

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

WISCONSIN COUNCIL OF COUNTY AND  
MUNICIPAL EMPLOYEES, AFSCME, AFL-CIO:

Involving Certain Employes of :

NORTH FOND DU LAC JOINT SCHOOL  
DISTRICT 11  
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Case I  
No. 15810 ME-813  
Decision No. 11182

Appearances:

Mr. William Sandoval, District Representative, AFSCME, AFL-CIO,  
appearing on behalf of the Petitioner.

Thiel & Thiel, Attorneys at Law, by Mr. Roy W. Thiel, and Mr. Roy W. Thiel, Jr., and Mr. Douglas Hendrickson, District Administrator, North Fond du Lac School District, appearing on behalf of the Municipal Employer.

DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, by its District Representative, William Sandoval, having petitioned the Wisconsin Employment Relations Commission to conduct an election pursuant to Section 111.70 of the Wisconsin Statutes among certain employes of North Fond du Lac Joint School District 11; and hearing on such petition having been conducted on July 20, 1972, at Fond du Lac, Wisconsin, by Jos. B. Kerkman, Commissioner; and the Commission having considered the evidence and the positions of the parties, and being satisfied that a question has arisen concerning representation for certain employes of North Fond du Lac Joint School District 11;

NOW, THEREFORE, it is

DIRECTED

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days from the date of this Directive in the collective bargaining unit consisting of all regular full-time and regular part-time custodial and maintenance employes of North Fond du Lac Joint School District 11, excluding professional, supervisory, managerial, confidential and administrative employes, who were employed by the Municipal Employer on June 1, 1972, unless such employes quit their employment or are terminated for cause prior to the date of the election, for the purpose of determining whether a majority of such employes desire to be represented by Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, for the purpose of collective bargaining with North Fond du Lac Joint School District 11 on questions of wages, hours and conditions of employment.

Given under our hands and seal at the  
City of Madison, Wisconsin, this 28th  
day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney  
Morris Slavney, Chairman

Jos. B. Kerkman  
Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

During the course of the hearing the parties stipulated to the conduct of the election and further stipulated that Steve Opperman and Kenneth Palmer are summer employees only, and fall within the definition of casual employees and should be excluded from the unit. The parties further stipulated that those persons employed under the Neighborhood Youth Corp Program were not employees within the meaning of Section 111.70 and would be excluded from the unit. An issue arose as to whether Jerome Will, the Chief Maintenance Man, should be excluded from the unit as a supervisory employee of the District. The Employer argues that Mr. Will's duties are sufficient to exclude him under the statutory definition of a supervisor. The Union contends that the position occupied by Mr. Will should be included because his responsibilities are not sufficient to exclude him as a supervisor.

Section 111.70(1)(o)1 reads:

"'Supervisor' means:

1. As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, 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."

Evidence regarding Mr. Will's responsibilities was adduced through the testimony of Mr. Hendrickson, District Administrator, and testimony of Mr. Jerome H. Will, Chief Maintenance Man. The testimony of both parties agree as to the duties performed by Mr. Will as Chief Maintenance Man. The record is clear that Mr. Will has not only effectively recommended hire and dismissal of employees, but has also, in at least one case, made all hiring arrangements for a summer employee without consultation with Mr. Hendrickson, the District Administrator, or anyone else.

The testimony further discloses that Mr. Will has complete responsibility for direction of the work force in the Maintenance and Custodial Department. It is clear to the Commission that Will plans the work and makes work assignments to the employees. It is also clear from the record that the District Administrator has never issued direct orders to any Maintenance Department employee and further, in cases where a principal directs a custodial employee to perform certain duties and where such direction from the principal conflicts with the direction from the Chief Maintenance Man, the Chief Maintenance Man's direction prevails.

Mr. Will now possesses and has possessed the authority to adjust complaints of employees and prospectively the Employer testifies that should the Union be certified as the collective bargaining agent for the custodial and maintenance employees, the Employer would intend to make the Chief Maintenance Man the party responsible for handling grievances in the first step of the grievance procedure.

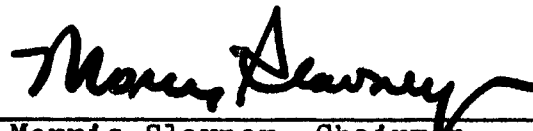
While Mr. Will spends 75% of his time performing work normally performed within the scope of the bargaining unit and only 25% in supervisory and managerial duties, he is the only supervisor in the District who directs the work of the custodial employees and there is no intervening layer of supervision between the Chief Maintenance Man and the District Administrator who is the Chief Administrative Officer of the School District. The Commission also notes that Mr. Will is paid 71¢ per hour more than the next highest paid man in the Department.

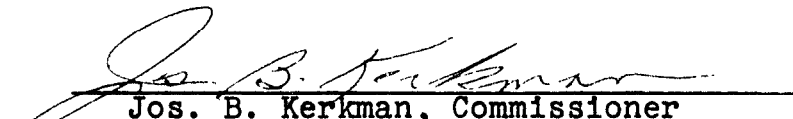
While the amount of time spent performing bargaining unit work is one of the factors the Commission considers in determining whether an employee is a supervisor, in this case Mr. Will clearly performs in a supervisory capacity and the Commission is satisfied that the position of Chief Maintenance Man should be, and is excluded from, the unit.

Dated at Madison, Wisconsin, this 28th day of July, 1972.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Jos. B. Kerkman, Commissioner