

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
Involving Certain Employes of
CALUMET COUNTY

Case 3
No. 48284 ME-607
Decision No. 11158-C

Appearances:

Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, 1207 Main Avenue, Sheboygan, Wisconsin 53083, on behalf of the Union.

Mr. Charles E. Carlson, David M. Griffith & Associates, Ltd., 315 Wisconsin Avenue, Madison, Wisconsin 53703, on behalf of the County.

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

Wisconsin Council 40, AFSCME, AFL-CIO, having on November 3, 1992, filed a petition requesting the Wisconsin Employment Relations Commission to determine whether the positions of Legal Secretary in the Corporation Counsel's Office, Secretary to the Administrative Coordinator, Victim Witness Coordinator, Reproduction Coordinator and Maintenance Coordinator should be included in the existing collective bargaining unit represented by Council 40; and hearing having originally been held before Mary Jo Schiavoni, a member of the Commission's staff, on February 11, 1993, in Chilton, Wisconsin, at which time the parties agreed that the Victim Witness Coordinator should be excluded from the bargaining unit as a professional employe, that the Legal Secretary in the Corporation Counsel's office should be included in the bargaining unit, and that the Secretary to the Administrative Coordinator should be excluded from the bargaining unit as a confidential employe; and the parties having requested that the matter be held in abeyance to discuss the status of the remaining two positions, Reproduction Coordinator and Maintenance Coordinator; and the matter having been held in abeyance until October 26, 1993, when a second day of hearing was held regarding the aforementioned positions; and a stenographic transcript having been made and received on November 17, 1993; and the parties having completed their briefing schedules on January 24, 1994; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Calumet County, referred to as the County, is a municipal employer and has its offices at the Calumet County Courthouse, 206 Court Street, Chilton, Wisconsin. Among its functions, the County maintains and operates a Courthouse.

2. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 1207 Main Avenue, Sheboygan, Wisconsin. The Union is currently the exclusive collective bargaining representative for a bargaining unit described in the parties' 1992-1994 collective bargaining agreement as:

all regular clerical and maintenance employees of Calumet County employed in the Calumet County Courthouse, but excluding supervisory, managerial and confidential employees.

3. Five positions were initially in dispute but the parties stipulated to the inclusion of Legal Secretary to the Corporation Counsel into the bargaining unit referred to Finding of Fact 2 above. They also stipulated to the exclusion of the position of Secretary to the Administrative Coordinator from the bargaining unit as a confidential employee. Both parties agreed that the Victim Witness Coordinator is a professional employee, properly included in another of the County's bargaining units.

4. The only remaining positions in dispute are the Reproduction Coordinator, also referred to as the Central Duplicating Coordinator, and Maintenance Coordinator, also referred to as the Maintenance Foreman. The County maintains that both should be excluded as either supervisory or managerial employees, while the Union maintains that both are municipal employees.

5. Both disputed positions were included in the bargaining unit until August of 1992 when the County made the occupants of both positions department heads and excluded them from the bargaining unit. When they became department heads, they became responsible for the preparation and submission of their department budgets to various County committees for approval. They both report to the Administrative Coordinator and participate in department head meetings.

6. The position of Central Duplicating Coordinator is currently occupied by Linda Meyers. Her job description is as follows:

CENTRAL DUPLICATING COORDINATOR

Characteristic Work of the Class

Nature: Responsible for the coordination of the Central Duplicating Department to provide County departments with central duplicating services such as offset printing and bindery, graphic artwork, photocopy, microfilming, records management and facsimile. Performs related duties as required.

Examples of Duties:

1. Actively participates in Department Head meetings.
2. Reports to the Administrative Coordinator on a regular basis.
3. Prepares detailed and comprehensive written and oral reports and makes presentations to committees, boards and staff.
4. Prepares, presents and administers the annual budget.
5. Prepares the Annual Report.
6. Maintains records of all related equipment located in the courthouse building.
7. Prepares monthly vouchers.
8. Orders necessary supplies and parts for the various operational needs and services.
9. Performs maintenance, repairs and adjustments to all related equipment.
10. Evaluates the need and arranges for service contracts on all related equipment.
11. Evaluates the need, recommends and purchases printing, microfilm, photocopy, facsimile equipment for various departments.
12. Maintains records and assists departments in the operation of photocopy and facsimile machines.
13. Consults with departments regarding printing needs for in-house or outside printing, advising on format, size, colors, paper stock and preparing necessary estimates.
14. Directs, schedules and assists staff in the day-to-day operation of printing services to ensure printing work is completed accurately and according to schedule including operation of the offset press, an electrostatic platemaker, and a variety of bindery

