

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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 In the Matter of the Petition of :  
 AFSCME COUNCIL 40, AFL-CIO :  
 Involving Certain Employes of : Case 3  
 CITY OF JEFFERSON : No. 14525 ME-634  
 : Decision No. 10344-A  
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Appearances:

Mr. David Ahrens, Staff Representative, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Union.  
Lindner, Honzik, Marsack, Hayman & Walsh, S.C., Attorneys at Law, 700 North Water Street, Milwaukee, WI 53202, by Mr. Roger E. Walsh, appearing on behalf of City of Jefferson.

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

The above-captioned petitioner, having filed a petition on May 7, 1984, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit consisting of all regular full-time and regular part-time employes of the City of Jefferson, excluding clerical, law enforcement, confidential employes and supervisors, by including the Chief Operator of the Wastewater Plant; and a hearing in the matter having been conducted on July 5, 1984, in Jefferson, Wisconsin, by Examiner James W. Engmann, a member of the Commission's staff; and a stenographic transcript having been prepared and forwarded to the parties on July 31, 1984; and the parties having filed briefs in the matter, the last of which was received on August 23, 1984; and the Commission having considered the evidence, arguments and briefs of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the City of Jefferson, herein referred to as the City, is a municipal employer and has its offices at 317 South Main Street, Jefferson, Wisconsin 53549; and that among its municipal functions the City maintains and operates a Wastewater Treatment Plant.

2. That Jefferson County Employees Local 655-D, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization representing municipal employes for the purposes of collective bargaining and is affiliated with AFSCME Council 40, AFL-CIO which Council has its offices at 5 Odana Court, Madison, Wisconsin 53719.

3. That the Union is the certified representative of the collective bargaining unit consisting of all regular full-time and regular part-time employes of the City of Jefferson, excluding clerical, law enforcement, confidential employes and supervisors 1/; that at the time of said certification Walter Buske was Chief Operator of the Wastewater Treatment Plant; and that at the time of said certification the position of Chief Operator of the Wastewater Treatment Plant was not included in the collective bargaining unit.

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1/ Dec. No. 10344, (WERC, 8/11, 1971).

4. That the Union filed a Petition to Clarify the Bargaining Unit of Municipal Employes with the Wisconsin Employment Relations Commission on May 7, 1984 wherein it requested the inclusion of the position of Chief Operator of the Wastewater Treatment Plant in the collective bargaining unit.

5. That earlier in 1984 Chief Operator Walter Buske retired; that the City advertised to replace the chief operator; that the following constituted the advertisement:

CHIEF WASTEWATER TREATMENT PLANT OPERATOR - City of Jefferson (pop. 5,640) is accepting applications for the position of Chief Operator, responsible for coordinating the operation and maintenance of the Jefferson Treatment Plant presently classified as a two stage trickling filter system and which is to be upgraded commencing in the spring of 1984 to an activated bio-filtration (ABF) process. Specific duties will include, but not be limited to, supervision of assistant operators, laboratory testing, building and equipment maintenance and the preparation and maintenance of reports on plant operations. Applicants should possess or be eligible to obtain Grade IV Certification covering the following subclasses: primary settling, activated sludge, disinfection, anaerobic digestion and on-site laboratory testing. In addition, a minimum of two year's supervisory and four year's laboratory experience is preferred. Salary negotiable with excellent fringe benefits. (present salary: \$21,660) Send letter and resume to: Denise M. Pieroni, City Administrator, 317 S. Main St., Jefferson, Wis. 53549 by Friday, February 24, 1984. An Equal Opportunity Employer.

and that the following constitutes the job description for the position:

#### WASTEWATER TREATMENT UTILITY SUPT.

GENERAL STATEMENT OF DUTIES: Plans and directs the operations of the Wastewater Treatment Plant, Lift Stations and Collection System.

DISTINGUISHING FEATURES OF CLASS: This is a responsible position requiring the ability to plan, supervise and operate the City's Wastewater Treatment Plant, Lift Station and Collection System. Responsibilities include: the continuous analysis of wastewater treatment problems and the operation and maintenance of the wastewater treatment plant in accordance with constantly changing condition and in line with State standards for plant operation; the monitoring and maintenance of lift stations; and the maintenance of the collection system. The work is performed under the general direction of the City Engineer/Director of Public Works. Supervision is exercised over treatment plant operators and public works crews assigned to the maintenance of the collection system.

EXAMPLES OF WORK: (Illustrative Only)

Supervises the operation and maintenance of the wastewater treatment plant, lift stations and collection system. Prepares work schedules and inspects the work of plant operators and collection system maintenance crews.

Conducts laboratory analysis of samples collected to determine PH, BOD, suspended solids, chlorine content, etc.;

Monitors plant operations and laboratory test results to determine appropriate settings and insure proper functioning of equipment;

Prepares and maintains records on plant operations and laboratory analysis for the DNR and EPA as well as records on the maintenance of the collection system;

Oversees and participates in building and equipment maintenance and repair activities;

Prepares and, upon approval, implements annual budgets for the plant facility and collection system;

Establishes standards and issues general instructions for wastewater plant operation and collection system maintenance activities;

Supervises the installation of sewer main and sewer laterals;

Meets with vendors and orders necessary supplies and chemicals;

Keeps abreast a professional development of the field by attendance at conferences and meeting and review of technical journals;

Does related work as required.

#### QUALIFICATIONS:

--Knowledge of wastewater treatment, collection and disposal principles and practices;

--Knowledge of state and federal requirements covering the operation of wastewater treatment plants and collection systems;

--Ability to develop work plans and coordinate plant and collection system maintenance work;

--Ability to direct the work of subordinate personnel;

--Ability to operate and make adjustments and repairs to plant equipment;

--Ability to conduct accurate laboratory tests and prepare complete reports and records;

--Possession of a Class IV (a, b c,e, f, j) Wastewater Treatment Plant Operator Certification issued by the State of Wisconsin.

#### TRAINING AND EXPERIENCE

Completion of a standard high school course supplemented by courses in wastewater treatment. Considerable experience in supervising the operation and maintenance of a wastewater treatment plant and collection system; or any equivalent combination of training and experience which provides the required knowledge, skills and abilities.

6. That thereafter the City hired Michael Kelly as Chief Operator; that Kelly began his duties on May 21, 1984 approximately six weeks prior to the hearing in this matter; and that between the time of Buske's retirement and the hiring of Kelly--a period of over two months--Assistant Operator James Sullivan performed some of the Chief Operator's tasks.

7. That the Johnson Creek Wastewater Treatment Plant was classified Grade 1; that Kelly currently holds a Grade 1 operator's licence; that the Jefferson Wastewater Treatment Plant is classified as Grade 4, a higher level classification; that the two Assistant Operators James Sullivan and Tom Hake, hold Grade 4 operator's licenses; that Kelly is eligible to operate the Jefferson Plant for one year with a Grade 1 operator's license; that Kelly will be eligible to

receive a Grade 4 operator's license within one year; that both Assistants are qualified to operate the plant; that one Assistant works from 5:00 a.m. to 1:00 p.m., the other Assistant works from either 10:00 a.m. or 11:00 a.m. to 7:00 p.m., and Kelly works from 7:30 a.m. to 4:00 p.m. that both Assistant Operators are more experienced than Kelly in the operation of the specific equipment at the existing plant; that Kelly learned to operate the existing plant from the two Assistant Operators; that Kelly is the only person who directs the day-to-day operations of the Wastewater Treatment Plant and supervises the daily work of the Assistant Operators; and that a majority of said work is routine in nature.

8. That examples of work that are not routine occur when equipment breaks down or the plant is overloaded; that equipment has broken down three times in the six weeks Kelly has been employed; that Kelly begins repairs if the malfunctioning equipment is vital and then notifies his superior, City Engineer Rubin Schultz; that in two of the breakdowns Kelly decided the equipment should be removed and repaired by an outside firm; that in the other case Kelly discussed alternatives with Schultz before he investigated repairs; and that Kelly has authority to and that he has authorized repairs in excess of \$500 without prior authority from higher level management.

