

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF SUPERIOR

Case XXI  
No. 16565 ME-890  
Decision No. 11758

Mr. Richard Erickson, appearing on behalf of AFSCME, Local 235.

Building Inspector,  
City Assessor,  
Library Director,  
Sup. of Public Works,  
Sup. of Streets,  
Asst. Sup. of Streets,  
Computer Programmer,

By Morris Slaney  
Morris Slaney, Chairman

Zel S. Rice II  
Zel S. Rice II, Commissioner

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

MEMORANDUM ACCOMPANYING  
ORDER CLARIFYING BARGAINING UNIT

Local 235, American Federation of State, County and Municipal Employees, AFL-CIO, for at least the last 20 years, has been the recognized exclusive bargaining representative for certain employees of the City of Superior. The current collective bargaining agreement, which also covers employees in the bargaining unit represented by Local 244, AFSCME, AFL-CIO, contains the following recognition clause:

"ARTICLE I  
Recognition

The City of Superior recognizes said Unions as the exclusive representative of its employees in the City Hall, Public Works, Equipment Depot, Park and Recreation Departments and Sewage Disposal Plant, except for the following Department Heads and/or other titled positions:

City Attorney,  
Finance Director,  
Public Works Director,  
Health Commissioner,  
Park & Recreation Director,  
Welfare Director,  
City Clerk,

Building Inspector,  
City Assessor,  
Library Director,  
Sup. of Public Works,  
Sup. of Streets,  
Asst. Sup. of Streets,  
Computer Programmer,

for the purpose of collective bargaining with respect to wages, hours, and working conditions and other conditions of employment. The term employee refers to all employees covered by the terms of this Agreement."

On February 28, 1973, the Municipal Employer filed with the Commission a petition for clarification of bargaining unit wherein it seeks exclusion of the following three positions from the bargaining unit; the Recreation Supervisor, the Deputy Treasurer, and all Nurses. At the hearing conducted herein, the Municipal Employer argued that the Recreation Supervisor is both a professional and supervisory employee; that the Deputy Treasurer is both a supervisory and confidential employee; and that Nurses are professional employees. During the course of the hearing Local 235 conceded that Nurses are professional employees and, therefore, on said basis should properly be excluded from the collective bargaining unit described above. Therefore the Nurse positions are excluded from the unit.

Deputy Treasurer

The position of Deputy Treasurer is currently occupied by Raymond Harding; Harding's immediate supervisor is the City Treasurer who is directly responsible for the operation of his department. The position of City Treasurer is excluded from the bargaining unit.

Harding's day-to-day responsibilities consist of actually performing or assigning the following duties: counting the daily intake of cash; making bank deposits; posting accounts; balancing books; and balancing cash to cash statements. Harding is also solely responsible for the collection of taxes and assists the City Treasurer in preparing the City budget.

The Commission, in determining whether an employee is a supervisor considers the following factors:

1. The authority to effectively recommend 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 skill or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is 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.

In applying the above factors to the duties and responsibilities of the Deputy Treasurer, it is obvious to the Commission that Harding is not a supervisor within the meaning of Section 111.70. Harding is more like a "lead man" supervising the activities of six other employees in the City Treasurer's office rather than spending a substantial majority of his time primarily supervising employees. Harding does not have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. Based on the above the Commission concludes the position of Deputy Treasurer is not a supervisory position and, therefore, is included in the collective bargaining unit.

Further, the Commission is not convinced that said employee is a confidential employee as alleged by the City.

The record indicates that the City Attorney, who negotiated for the City in the past, at times utilized Harding as a resource man, i.e., to cost out certain proposals. Whether Harding is so used currently is questionable. While Harding is responsible for performing work on the City budget, he is not a member of, or a part of, the City's negotiating team or involved in the process of negotiations. The fact that he at times would take part in conversations regarding negotiations is not in itself sufficient to exclude him as a confidential employee. The Commission has held 1/, where the amount of time spent by an employee pertaining to confidential labor relations matters is clearly de minimus, said employee will not be excluded as a confidential employee. In the instant case it appears that the amount of time the Deputy Treasurer will be, or could be, spending in confidential labor relations matters is de minimus and therefore the Commission concludes that the Deputy Treasurer is properly included in the collective bargaining unit.

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1/ Sheboygan Board of Education, (10488) 8/71; Eau Claire Public Library, (10789) 2/72.

### Recreation Supervisor

Keith Duff currently occupies the position Recreation Supervisor. For six months of the year, April 15-October 15, Duff is the City's full-time golf pro. Duff is directly responsible for management and operation of the City golf course and pro shop. At the beginning of each season, Duff screens and recommends the hiring of part-time employees to fill six seasonal positions. Said part-time employees are under the direct supervision of the golf pro.

During the remainder of the year, October 15-April 15, he is responsible for the City's basketball and hockey programs. This entails the setting up of schedules; the hiring, and if necessary, firing of 40 to 50 officials; public relations work needed to coordinate the City programs and handle problems and grievances of people involved in the programs, as well as parents. In reviewing the responsibilities and duties of the position of Recreation Supervisor, the Commission is not convinced said position is a supervisory position as argued by the City, but rather the Commission concludes that said position is a managerial position and should be excluded from the bargaining unit on the latter basis. Duff does not spend a substantial part of his time exercising authority over other employees to qualify as a supervisor within the meaning of Section 111.70. In reviewing the duties of the position, however, described above, which requires Duff to manage and operate the golf course and pro shop and assume the responsibility for the City basketball and hockey programs, the Commission concludes that said position is aligned with management in that Duff exercises independent judgment in the formulation and effectuation of management policy. For said reason the position of Recreation Supervisor is excluded from the existing collective bargaining unit.


Dated at Madison, Wisconsin, this 18th day of April, 1973.

#### WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slaveney, Chairman

  
Zel S. Rice II, Commissioner

  
Jos. B. Kerkman, Commissioner