- equipment.
15. Performs pre-press graphic artwork including word processing and desk-top publishing.
 16. Prepares data entry of monthly printing requisition costs and form listings for individual departments and outside organizations.
 17. Consults and advises departments regarding microfilming needs regarding filming, storing and keeping records.
 18. Maintains records regarding microfilming operations and procedures assuring guidelines and equipment are in compliance with all conditions and standards prescribed in the Wisconsin State Statutes.
 19. Keeps abreast of new developments, confers with vendors and area counties on various needs, new ideas and better ways to save time and money in various County operations concerning the Central Duplicating Department.
 20. It is unlikely an employee will perform all the duties listed on a regular basis, nor is the list exhaustive in the sense it covers all the duties the employee may be required to perform. The examples are merely indicative, not restrictive.

Qualifications:

Essential Knowledge and Abilities:

1. Ability to maintain department records, preparing clear and detailed reports.
2. Thorough knowledge of business English, spelling and composition.
3. Thorough knowledge of modern printing, bindery, and graphic arts procedures.
4. Thorough knowledge of microfilm and records management procedures.
5. Some knowledge of photocopy procedures.
6. Some knowledge of facsimile procedures.
7. Some knowledge of the operation and the maintenance of all related equipment.
8. Good knowledge of supplies used for all related equipment.
9. Ability to learn the County's word processing system.

10. Ability to plan, organize and effectively present ideas, concepts and recommendations.
11. Some knowledge of P.C. environment to produce desktop publishing applications.
12. Ability to learn data processing on the County's computer system.
13. Ability to schedule and supervise production efficiently and to meet deadlines.
14. Ability to establish and maintain effective public and working relationships.
15. Ability to select, evaluate and supervise employees.

Desirable Training and Experience:

1. An associate degree in printing
 2. Considerable experience in the printing, bindery, and graphic arts field.
 3. Considerable experience in the microfilm and records management field.
 4. Some experience in a supervisory capacity.
- or
5. An equivalent combination of experience and training which provides the required knowledge, skills and abilities.

There is one permanent County employe in Meyers' Department who works a sixty percent schedule spread over four days a week. At the time of the hearing, in addition to the regular part-time employe, there was one other employe hired through and by a temporary service pursuant to a grant from the State Historical Society for a specific period of time. There may also be other individuals working in the department at any given time such as students, employes paid by special outside grants, and those temporarily placed by job programs.

As the work comes into the Reproduction Department, Meyers prioritizes it and assigns it to the employes. She does all of the pre-press work necessary. She may also perform some of the reproduction work herself depending upon how quickly it is needed. Thus, during rush periods or on rush deadlines, Meyers assists the employes. She may also perform the reproduction work on days when she is the only person working in the Department. In addition to her job assignment and pre-press duties, Meyers may perform the set-up of certain forms on the computer. Approximately sixty percent of her time is spent performing printing-related duties in the Department.

Meyers prepares the initial budget for her Department which is ultimately submitted to the Building and Grounds and Finance Committees. In connection with this duty, she evaluates the County's equipment, determines whether any of the machines need to be repaired or replaced,

makes recommendations as to the type and amount of equipment and supplies the County should purchase, and the service contracts necessary to maintain some of the equipment. She submits her recommendations to the appropriate committees. Her budget recommendations are ultimately submitted to the County Board for approval after passing both of the above-named committees. Meyers cannot make changes in the budget allocations without her committees' approval.

Meyers participated in the hiring of the temporary grant employe along with the Register of Deeds. After screening the written applications, they interviewed six individuals and jointly agreed on who to hire. When hiring a regular County employe, Meyers would be a participant in the interview process along with the Administrative Coordinator and three members of the County Board. She has never had an opportunity to promote any employes. Meyers has the authority to issue verbal warnings to the employes in her Department. Any discipline above and beyond this is cleared with the Administrative Coordinator and/or the appropriate County Board committee. She has not disciplined any employes other than to verbally reprimand them. She does evaluate the one regular part-time employe in her Department and approves requests for vacation and sick leave for that employe. Evaluations which are unsatisfactory may be used for disciplinary purposes. Meyers has the authority to evaluate probationary employes and recommended whether they continue employment with the County.

Meyers earns a salary of \$25,649, which breaks down to approximately \$12.46 per hour. The maximum wage rate for the regular part-time employe is \$9.09 per hour. Meyers does not have the authority to authorize overtime or to increase the hours of the part-time employe who works in her Department. She does have authority to schedule existing hours to best meet work needs.

Meyers does not exercise supervisory responsibilities in sufficient combination and degree to be deemed a supervisor. Meyers does not possess sufficient authority to commit the County's resources nor participate sufficiently in the formulation, determination and implementation of policy so as to render her a managerial employe.

7. The occupant of the Maintenance Foreman or Maintenance Coordinator position is David Franz. His job description is as follows:

MAINTENANCE COORDINATOR

Characteristic Work of the Class:

Nature: Responsible for the coordination of all maintenance functions required for upkeep and operation of all County buildings and grounds. Performs related duties as assigned.

Examples of Duties:

1. Directs and assists with the operation and maintenance of heating, plumbing, air conditioning

- and phone system units of county buildings.
2. Directs, schedules, and assists the staff in the day to day operations of the Courthouse and Jail Buildings.
 3. Coordinates purchasing of supplies and equipment.
 4. Coordinates an equipment preventive maintenance program.
 5. Conducts periodic inspections of county buildings.
 6. Remains on call twenty-four hours a day for emergency repairs.
 7. Conducts performance evaluations and effectively recommends hiring and disciplinary actions.
 8. Assists in maintaining records of time and work done and materials used.
 9. Inspects buildings to determine needed repairs.
 10. Monitors the construction and remodeling of County buildings.
 11. Examines sub-contracted work to ensure adherence to specifications.
 12. Works with architects and engineers as necessary.
 13. Prepares, presents and administers Maintenance budget for Courthouse and Jail.
 14. Assists the Highway, Homestead and Park personnel in preparing annual budgets as relates to the maintenance of buildings, monitors maintenance budget during year.
 15. Actively participates in Department Head meetings.
 16. Reports to the Administrative Coordinator on a regular basis.
 17. Meets with the Public Grounds and Property Committee and other County Committees as requested.
 18. It is unlikely an employee will perform all the duties listed on a regular basis, nor is the list exhaustive in the sense it covers all the duties an employee may be required to perform. The examples are merely indicative, not restrictive.

Qualifications

Essential Knowledge and Abilities:

1. Thorough knowledge of building maintenance requirements, materials, equipment and methods.
2. Thorough knowledge of carpentry, plumbing,

- painting and electrical trades.
3. Thorough knowledge of air conditioning and heating equipment.
 4. Ability to establish and maintain effective working relationships with co-workers, fellow employees and the public.
 5. Ability to select, evaluate and supervise employees.

Desirable Training and Experience:

1. Vocational/technical courses in building maintenance and management practices.
 2. Extensive experience in building and equipment maintenance.
 3. Some experience in a supervisory capacity
- or
4. An equivalent combination and training which provides the required knowledge, skills and abilities.

Special Requirement:

1. Possession of a valid Wisconsin Driver's License.

There are three other employees in the Maintenance Department, a full-time maintenance employe, a full-time janitor, and a part-time janitor. The first two hours of Franz's work day is spent making inspections to ascertain if the Courthouse facilities are clean or need some other type of maintenance. Franz reviews work orders that have been filled out by other departments, prioritizes the various maintenance jobs and assigns them to the maintenance and janitorial staff. Franz also assigned the work to the other employes in the Department prior to being excluded from the bargaining unit as the Maintenance Coordinator. He directs the maintenance employes in the performance of certain maintenance jobs. Franz spends approximately fifty percent of his work day performing more complex maintenance tasks and, on occasion, cleaning or groundskeeping tasks.

Franz has the authority to issue verbal and written reprimands. He must, however, involve the Administrative Coordinator's office and/or a County Board committee for any discipline involving a suspension or discharge. He has never promoted an employe nor administered any discipline of any form higher than a verbal warning. He has participated in the hiring process. He submitted the appropriate form to the Building and Grounds Committee to fill a position vacated by a resigning employe and upon receiving approval, advertised in the public newspaper. Of the fifty applicants, Franz narrowed the field down to eight candidates. The Administrative Coordinator reviewed these actions along with the head of the Building and Grounds Committee. Franz interviewed the candidates along with the three members of the Building and Grounds Committee. He recommended selecting one of the candidates and the three members of the Committee accepted his recommendation.

He does not schedule vacations because seniority dictates who is entitled to take them, but he does authorize requests for time off for medical appointments, sick leave, and overtime. The overtime is usually due to the need for snow removal. Franz writes annual performance evaluations on the other employees in his Department which may be used for disciplinary purposes. He will perform a three-month and final evaluation on any probationary employee. He will then make an effective recommendation to the County Administrator and the Salary and Personnel Committee as to whether or not to retain the employee.

Franz prepares the initial budget for his Department. He then submits it to the Building and Grounds Committee and the Finance Committee prior to the County Board reviewing it. Franz is also responsible for coordinating certain County projects in terms of inviting outside contractors to make bids. The Building and Grounds Committee then determines which contractor to hire. They have not necessarily listened to Franz's recommendations in this respect. Franz is responsible for maintaining the County's relationship with the contractor and ensuring that the tasks are correctly performed. Franz is a salaried employee earning \$31,800 annually. His hourly rate averages approximately \$15.00 per hour as compared to the most senior maintenance employee rate of \$11.85 per hour.

Franz exercises supervisory responsibilities in sufficient combination and degree to be deemed a supervisor.

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

CONCLUSIONS OF LAW

1. The occupant of the position of Central Duplicating Coordinator is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is not a managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupant of the position of Maintenance Coordinator is a supervisor 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.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Central Duplicating Coordinator is included in the bargaining unit described

in Finding of Fact 2 and the position of Maintenance Coordinator is excluded from the bargaining unit described in Finding of Fact 2.

1/ Footnote on following page.

Given under our hands and seal at the City of Madison, Wisconsin
this 5th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/
Herman Torosian, Commissioner

I dissent in part.

By William K. Strycker /s/

William

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- 1/ 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

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

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.

CALUMET COUNTY

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

BACKGROUND

The only issues for determination by the Commission are whether the positions of Central Duplicating Coordinator and Maintenance Coordinator are supervisory or managerial. The positions were included in the bargaining unit prior to 1992, but were modified and removed from the bargaining unit by the County in 1992.

POSITION OF THE PARTIES

The County contends that both positions are supervisory or, in the alternative, managerial in nature. It stresses that the occupants of both positions are responsible for the direction and supervision of staff in their respective departments. It notes the authority of both Meyers and Franz to direct and assign day-to-day work and special projects. It stresses that there are no other direct supervisors of the reproduction and maintenance staffs other than Meyers and Franz. The County argues that both have the authority to recommend the hire and discipline of employees. Both can issue verbal and written warnings and recommend suspension. Both can and do evaluate employees as well as approve vacation, other time off and, in the case of Franz, overtime. The County points to a substantial difference in pay between Meyers and Franz and those employees whom they supervise. Although both perform some bargaining unit work, this is insufficient to disqualify them from being found to be supervisory if a sufficient combination of supervisory indicia exist.

With respect to its claim that both are managerial employees, the County claims that Meyers and Franz are involved in the formulation, determination, and implementation of managerial policy. It notes that both the Central Duplicating Coordinator and the Maintenance Coordinator independently prepare budgets for their respective departments and submit them to the Building and Grounds, Finance and Audit Committees and the County Board for approval. Their recommendations are usually followed. Both also prepare the Annual Reports for their respective departments. Meyers has a substantial role in purchasing expensive capital equipment, while Franz has substantial authority to approve and inspect subcontracted work, as well as authority to recommend repairs and capital improvements on building and grounds matters. The County urges the Commission to find that both are managerial employees as well as supervisory employees.

The Union argues that the record does not support supervisory or managerial status for either the Central Duplicating Coordinator or the Maintenance Coordinator. It stresses that both individuals were in the bargaining unit until the County removed them. With regard to Meyers, the Union notes that there is only one regular part-time employee in her Department. It points out that

Meyers herself is unsure of what her responsibilities or role in the hiring process is but "hopes" her recommendations would be followed. Although Franz has been involved in the hiring of a full-time janitor, he had to get committee approval in order to hire and the Administrative Coordinator reviews all of his actions with respect to the hiring. In the Union's view, neither employe has hired independently. It points out that all of the evaluations performed by Meyers and Franz must be turned into the Administrative Coordinator and signed by him. The Union stresses that these evaluations are not used for any measurement that results in monetary increases or decreases for employes based upon merit. Any disciplinary action beyond a written reprimand would also be handled by the Administrative Coordinator.

The Union asserts that Meyers' authority to direct and assign work is circumscribed. She cannot grant overtime or increase hours of work for the one other employe in her Department. She cannot move budgeted money from one item to another independently. With regard to Meyers, it notes that vacations are assigned by seniority and that the Administrative Coordinator receives employe calls when employes are reporting sick. According to the Union, the Maintenance Department uses a work order system which results in the maintenance employe being given the work orders from other departments by Franz. The janitors receive their cleaning schedules from Franz. These actions are not supervisory in nature but rather the duties of a leadman.

The Union stresses that little has changed in the actual authority given to either Meyers or Franz. The Administrative Coordinator and the Building and Grounds Committee still "call all the shots". The influence of the Administrative Coordinator and the Committee has not lessened. Both positions report to the Administrative Coordinator on a daily basis. Both hiring and discipline involve heavy input from the Administrative Coordinator and various committees constituted of County Board Supervisors, who have the final say in everything.

The Union claims that the level of pay received by both the Central Duplicating Coordinator and the Maintenance Coordinator is a result of their advanced skills and expertise in their respective areas and not the result of any tangential supervisory duties. Both spend the majority of their time performing bargaining unit but not supervisory duties. In the Union's view, both supervise activities versus supervising employes. They are working foreman or leadmen who should remain in the bargaining unit.

The Union does not believe that either employe is a managerial employe. The contents of the budgets which they submit are comprised of items of a routine nature, such as capital expenditures, salaries, etc. Meyers and Franz act more like purchasing agents with expertise seeking a good deal on necessary items. They are not establishing an original budget per se. Moreover, neither has the authority to commit the employer's resources. They cannot deviate from an established budget item. The Union alleges that Franz has limited authority to even recommend where outside contractors are concerned. He could not choose a contractor but had to take his choice to a committee which did not follow his recommendation. None of his duties affect the nature or direction of the employer's operation.

Accordingly, the Union disputes County contentions that Meyers or Franz are either supervisory or managerial, asserting that they are municipal employees who should be included in the collective bargaining unit.

DISCUSSION:

Supervisory Status

In order to determine whether a position is supervisory in nature, the Commission has consistently considered the following factors:

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
7. The amount of independent judgment and discretion exercised in the supervision of employees. ^{2/}

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and

^{2/} City of La Crosse, Dec. Nos. 27361-A, No. 7833-C, (WERC, 1994); City of Lancaster, Dec. No. 27180 (WERC, 2/92).

degree to warrant finding the position supervisory. 3/

Reproduction Coordinator

In reviewing Meyers' job duties and applying the above criteria, we are convinced that while Meyers performs some supervisory related duties, the above factors are not present in sufficient combination and degree to warrant a finding that her position is supervisory.

As Reproduction Coordinator, Meyers is responsible for the operation of the Reproduction Department and supervising the activity of one regular part-time employee who works four days a week. Periodically, she also oversees the work of temporary employees who are hired through grants or special programs such as Private Industry Council (PIC) and Columbia programs. 4/ Meanwhile, she spends almost all of her time performing non-supervisory duties. 5/

Meyers is responsible for directing and evaluating the work of the part-time and temporary employees and is the only individual present in the Department who directs the activities of said employees. The Administrative Coordinator, however, is available for consultation whenever Meyers so desires. Meyers' annual evaluations are signed by both her and the Administrative Coordinator. The evaluations could lead to oral reprimands.

Meyers' role in the hiring process 6/ in the Duplicating Department is as follows. She is

3/ Somerset School District, Dec. No. 24986-A (WERC, 3/88).

4/ PIC is a federally funded program that places college students in summer programs. Each PIC student is only available 360 hours. Columbia is a program placing individuals with disabilities and requires no funds by the County. They are available 180 hours. There have only been 19 PIC and Columbia program employees in an eleven year period.

5/ The County correctly cites West Bend Joint School District No. 1, Dec. No. 16669-A (WERC, 12/92) as an instance which an individual who spent the majority of her time performing clerical duties was nonetheless found to be a supervisor. However, that individual had responsibilities over six employees and had demonstrated substantial independent hiring authority.

6/ This does not include PIC and Columbia program employees. The County applies to participate in those programs and

responsible for advertising a vacant position and along with the Administrative Coordinator screens applicants. She serves as a member of the interview committee along with the Administrative Coordinator and three Home Committee members. The one employe she has been involved with hiring was an LTE temporary employe hired through a temporary service agency to fill a grant position. Meyers and the Register of Deeds narrowed the list of applicants from ten to six. After interviews there was a unanimous decision among Meyers, the Register of Deeds and the Home Committee members on which applicant to hire. In that case, Meyers consulted with the Administrative Coordinator for guidance in making sure she was proceeding correctly. With respect to other types of hire, Meyers responded as follows when asked about making a recommendation:

Q Are you going to make recommendations as to who they should hire?

A I would hope I would have something to say what it, yes.

Q And are they going to listen to your recommendations, do you know?

A My Home Committee does follow through on my recommendations. I feel confident they would at least listen or hear me out.

We are not convinced from record evidence that Meyers has the authority to effectively recommend the hiring of new employes.

Meyers' authority to discipline is limited. During her entire tenure she once had to talk to an employe about a problem. She feels she has the authority to issue a verbal and written warnings. However, she seems to be confused with the extent of her authority. Her testimony was as follows:

Q All right. Do you think you have the authority to go beyond a written warning without consulting someone else?

A Yes, I feel I could as a department head.

Q To what -- I mean, what's your -- I'm trying to get at what's your understanding of your authority here.

A Okay. My understanding, if I need to go that far, it would be

participants are provided.

a verbal. I would have a writing -- written notice and probably follow up with that pink slip, but before I'm going to suspend or before I'm going to take any action in that regard, I would get my Home Committee involved as far as jointly what kind of a recommendation to make. But I would work with them and pass on -- if there is a problem, I would pass it on to them. I work closely with my Home Committee on that.

Based on the foregoing, it appears Meyers herself is uncertain of her independent authority to issue even written warnings. Thus, we are not persuaded that Meyers has the authority to issue any more than verbal warnings without the close involvement of her Home Committee.

Meyers does have authority to approve vacation and time off requests. However, when the regular part-time employee wanted to change her hours to accommodate her child and school, she consulted with the Administrative Coordinator before a decision was made. Again when the same employee broke her foot and was absent for several weeks, she consulted with the Administrative Coordinator about the situation.

Meyers is paid significantly more than the employees whose work she directs. But where, as here, we are comparing the wages of an eleven and one-half year full-time lead worker with that of a three year part-time employee and temporary employees, we do not find the difference in pay comparison convincing as to supervisory status.

Our colleague disagrees with our conclusion and cites a previous Calumet case in support of his position. But that case is easily distinguishable in that there the Judge clearly gave the disputed Register in Probate position complete supervisory authority, advised the occupant of said position of her authority, and the occupant of said position understood this. Those facts do not appear in the instant matter.

Moreover, it is noteworthy that while the "ability to select, evaluate and supervise employees" is listed under the qualifications of the Central Duplicating Coordinator position, there are no supervisory duties listed under the example of duties enumerated for said position. 7/ This is in contrast to the Maintenance Coordinator position where one of the examples specifically listed is "conduct performance evaluation and effectively recommends hiring and discipline actions."