9. That Kelly is paid a salary of \$22,568 per year; that he is not compensated on an hourly basis nor is he compensated for overtime work; that the Assistant Operators are paid a wage of \$9.30 per hour; and that Assistant Operator James Sullivan has made more than \$22,568 in a year because of overtime compensation.

10. That Kelly has changed the policy on call-outs and has established a procedure in which he is called first and he determines who is to be called out for overtime in an emergency; that prior to that policy change, call-outs had occurred three times in the six weeks Kelly has been employed; that Kelly did not respond to any of these call-outs, since the Assistant Operators were contacted directly; that Kelly developed a daily work sheet for the Assistant Operators which details the operations to be performed, although this involved no change in existing duties of the Assistant Operators and they have some freedom to decide the order in which the duties are performed; that he assigns responsibility to do lab work and the removing, hauling and storing of sludge; and that Kelly is working on a method, such as the installation of a time clock, to improve the reporting of time worked by the Assistant Operators.

11. That the City is building a new Wastewater Treatment Plant; that Kelly works with a consulting engineer in the inspection of the construction of the new plant by taking construction photos, witnessing required tests, inspecting placement of materials, such as underground piping, determining compliance with design specifications and checking underground structure; that Kelly has made recommendations regarding the addition or elimination of equipment, with one recommendation to substitute one piece of equipment for another having been approved and other recommendations currently being studied; that the previous Chief Operator had authority over the lift stations and the Treatment Plant; that in addition to those duties, Kelly is in the process of assuming management of the collection system; that although Kelly will be in charge of the collection system, any physical labor on the collection system will be done by the Streets Department; that Kelly will work with the Streets Superintendent to select the Street Department employees who will work on the collection system and to schedule those employees to do the work, including emergency call-outs; and that said Street Department employees will call him if an emergency occurs in the collection system.

12. That if a person is hired for the Treatment Plant, Kelly has authority to write the job description, advertise the vacancy, interview the candidates and recommend his selection to the City Administrator for review by the City Council; that the City Administrator would be involved in the interview process to explain City policies and benefits; and that Kelly's supervisor, City Engineer Rubin Schultz, would not be involved in the hiring process.

13. That Kelly has been told he has the authority to give oral and written reprimands, to send an employe home without anyone else's authorization and to recommend suspension or discharge of an employe to the City Administrator; that the current collective bargaining agreement contains the following Article:

### Article III - Grievance Procedure

The grievance procedure provided for in this Article shall apply only to grievances involving the interpretation or application of this Agreement and such grievance shall be handled as follows:

Step 1: The Union committee or a member thereof and/or the Union representative shall orally present the grievance to the most immediate supervisor who has authority to make adjustments in the matter within fourteen (14) days of the event causing the grievance or of their knowledge of the grievance.

Step 2: If a satisfactory settlement is not reached in Step 1 within forty-eight (48) hours, the Union committee and/or the Union representative may present the grievance in writing to the Mayor or Personnel Committee within five (5) workdays thereof.

Step 3: If a satisfactory settlement is not reached in Step 2 within fifteen (15) working days after the grievance is presented in writing to the Mayor or Personnel Committee, either party shall have five (5) days within which to serve notice upon the other that the dispute shall be arbitrated. Within five (5) days after the receipt of such notice to arbitrate, the parties shall meet to agree upon an arbitrator. If agreement upon an arbitrator cannot be reached, either party may request the Wisconsin Employment Relations Commission to appoint an arbitrator. The arbitrator thus selected, or appointed by the WERC, shall meet with the parties and hear the dispute and the arguments, and shall render a final and binding decision upon the parties. (Days shall mean work days, Monday through Friday).

that Kelly is the most immediate supervisor specified in Step 1; that Kelly has the authority to make adjustments in some matters involved in a grievance; that he has been presented with one grievance which was settled at Step 2; and that Kelly has not reprimanded or recommended suspension or discharge of any employe.

14. That Kelly has the authority to develop the budget for the Wastewater Treatment Plant and the collection system; that said budget will be several hundred thousand dollars for operating expenses and capital expenditures; that he will present and defend the budget before the Common Council; that he was consulted by the City Administrator regarding staffing requirements of the new Wastewater Treatment Plant and problems the collective bargaining agreement may cause in operating the new treatment plant; that Kelly can spend up to \$500 on equipment and supplies without approval; and that; as noted Finding of Fact 9, he has authorized repairs in excess of that amount without prior approval from higher management.

15. That Kelly exercises supervisory responsibilities in sufficient combination and degrees so as to make him a supervisory employe.

16. That Kelly's participation in management decisions and his authority to commit the employer's resources, taken together, are sufficient to make him a managerial employe.

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

#### CONCLUSION OF LAW

That Michael Kelly occupying the position of Chief Wastewater Treatment Operator is a supervisor and a managerial employe and, therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above Findings of Fact and Conclusion of Law, the Commission issues the following

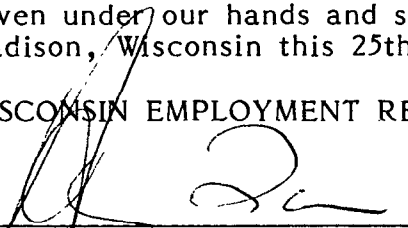
ORDER CLARIFYING BARGAINING UNIT 2/

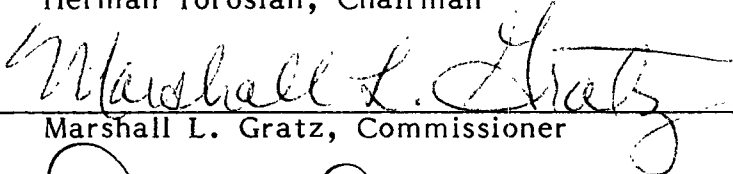
That the position of Chief Wastewater Treatment Plant Operator shall continue to be excluded from the above described bargaining unit.

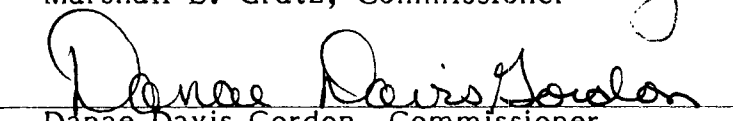
Given under our hands and seal at the City of  
Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

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- 2/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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 (Footnote 2 continued on Page 7)

CITY OF JEFFERSON

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

The Union was certified as the exclusive collective bargaining representative on August 11, 1971, following an election of the members of the following unit: all regular full-time and regular part-time employes of the City of Jefferson, excluding clerical, law enforcement, confidential employe and supervisors. The position of Chief Wastewater Treatment Plant Operator existed at that time and was not included in the unit. On May 7, 1984, the Union filed a Petition to Clarify Bargaining Unit of Municipal Employes seeking to include the position of Chief Wastewater Treatment Plant Operator in the collective bargaining unit.

Position of the Parties

The basic contention of the Union is that the position of Chief Wastewater Treatment Plant Operator does not meet the criteria of supervisory status, and that all of the alleged supervisory duties and activities for which the Chief Operator is responsible, including supervision of employes, at best, are prospective and have not actually been performed.

More specifically the Union asserts that the incumbent Chief Operator's predecessor never disciplined anyone and refused to handle grievances on behalf of the City; that the current Chief Operator does not have to direct and assign the workforce, as evidenced by the fact that the Assistants ran the plant for several months prior to the incumbent's hiring; that the incumbent can only supervise the two employes on a part-time basis, as they work different hours than he does; that at least one Assistant Operator earns more per year with overtime than the Chief Operator; that both Assistant Operators have higher certifications than the Chief Operator; that the Chief Operator cannot really supervise the Assistant Operators as they are the ones who taught him to operate the plant; that the Chief Operator does not supervise the plant as it is basically a self-running entity; and that the Chief Operator does not exercise independent judgment or discretion because he knows so little about the plant.

Finally, the Union asserts that the Chief Operator is not a manager; that the City is including this argument as an afterthought; that none of these job requirements are listed in the job posting or description; that developing a

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2/ (Continued)

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. 227.20 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.

budget would be significant enough to warrant a mention in the posting or description; and that the Chief Operator is nothing more than a part-time inspector.

The City asserts that the position of Chief Wastewater Treatment Plant Operator exhibits sufficient indicia of supervisory authority to continue to be classified as a supervisory employee. Further, the Chief Operator participates in the formulation, determination and implementation of management policy and has authority to commit the employer's resources to a sufficient extent to also be found a managerial employee.

More specifically the City asserts that the Chief Operator has the authority to review job applications, conduct interviews and recommend hiring; that he has the authority to give verbal and written reprimands without further approval, to suspend an employe immediately, and to recommend longer suspensions and discharge to the City Administrator; that he is responsible for adjusting grievances under Step 1 of the grievance procedure; that the Chief Operator has the authority to direct and assign the work by ensuring the duties of the Assistant Operators are performed, by determining who will respond to emergencies and by assigning tasks and functions to the employes; that he is paid a salary without additional payment for overtime; and that the job advertisement and position description list specific supervisory duties.

Finally, the City argues that the Chief Operator is a managerial employe because he has made a number of policy changes and because he has made recommendations regarding plans and specifications for the new plant which have been accepted or are under study; that he has had input with respect to upcoming negotiations regarding a new collective bargaining agreement with the Union; that he has authority to make repairs over \$500 without prior approval; that he has authority to purchase equipment up to \$500; and that he is developing a budget for the new system, which he will present and justify to the City Council.

## DISCUSSION

The two issues before the Commission are whether the Chief Operator is a supervisor and whether he is a managerial employe.

### Supervisory Status

The WERC considers the following factors in determining if a position is supervisory in nature:

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 skills 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; and
7. The amount of independent judgment exercised in the supervision of employes. 3/

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3/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83); Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83).



The record is clear that Kelly has been given the authority to effectively recommend the hiring, disciplining and discharging of employees. Upon being hired, Kelly was told that he was the one who would review job applications, interview candidates and recommend to the City Administrator the hiring of employees for the treatment plant. In conjunction with the Streets Superintendent, he will also be involved in the hiring of those Street Department employees who will work in the collection system.

Kelly testified that he has authority to issue verbal and written reprimands and to temporarily suspend an employee. He also testified that he has the authority to recommend longer suspensions and discharges to the City Administrator. This is true of the Treatment Plant employees as well as those Street Department employees who work in the collection system.

The Union argues that Kelly has not recommended the hiring, disciplining or discharging of anyone. While it is true Kelly has not exercised this authority in his first six weeks on the job, this does not mean he is not in possession of the authority to do so if the occasion arises. While the Personnel Committee or the full City Council may retain ultimate authority to hire and fire, this does not negate the supervisor's authority to effectively recommend such action.

It is also clear from the record that in the past no one else, other than the Chief Operator, has recommended the hiring, disciplining and discharging of Treatment Plant employees. Further, the Union has presented one grievance to Kelly as the immediate supervisor identified in Step 1 of the grievance procedure.

The Union stresses the facts that Kelly was unfamiliar with the Jefferson Plant, that his operator's license was Grade 1 while the Jefferson Plant was a Grade 4 and the two Assistant Operators had Grade 4 licenses; that the two Assistant Operators had many years experience operating the plant and that, in fact, they trained Kelly in many of the plant's operations. These factors are countered however by the fact that the City advertised for a person with a minimum of two years supervisory experience; that Kelly had three years of supervisory experience when hired; that he was qualified to run the plant for one year with his current license and during that one year he is able to qualify for a Grade 4 license; and that at least one of the Assistant Operators applied for the position but the City chose to hire someone with supervisory experience. The fact that the Assistant Operators were the main and obvious persons to orient Kelly to the plant does not negate the fact that Kelly was hired to supervise them.

The Union also argues Kelly is not a supervisor in that the two supervised employes ran the plant following the retirement of the previous Chief Operator and prior to Kelly beginning the job, that in actuality no supervision is needed since the plant is self-operating and that both Assistant Operators work some hours when the Chief Operator is not present. But while these employes may not need a lot of supervision, the Chief Operator is the only person available to provide supervision when necessary on a day-to-day basis. Although much of the work is routine, emergencies occur which require the use of independent judgment, such as the repair of broken down equipment which happened three times in six weeks. The record shows that Kelly, as the Chief Operator, has the authority to assign work to employes and to direct them in that work and that he has done so, for example, by determining who will respond to emergencies.

The WERC has held that not all of the factors it considers in determining supervisory status need to be present but if a sufficient number or combination of these factors appear in any given case, the WERC will find an employe to be a supervisor. <sup>4/</sup> Such is the case here. Kelly's authority in the areas of hiring, disciplining and discharging of employes, and his authority in directing and assigning the workforce, together with the fact that he exercises independent judgment and discretion on the job and is the only person available to supervise the employes involved outweighs the fact that much of the work is routine and is done by experienced assistants. Thus a sufficient number or combination of the factors listed above appear in this case for us to find that Kelly is a supervisor.

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<sup>4/</sup> City of Rice Lake, supra.

Managerial Status

The WERC considers the following factors in determining if a position is managerial in nature: the employee's participation in the formulation, determination and implementation of management policy; and the employee's possession of effective authority to commit the employer's resources. 5/ The WERC will determine that a position is managerial if the employee participates in a significant manner in the formulation, determination or implementation of management policy. 6/ The WERC will also determine a position is managerial if the employee has authority to establish an original budget or to allocate funds for differing purposes from such a budget, provided the authority to allocate funds is not merely ministerial. 7/

The Union asserts that the City makes "a grasping attempt to portray the incumbent as a manager", that the inclusion of this argument by the City is an afterthought because none of the managerial job requirements, specifically developing a budget, are included in the advertisement or job description, and that Kelly is a part-time inspector, not a manager.

While the development of a budget is not listed specifically in the advertisement, it is listed as an example of work on the job description. The record is clear that Kelly will not only prepare a budget of several hundred thousand dollars, but that he will present it to and defend it before the City Council. In addition, Kelly has authority to spend up to \$500 on equipment and has authorized repairs for more than that amount.

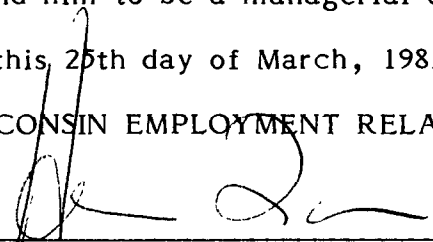
The record is also clear that Kelly has the authority to make policy decisions in the operation of the Treatment Plant and that he has done so; that he has been a part of the management team in the building of the new Treatment Plant by making recommendations to the consulting engineer as to what equipment the new plant should and should not have, and that he has made recommendations regarding the collective bargaining contract's impact on the operation of the new treatment plant.

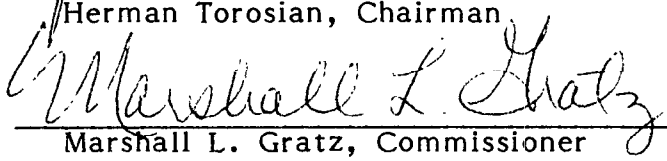
Taken together, Kelly's authority to develop a budget and to present and defend it before the Council, his authority to commit the employer's resources and his participation in management decisions sufficiently aligns Kelly with the interests of the City so that we find him to be a managerial employe.


Dated at Madison, Wisconsin this 25th day of March, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Marshall L. Gratz, Commissioner

  
Danae Davis Gordon, Commissioner

5/ Kewaunee County (Highway Dept.), Dec. No. 21344 (WERC, 1/84); Madison Metropolitan School District, Dec. No. 20836-A, 21200 (WERC, 11/83); Ondossagon School District, Dec. No. 19667 (WERC, 6/82); and Village of Brown Deer, Dec. No. 19342 (WERC, 1/82).

6/ Madison Metropolitan School District, supra; Village of Brown Deer, supra.

7/ Kewaunee County (Highway Dept.), supra; Ondossagon School District, supra.