

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
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 PIERCE COUNTY :  
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 Involving Certain Employes of : Case 4  
 : No. 43721 ME-401  
 PIERCE COUNTY : Decision No. 9616-D  
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Appearances:

Ms. Margaret McCloskey, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1203 Knollwood Court, Altoona, Wisconsin 54720, for the Union.  
 Mulcahy and Wherry, S.C., 715 South Barstow Street, Eau Claire, Wisconsin, 54702, by Mr. Richard J. Ricci, for the County.

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

Pierce County, on February 23, 1990, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit of certain employes of the County to determine whether a senior legal secretary should be included in said unit. Hearing was held in Ellsworth, Wisconsin, on May 16, 1990. The parties declined the opportunity to submit briefs. The Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Pierce County, herein the County, is a municipal employer and has its offices at 414 West Main Street, Ellsworth, Wisconsin 54011.

2. Wisconsin Council 40, AFSCME, AFL-CIO, herein the Union, is a labor organization and has its offices at 1203 Knollwood Court, Altoona, Wisconsin 54720.

3. On May 26, 1970, the Commission certified the Union as the exclusive bargaining representative of County employes in the following bargaining unit:

All regular full-time and regular part-time courthouse employes employed by Pierce County, but excluding all elected officials, supervisors, professional, and confidential employes. 3/

4. On February 23, 1990, the County filed a petition for unit clarification with the Commission wherein it sought the exclusion of the Legal Secretary-Office Manager in the District Attorney's Office as a managerial and/or supervisory employe. The Union opposed such an exclusion.

5. The incumbent of the disputed Legal Secretary-Office Manager position is Marjorie Armbruster, a 21-year employe of the County. She performs general clerical and word processing duties in the District Attorney's Office. Additionally, she prepares the office's annual report and budget, and has several responsibilities regarding the other full-time legal secretary, the part-time (one-day-a-week) secretary, the Victim/Witness Coordinator and the Assistant District Attorneys. The aforementioned second full-time legal secretary performs general clerical and word processing duties similar to those performed by Armbruster and receives the same rate of pay. Armbruster assigns work to the clericals and Assistant District Attorneys based on their workload and general area of expertise. She does not assign work to the Victim/Witness Coordinator.

6. In September 1989, when the hiring of the part-time legal secretary occurred, Armbruster narrowed the field of applicants to be interviewed and participated in joint interviews with the District Attorney. Armbruster and the District Attorney jointly determined which applicant to hire. As to the hiring of Assistant District Attorneys, Armbruster does not participate in the process until an interviewing committee screens the applications and interviews candidates. Armbruster then meets alone with interviewed applicants and reports her recommendations to the interviewing committee and District Attorney. In September of 1989, the applicant she recommended was hired. In 1985, the Victim/Witness Coordinator was hired following the same hiring procedure as is applicable to Assistant District Attorneys. The applicant preferred by Armbruster was hired rather than the one initially favored by the District Attorney.

7. Armbruster has not imposed any discipline that was noted in a personnel file, but has informally cautioned both a clerical employe and an

Assistant District Attorney. She has informally adjusted employe complaints by admonishing complained-of employes regarding their treatment of the complaining employes; similarly, she has attempted to resolve working conflicts between two employes, but Armbruster is not the department head to whom grievances are initially presented pursuant to the collective bargaining agreement. The clerical employes are not formally evaluated. The Assistant District Attorneys are evaluated yearly or once every 18 months. These evaluations are drafted by the District Attorney who then solicits Armbruster's comments. Her comments have occasionally been incorporated into the final document.

8. For both clerical employes and the Assistant District Attorneys, Armbruster approves vacation time, basing her approval on the workload and the number of people out of the office at the same time. For the clerical employes, Armbruster also approves sick leave usage, any variation in the regular work hours and any use of overtime or compensatory time.

9. The incumbent of the position of Legal Secretary-Office Manager possesses supervisory duties and responsibilities in sufficient combination and degree to be found a supervisor.

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

CONCLUSION OF LAW

The incumbent of the position of Legal Secretary-Office Manager in the District Attorney's Office is a supervisor within the meaning of Sec. 111.70(1)(o), Stats., and therefore is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

On the basis of the above Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 2/

The position of Legal Secretary-Office Manager in the District Attorney's Office shall be, and hereby is, excluded from the bargaining unit represented by Wisconsin Council 40, AFSCME, AFL-CIO.

Given under our hands and seal at the City of  
Madison, Wisconsin this 30th day of August,  
1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

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A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

(See Footnote 2/ on Page 3)

2/ 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.

(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.

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

POSITIONS OF THE PARTIES

The County

The County argues the incumbent of the position of Legal Secretary-Office Manager should be excluded from the bargaining unit as a supervisory employe because she has supervisory authority in varying degree over all the other employes in the District Attorney's Office except the District Attorney. She is involved in hiring, assigning work, approving overtime and leaves, and has orally cautioned employes about their work. According to the County, she exercises managerial authority by creating the office budget, and contributing to the development of various programs of the Office, most notably the Victim/Witness Assistance Program.

The Union

The Union contends the work performed by Armbruster is similar or nearly identical to that performed by other legal secretaries employed by the County even as regards her responsibilities in hiring, firing, disciplining and developing budgets, and that the position should not be removed from the unit.

DISCUSSION

In determining whether a position is supervisory, the Commission considers the following criteria:

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 or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 4/

The first of these indicia of supervisory status, effective recommendation in hiring, is also the area of Armbruster's most important supervisory duties, for she significantly participates in the selection of new employes in the District Attorney's Office by interviewing candidates for the legal secretary position jointly with the District Attorney, and by passing judgment on candidates for Assistant District Attorney and the Victim/Witness Coordinator positions after they have met with the interviewing committee. Her most significant exercise of authority in this regard occurred when the candidate lpreferred by the then District Attorney for the Victim/Witness Coordinator was not selected because of her input.

Armbruster assigns work not only to the other legal secretary but to the Assistant District Attorneys. Her authority in granting sick leave, vacation, compensatory time and temporary changes in the regular working hours for the legal secretary and even establishing the vacation schedule for the Assistant District Attorneys is yet another demonstration of supervisory status.

Although the clerical employes are not formally evaluated by anyone, the Assistant District Attorneys receive evaluations and after the District Attorney has drafted them, he asks Armbruster for her comments which are sometimes incorporated in the final evaluation.

Armbruster's actions in resolving problems in working relationships, although infrequent, also indicate supervisory status.

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3/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64), Sauk County (Sheriff's Department), Dec. No. 17201-A (WERC, 6/87).

Taken together, the above-noted activities indicate the incumbent of the Legal Secretary-Office Manager position is a supervisory employe, notwithstanding the small number of employes she supervises. The number of employes supervised is not the controlling criterion, especially where, as here, only minimal supervision is exercised by anyone else. 5/ Although the District Attorney is the department head, and could overrule Armbruster in the above-noted matters, there is no evidence that he has done so and the record shows that he has effectively delegated these supervisory duties, in the first instance, to this long-term employe.

We acknowledge that it is unusual for a non-professional employe to be exercising supervisory authority over both non-professional and professional employes. However, on this record, we can reach no other conclusion.

Since we find the incumbent of the position of Legal Secretary-Office Manager in the District Attorney's Office should be excluded from the bargaining unit as a supervisory employe, it is unnecessary to address the County's contention that she should be excluded as a managerial employe.

Dated at Madison, Wisconsin this 30th day of August, 1990.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairman

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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4/ Calumet County, Dec. No. 11158-A (WERC, 9/88).