7/ This is not to say we rely on position description rather than actual performance of duties in deciding supervisory status, but only to point out that the employer itself did not consider the alleged supervisory duties of the position significant enough to list in the recent position description.

From a review of the record here, we are not convinced that Meyers possesses and exercises enough supervisory authority to warrant her exclusion. Rather, we conclude that Meyers is a working supervisor.

Maintenance Coordinator

Franz is responsible for independently directing the work of the employees in his Department and is the only individual who exercises direct authority over said employees. While Meyers directs the work of only one part-time employee in her department as well as that of temporary employees who are present from time to time, Franz directs the work of two full-time and one part-time employees.

Like Meyers, Franz is paid significantly more than the employees whose work he directs and we conclude the pay differential is primarily related to his skills, rather than supervisory responsibility.

Both individuals primarily supervise the activity of the employees in the departments but Franz spends less time than Meyers performing the same general type of work as the employees in their departments.

In contrast to Meyers, we are satisfied that Franz plays a significant role in the hiring process and has the authority to independently issue written reprimands.

Having considered the matter, we are satisfied that Franz does possess the supervisory indicia in sufficient combination and degree to warrant exclusion from the unit. Critical to our decision is the larger number of employees directed by Franz, the greater amount of time he spends directing the work of employees and his more substantial authority as to discipline and hiring. Thus, we have excluded Franz from the unit as a supervisor, and turn to the question of whether Meyers is a managerial employee.

Managerial Status

In the absence of a statutory definition of a "managerial" employe, the Commission, through case law, has developed a definition of managerial status. A managerial employe is one who participates in the formulation, determination and implementation of management policy, or who has effective authority to commit the employer's resources. 8/ To yield managerial status, the involvement with the municipal employer's policies must be "at a relatively high level of responsibility" 9/ and be "to a sufficient degree." 10/ Preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 11/

As to Meyers status as a managerial employe, we conclude that her budgetary and policy roles are not sufficient to warrant her exclusion from the unit. Simply put, her budgetary responsibilities do not involve the requisite allocation of resources in a way which significantly affect the nature and direction of the County. Similarly, her policy contribution role in department head meetings is not at a sufficiently high level of responsibility to produce managerial status.

Given the foregoing, we conclude that Meyers supervisory and/or managerial responsibilities are not sufficient to exclude her from the unit.

Dated at Madison, Wisconsin this 5th day of August, 1994.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

Herman Torosian /s/

Herman Torosian

I dissent in part.

By William K. Strycker /s/

William K. Strycker

8/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Milwaukee v. WERC, 71 Wis.2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).

9/ City of Milwaukee, Dec. No. 12035-A (WERC, 2/74).

10/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73).

11/ DePere Unified School District, Dec. No. 26572 (WERC, 8/90).

Dissenting Opinion of Commissioner Strycker

I disagree with my colleagues' conclusion that Linda Meyers, the Central Duplicating Coordinator, is not a supervisory employe. The record supports that Meyers functions as a department head and is completely responsible for the operation of the Central Duplicating Department which provides printing and duplicating services to all other County departments. She functions very independently receiving only minimal supervision from the County's Administrative Coordinator. Meyers directs the staff and assigns all work. She develops priorities and makes assignment changes when necessary. While she does not have the authority or resources to increase hours above the budgeted number, she does adjust employes' work schedules depending upon workload. Based upon the needs of the department, she has increased weekly hours to meet production demands. At other times she has decreased hours so as not to exceed her budget.

Meyers supervises one regular part-time employe who works a sixty percent schedule spread over four days a week. She also supervises varying numbers of program employes depending upon available funds and County needs. Over a ten year period, Meyers supervised 19 different program employes who worked a varying number of hours on a part-time basis. When program employes are utilized Meyers is responsible for training, assigning work and overseeing their performance.

