job descriptions, on the ground that the first such description made little reference to supervisory work, while the second, which was more specific and explicit in giving the position supervisory responsibilities, post-dated the petition in this matter. Based on the un rebutted testimony of the incumbent, however, we conclude that his supervisory responsibilities are sufficient to warrant exclusion from the unit.

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2/ Portage County, Dec. No. 6478-D (WERC, 1/90); Price County, Dec. No. 11217-B (WERC, 9/89).

Initially, while the County specified substantial detail in its job posting concerning heating and air conditioning expertise for the position, only brief reference was made to supervisory abilities. Nevertheless, the reference does exist. The surrounding evidence demonstrates that this was not de minimus. In particular, we note that the Service Technician's position initially replaced a position clearly identified as Facilities Manager at one of the County's two main facilities. At that time, the position was proximate to, and clearly in charge for day-to-day purposes of, six full-time employees. Subsequently, when the incumbent was moved to the Hudson facility, his position became second in command to the Facilities Manager, but over a larger number of employees. Thus thirteen full-time employees now report to the combination of Robole and Best, plus a fluctuating number of part-time and casual employees. Significantly, two of the full-time employees who report to Robole and Best are designated, and paid under the contract as, lead workers.

The Service Technician's earnings outpace the higher paid of the two lead workers by almost forty percent, while his earnings are a little more than ten percent below those of the Facilities Manager.

The level of pay received by Best is significant in evaluating whether he is paid for skills or for supervision, because the County clearly employs several individuals at each facility who are expected to have more skill than custodians, while the Service Technician's earnings far outpace them. Best's testimony shows that the bulk of the actual heating and air conditioning work is now performed by the maintenance mechanics, because over the course of his employment he has trained several of them to perform much of this work. The consequence is that he spends fewer hours performing bargaining unit work himself than he did when initially hired; he estimated that his time performing such functions as repairing controls and equipment had dropped from forty percent initially to about five percent in the week immediately prior to the hearing, though he conceded that the fact of the recent move to a new facility may have given him an unusual workload during that period. In general, Best testified that heating and refrigeration now accounts for about ten percent of his time, and that determining what work needs to be performed and assigning and supervising that work now consumes the vast majority of his time.

The Union correctly notes that there has been little supervisory activity in the department of the more dramatic kind such as hires, discharges, or discipline other than oral warnings. More significant to us is that Best frequently replaces the Facilities Manager and has the same authority as the Manager when he does. He has also played a significant role in the hiring process by serving on an interview panel made up of two high level County officials, as well as the Facilities Manager. He had an equal vote as to which candidate would be hired. There is substantial evidence that Best has exercised independent judgment in determining which maintenance employees are best suited to performing what tasks, and he clearly has, and exercises continuously, the authority to direct and assign the work force. The number of employees supervised is clearly substantial enough to warrant more than a single supervisory employee in the department. Further supporting a conclusion that Best is not a lead worker but a supervisor is the fact that two lead workers report to him as well as to Robole. The percentage of time spent in non-bargaining unit work, the level of pay, the number of employees supervised, the authority possessed in Robole's absence, his role in the hiring process and the authority to direct and assign the work force are sufficient indicia of supervisory status.

Thus, we conclude that David Best, Service Technician, exercises supervisory responsibilities in sufficient combination and degree to make him a supervisory employee.

Dated at Madison, Wisconsin this 25th day of March, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner