

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Stipulation of :
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 UNIVERSITY OF WISCONSIN AND DEPARTMENT : Case XXIX
 OF ADMINISTRATION, STATE OF WISCONSIN : No. 14657 SE-32
 and RESIDENCE HALLS STUDENT LABOR : Decision No. 10320-B
 ORGANIZATION :
 :
 Involving Certain Student Employes of the :
 :
 UNIVERSITY OF WISCONSIN-MADISON :
 :

Appearances:

Mr. Paul T. Schollaert, appearing on behalf of the Union.
Mr. Gene Vernon, Attorney at Law, appearing on behalf of the
 State Employer.

ORDER CLARIFYING BARGAINING UNIT

The Wisconsin Employment Relations Commission heretofore and on May 26, 1971, conducted an election among all student employes of the Division of Residence Halls of the University of Wisconsin-Madison, excluding substitutes, supervisors, and all other employes, and as a result of such election, Residence Halls Student Labor Organization was on June 8, 1971, certified as the collective bargaining representative for the employes in said unit; and that during the course of said election the ballots of 14 individuals were challenged; however, said challenged ballots did not affect the results of said election; and on January 18, 1972, the above named State Employer having requested the Commission to make a determination as to the exclusion or inclusion from the unit of those individuals whose ballots were challenged; and the Commission having conducted hearing in the matter at Madison, Wisconsin, on February 22, 1972; and the Commission having considered the evidence, arguments and briefs of Counsel and being fully advised in the premises, makes and issues the following

ORDER

IT IS ORDERED that the following classifications shall be, and hereby are, included in the collective bargaining unit described above:

1. Assistant Student Supervisor (Maintenance) positions other than the position occupied by Ralph Pondell.
2. Assistant Student Supervisors (Desk).
3. Lakeshore Party Attendant.

IT IS FURTHER ORDERED that the following classifications shall be, and hereby are, excluded from the collective bargaining unit noted above:

1. Assistant Student Supervisors (Food).
2. Student Supervisors (Food).
3. Assistant Student Supervisor (Maintenance) position occupied by Ralph Pondell.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
 Morris Slavney, Chairman

Jos. B. Kerzman
 Jos. B. Kerzman, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

The Wisconsin Employment Relations Commission conducted a representation election among certain student employes of the above-mentioned State Employer. The State Employer challenged 14 ballots of which at least six were challenged on the grounds that the employes in question were supervisors. The vote in the election favored representation by the above-mentioned labor organization (hereinafter referred to as RHSLO) by a margin sufficient to make the challenged ballots irrelevant to the outcome. The challenged ballots remain unopened.

On June 8, the Commission certified RHSLO as the exclusive collective bargaining representative of "all student employes of the Division of Residence Halls of the University of Wisconsin-Madison excluding substitutes, supervisors, and all other employes." Nevertheless, on January 18, 1972, the State Employer requested that the Commission make a determination as to exclusion from or inclusion in the bargaining unit of those alleged supervisors whose ballots were challenged. A hearing on the matter was ordered on January 18, 1972, and conducted on February 27, 1972, by the Commission. The Commission has considered the evidence adduced at the hearing and the arguments in the parties' briefs.

The employes whose challenged ballots remained at issue during the hearing are classified as either "Student Supervisors" or "Assistant Student Supervisors" or as "Lakeshore Party Attendant". Although only about six ballots were challenged as supervisory, the parties have agreed that the Commission should determine the inclusion in or exclusion from the bargaining unit of all employes in the above-mentioned classifications in the Food Service, Maintenance, Desk and Lakeshore Party Divisions of the State Employer. Thus, the determinations to be made herein are of the alleged supervisory status of as many as 44 employes classified by the State Employer as follows:

	<u>Food Service</u>	<u>Maintenance</u>	<u>Desk</u>
Student Supervisors	7		
Assistant Student Supervisors	21	10	5

plus one "Lakeshore Party Attendant".

POSITIONS OF THE PARTIES

University:

All positions in question are clearly supervisory, i.e., the positions about which evidence is adduced are supervisory and other similar positions in each classification are also supervisory.

RHSLO:

None of the positions in question are clearly supervisory, i.e., the positions described in the evidence are not supervisory nor are other similar positions in each classification supervisory.

RELEVANT LAW

The statutory definition of a "Supervisor" includes the following:

"any individual having authority, in the interest of the state employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."1/

In prior cases dealing with private and municipal employers, the Commission, in determining whether an employe is a supervisor, has looked beyond job titles and has considered the following factors:

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 for his 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 spends a substantial majority of his time supervising employes.
7. The amount of independent judgment and discretion exercised in the supervision of employes."2/

Those factors are similarly relevant in determining the alleged supervisory status of persons in the employ of the State of Wisconsin.

In applying the above-noted statutory and case law considerations, it is not necessary that the Commission find all of those factors present, but rather those factors should appear in sufficient combination in a given case to clearly establish that an employe is a supervisor.3/

It should also be noted that the underlying purposes served by the exclusion of supervisory employes from the bargaining unit are:

1. To avoid conflicts of interests within the employe between management responsibilities and loyalty to members and bargaining representatives of the bargaining unit; and
2. To protect other employes' exercise of rights afforded them by 111.81 from interference by employes closely aligned with management."4/

1/ Section 111.81(15), Wisconsin Statutes.

2/ City of Milwaukee (Engineers) (6960) 12/64.

3/ Wood County (10356-A) 10/71.

4/ City of Wauwatosa (6276) 3/63.

STUDENT SUPERVISORS (FOOD) AND
ASSISTANT STUDENT SUPERVISORS (FOOD)

These student employes work 15 to 20 hours per week compared with an average of 10 for other student food employes. In addition, Student Supervisors are paid between \$2.40 - \$2.55 and Assistant Student Supervisors are paid \$2.25 - \$2.40 compared with the bargaining unit employe range of \$1.75 - \$2.00.

The ratio of student supervisory personnel to bargaining unit employes supervised is about one to twelve. The breadth of geographical areas of student supervisory responsibilities varies from unit to unit. In one unit, there are activities on two floors and several work areas on one of the floors. The latter-mentioned unit is most often covered by two or three student supervisory personnel.

The daily duties of a Student Supervisor or Assistant Student Supervisor would generally include the following activities:

(1) Arrive before the bulk of student help, check work areas and physically put them in order if the prior shift has failed to do so.

(2) See that student employes punch in properly and note the number of absentees. Seek readily available replacements for absentees from a list of substitutes or compensate for the absentee by personally doing his job and/or reassigning student employes in the area in order to get the work for that meal completed. Testimony of a Union witness suggests that such "fill-ins" take up a considerable portion of the student supervisory personnel's time and that the trend is toward their spending an increasing percentage of their time on unit work.

(3) If not necessary to "fill-in", check to see that all student employes are at their work places and doing their work properly; work places, manpower allocations and work methods are all prescribed by higher management, however. In addition, check for proper uniforms, resolve any minor problems and make sure that proper clean-up procedures are followed. University witnesses suggest that such "supervision functions" take up 85% to 90% of the student supervisory personnel's time. The Union notes that cooks and certain other non-bargaining unit civil service personnel also check and correct the work of student employes in their work areas. The Union further notes that Student Supervisors and Assistant Student Supervisors are concurrently on duty during 5 of the 19 meals served and that at least one civil service supervisor is on duty at each meal.

(4) At the beginning of the year, fill in a management-prepared master work schedule with student employe applicants who have requested hours of work coincident with those called for in the schedule. Student supervisory personnel have no significant discretion with respect to hiring, however; instead, they must hire students based upon priority of the date of application.

(5) Early in the year, assist Food Manager in training new employes. At the end of each semester, evaluate the work performance of each employe; such numerical evaluations by each of three or four student supervisory personnel and of a civil service supervisor are averaged and after review (and possible revision) by the Food Manager, will determine whether or not an employe will receive a merit increase (8% to 10% of the food employes received such a merit increase of five cents during 1971-72). Student supervisory personnel may, subject to review by higher management, approve reductions in or increases in students' hours of work, but such approvals are limited by the master schedule and by general management policies of hours minima and maxima.

Student supervisory personnel may orally reprimand students for breaches of discipline and may recommend that employes be placed on probation or terminated. Such recommendations are followed 85 to 90% of the time. There is a management policy of termination following three unexcused absences, and student supervisory personnel have the authority to determine whether an absence is excused or unexcused. In practice, however, this authority is generally not exercised.

Although they may adjust verbal grievances, in practice the grievance adjustment function of student supervisory personnel appears to be somewhat limited.

The Commission concludes that Assistant Student Supervisors or Student Supervisors (Food) are "supervisors" and that they should not be included in the bargaining unit. The Commission is most influenced by evidence that up to 90% of their time is spent in making certain that employes are properly performing their work assignments. Such supervisory activities involve independent judgment in dealing with employes' work problems and some verbal grievances and in reassigning work to cover for an absentee. In addition, the record indicates that these student supervisory personnel do in fact effectively recommend discipline of student employes.

ASSISTANT STUDENT SUPERVISORS (MAINTENANCE)

Testimony of Ralph Pondell was offered concerning the nature of the Assistant Student Supervisor (Maintenance) position. Mr. Pondell leads a group of 8 to 12 employes. He hires his crew either from a list supplied by management or by "going out and finding someone" and after personally interviewing and judging the willingness of the applicants to endure janitorial work and unusual hours. Mr. Pondell is assigned routine and sometimes emergency maintenance and janitorial functions, and he assigns his crew to hours and functions according to his independent judgment. Only 25% of the members of Pondell's crew are ever supervised by other than Pondell, and those for only 5% of their time. He exercises independent judgment in making worker evaluations which are not reviewed. Moreover, he has verbally reprimanded employes and has effectively brought about termination. His recommendation of an individual for promotion to Assistant Student Supervisor was followed.

It seems clearly established that despite his 25-50% participation alongside his crew, Mr. Pondell is a supervisor within the meaning of 111.81(12) and relevant Commission precedents. In reaching this decision, the Commission is most influenced by Pondell's exercise of independent judgment in organizing his own work crew and planning his own work. Also influential is the fact that he clearly administers discipline and his judgments are in fact directly and effectively reflected in his crew's wage increases and promotional opportunities.

While Mr. Pondell has been shown clearly to be a supervisor, the same cannot be said for other Assistant Student Supervisors (Maintenance). Pondell's testimony made it clear that he has more discretion especially concerning organization of work and assigning and reassigning employes than do other Assistant Student Supervisors (Maintenance).

We are not convinced that Assistant Student Supervisors (Maintenance)-- who spend 25 to 50 percent of their time doing unit work and who exercise substantially less discretion in planning and organizing the work of their crews--are clearly supervisors. The record is not sufficient to clearly establish the supervisory nature of those other positions, and so we must find that all other Assistant Student Supervisors (Maintenance) are to be included within the bargaining unit.

ASSISTANT STUDENT SUPERVISORS (DESK)

These employes receive between \$2.25 and \$2.40 compared with \$1.75 to \$2.00 for other student desk employes. They work 10 to 20 hours a week as compared with an average of 10 for student desk employes. Their initial hiring responsibility is quite limited just as is that of student supervisory personnel in the food area. Each desk supervisor fits together the available hours of 5 to 15 employes in order to cover all of the hours of operation of the one desk for which that supervisor is responsible. The supervisor may orally reprimand employes and may recommend more serious discipline though the record does not indicate that such authority is reflected in practice. Their evaluation of student employes has much the same impact upon employe wage increases or promotions as do the evaluations of food employes by their student supervisory personnel.

On a typical day, an Assistant Student Supervisor (Desk) will periodically visit the one desk for which he is responsible. He will make such visits at the beginning and end of each worker's shift and perhaps sometime during the shift, though he may make no visit whatever on some occasions. If the desk worker is absent, the "supervisor" must either find a substitute quickly or take over the desk himself during the absentee's shift. If the desk worker is present, the "supervisor" will observe his work, correct any improper performance, and answer any problems which may arise. There is some overlap of supervisory responsibility with civil service personnel during the week, but the Assistant Student Supervisor has sole supervisory responsibility for the bulk of his 10 to 20 hour workweek.

The Commission cannot find that the Assistant Student Supervisors (Desk) positions have been clearly established as supervisory. We are most influenced by the fact that a considerable portion of the Assistant Student Supervisors' (Desk) time is spent at unit work. In addition, their responsibility seems focused more upon the desk activity per se than upon desk employes.

We therefore hold that the Assistant Student Supervisor (Desk) positions should be included within the bargaining unit.

LAKESHORE PARTY ATTENDANT

The person in this position receives between \$2.40 and \$2.55 as compared with \$1.80 received by members of his work crew. When the Party Attendant is assigned a party, he has the sole responsibility with respect to the following:

- (1) Decide how many employes are needed to serve refreshments and to clean up.
- (2) Hire employes with the appropriate temperament for party work. It is not clear to what extent hiring discretion is limited by a required adherence to a list of current residence halls employes or by other hiring priorities set by management. It would appear, however, that the discretion is somewhat limited because the Party Attendant is not free to decide against hiring any particular employe on his own initiative.
- (3) Direct the four or five student employes as to what, when and how to do their, e.g., tapping beer kegs, serving beer, cleaning up, etc.
- (4) Check in on the party at the beginning and later on if choosing not to stay throughout the party.

A Management witness testified that 15% of the Party Attendant's time was spent working alongside the employes he supervises. This seems unrealistically low given the likely general nature of party service and in view of the testimony of witness Novak that in a similarly entitled position the year before he had expended 90% of his time alongside his employes. Novak's testimony cannot be more broadly accepted in view of his admission that he is not familiar with the Lakeshore Party Attendant.

The Lakeshore Party Attendant evaluates the performance of his employes at the end of each semester. Such evaluations do not affect the wages of the employes, however, because they receive a flat \$1.80 rate for the party work. There is testimony to the effect that the Lakeshore Party Attendant has authority to orally reprimand his employes, to place them on probation for breaches of discipline or to effectively recommend their termination, but not a single example of the exercise of such disciplinary authority was adduced at the hearing.

In consideration of the above, the Commission cannot conclude that it has been clearly established that the Lakeshore Party Attendant is a supervisory position within the definition of 111.81(12) and relevant Commission precedents. While this employe is surely a leader, he is not so integrally involved in management functions so as to create a high probability that his loyalties to the workers or Union would conflict with the interests of management. For example, his evaluation function does not affect party employes' wages, and the record discloses no instances in which he has exercised any disciplinary authority whatever.

The Commission therefore concludes that the Lakeshore Party Attendant position is included within the bargaining unit.

Dated at Madison, Wisconsin, this 7th day of June, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Jos. B. Kerzman
Jos. B. Kerzman, Commissioner