The Central Duplicating Coordinator plays a significant role in the hiring process. She testified without challenge that she would be responsible for hiring a replacement if the Central Duplicating Operator position became vacant. Meyers would be responsible for advertising for the position and evaluating the technical expertise of the candidates. In conjunction with the Administrative Coordinator, she would screen applications and serve as a member of the interviewing committee along with County Board members. While her testimony is deferential regarding the role of her Home Committee in the hiring process, Meyers believes that her recommendation for hiring would be followed. She has hired grant employes. She advertised for the last vacancy and screened applications along with the Register of Deeds. Meyers developed the interview questions and the scoring method. After the interviews, a unanimous decision was reached regarding the candidate to be hired.

The Central Duplicating Coordinator has the authority to discipline and evaluate employes. She can issue verbal and written discipline independently. Although she has not had occasion to do so, she believes that she has the authority to recommend suspension but would only do so after discussions with the Administrative Coordinator and her Home Committee. The Central Duplicating Coordinator also has the authority to evaluate employes. Meyers independently completes the annual evaluation of the Central Duplicating Operator. While the Administrative Coordinator signs the form after the evaluation takes place, there is no evidence to suggest that he plays an active role in the process. These evaluations are meaningful as they can be used in the disciplinary process documenting unsatisfactory job performance. Meyers also has the authority to evaluate probationary employes and recommend whether they continue employment with the

County.

Ms. Meyers has the authority to grant or deny vacation and time-off requests. Because of workload requirements, she has denied time-off requests so that priority assignments could be completed. The Central Duplicating Coordinator also approves sick leave requests.

There is a significant wage differential between the Central Duplicating Coordinator and the Central Duplicating Operator. Meyers receives \$12.46 per hour while the operator receives \$9.09 per hour. This difference of \$3.37 per hour represents a 37 percent differential. While some of this difference may exist because of the higher level duplicating duties performed by Meyers, I conclude that a substantial proportion of this differential is due to her supervisory responsibilities.

The Commission reached the same conclusion in an earlier dispute between the same parties [Calumet County, Dec. No. 11158-A (WERC, 9/88)]. In that case the Commission concluded that the Register in Probate was a supervisor. The Register functioned as a department head and possessed authority in hiring, evaluations and discipline. Although the Register only supervised a part-time secretary working a forty percent schedule, the Commission concluded that there was no evidence that anyone else supervised the secretary's work. Further, there was no evidence that contradicted the Personnel and General Administrative Policies manual that vested supervisory powers in County department heads. The Commission viewed as significant the fact that the Register scheduled and assigned work to the secretary, had great discretion in assigning that work within the part-time limitation and approved time-off requests. Regarding the Union's argument that the Register's supervisory authority was de minimus the Commission stated:

...

While we recognize that the Register currently supervises only a 40 percent full-time equivalent employe, we find that she, and no one else, is the supervisor of that employe. While the third criterion for determining supervisory status addresses the number of employes supervised, that criterion is only one of seven, and where, as here, the authority possessed is clearly supervisory, and there is no one else responsible for the

supervision of that employe, we find the disputed position to be supervisory. 9/

9/ See, for example, Portage County, Dec. No. 6478-C (WERC, 10/87) for a position which supervised a single, part-time employe.

The supervisory role of the Register in Probate is virtually identical to that of the Central Duplicating Coordinator. Meyers, also a department head, is clearly the only supervisor of the Central Duplicating Operator and department program employes.

My colleagues note that the Maintenance Coordinator position description lists "conducts performance evaluations and effectively recommends hiring and disciplinary actions," as examples of duties. While this example is not listed on Meyers' job description, I do not view that as significant. While directing, scheduling and assisting staff is included as a duty example for the Central Duplicating Coordinator, the form specifically states that the duty listing is not intended to be all inclusive. More important, in my view, is that the "ability to select, evaluate and supervise employees" is listed as an "essential knowledge and ability" under the qualifications portion of the position description. It is also significant in my view that the Maintenance Coordinator and Central Duplicating Coordinator positions carry the identical supervisory qualifications. Additionally, the Commission has consistently relied upon the actual duties performed by an individual rather than those listed (or not listed) on a position description.

Based upon the complete record, I find that the Central Duplicating Coordinator exercises supervisory authority in sufficient combination and degree to be a supervisor within the meaning of MERA.

Dated at Madison, Wisconsin this 5th day of August, 1994.

By William K. Strycker /s/

William