

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case IV
No. 16737 ME-921
Decision No. 11931

Mr. Robert J. Oberbeck, Director, WCCME, for the Union.
Mr. Clarence Gorsegner, District Attorney, Clark County.

Clark County Highway Employees Local 546, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission issue a declaratory ruling to determine whether foremen in the employ of Clark County Highway Department are supervisors and should, therefore, be excluded from the collective bargaining unit consisting of: all regular employees of Clark County, Wisconsin, employed in the Clark County Highway Department including all seasonal employees, but excluding supervisory employees and confidential clerical employees; and hearing having been held in the matter on May 21, 1973, Herman Torosian, Hearing Officer, being present; and the Commission having considered the evidence and arguments and being fully advised in the premises, makes and files the following Findings of Fact and Declaratory Ruling.

3. That the Commission on March 13, 1963, issued a Direction of Election wherein the Commission directed that an election be conducted among all regular employees of Clark County, Wisconsin, employed in the Clark County Highway Department including all seasonal employees, but excluding supervisory employees and confidential clerical employees, for purposes of collective bargaining

on questions of wages, hours and conditions of employment; that the Commission in said Direction of Election found the Shop Foreman at the Neillsville Garage, the Crusher Foreman, the Grader Foreman, the General Foreman at the Loyal Garage and the General Foreman at the Owen Garage, to be supervisory employes, and, therefore, excluded from the above mentioned collective bargaining unit; that on April 30, 1963, following an election conducted by the Commission, the Petitioner was certified as the representative of the employes in the above mentioned bargaining unit.

4. The Municipal Employer currently maintains the same five positions, i.e. Shop Foreman at the Neillsville Garage, Crusher Foreman, Grader Foreman, General Foreman at the Loyal Garage and the General Foreman at the Owen Garage; that said positions are currently occupied, respectively, by John Subke, Ted Dux, Ted Schoenherr, Cullen Ayer and Don Zukowski, some of whom occupied the same positions at the time of the Commission's original determination mentioned above; that said individuals have responsibility for supervising employes employed in their respective operations including the authority to impose minor discipline; that while some of said foremen may do bargaining-unit work during the year, all spend a substantial majority of their time supervising employes to justify their exclusion as supervisors; and that said foremen receive \$3.46 per hour which is 2¢ to 35¢ per hour more than the employes they supervise. On the basis of the above and foregoing Findings of Fact, the Commission issues the following

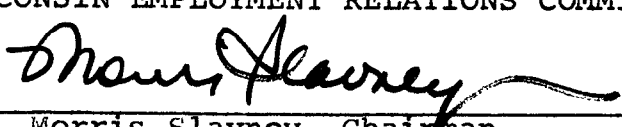
DECLARATORY RULING

That the Shop Foreman at the Neillsville Garage, Crusher Foreman, Grader Foreman, General Foreman at the Loyal Garage and General Foreman at the Owen Garage employed by the Municipal Employer in its County Highway Department, are supervisors within the meaning of Section 111.70 of the Municipal Employment Relations Act; and are, therefore, excluded from the existing collective bargaining unit consisting of all regular employes of Clark County, Wisconsin, employed in the Clark County Highway Department including all seasonal employes, but excluding supervisory employes and confidential clerical employes.

Given under our hands and seal at the
City of Madison, Wisconsin, this 18th
day of June, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Jos. B. Kerkman, Commissioner

MEMORANDUM ACCOMPANYING
DECLARATORY RULING

The Union, in the instant case, seeks a determination of the supervisory status of individuals occupying the following positions: John Subke, Shop Foreman of the Neillsville Garage; Ted Dux, Crusher Foreman; Ted Schoenherr, Grader Foreman; Cullen Ayer, General Foreman of the Loyal Garage; and Don Zukowski, General Foreman of the Owen Garage.

In regard to the above positions, the Commission in its Direction of Election for the bargaining unit involved herein issued in 1963 ^{1/} concluded that all of said positions, some occupied by the same individuals involved herein, were supervisors. In reviewing said decision, the Commission finds that the duties required of said positions have not changed significantly since 1963.

For instance, both Cullen Ayer, General Foreman at the Loyal Garage, and Ted Schoenherr, Grader Foreman, were previously found to be supervisors. Cullen Ayer still spends about 100% of his time for five or six months supervising the black-top and asphalt operations. During the remainder of the time Ayer continues to be responsible for the Loyal Garage and the twelve employees employed there. Ayer may perform some of the duties performed by the men he supervises, but overall, the Commission concludes, his position is still a supervisory position.

Ted Schoenherr, as found previously, is the Grading Foreman for six or seven months of the year at which time he performs entirely as a supervisor. He usually has at least seven or eight employees under his direction. During the remainder of the time Schoenherr may perform bargaining unit work but still spends a majority of his time supervising. The Commission finds no significant change in his duties to conclude that said position is not supervisory.

John Subke, Shop Foreman at Neillsville who was previously found to be a supervisor as a Crusher Foreman, is clearly a supervisor. The uncontroverted evidence establishes that Subke is in charge of the Neillsville Shop and employees employed there and is responsible for all mechanical repairs both in the shop and in the field. He spends 100% of his time supervising except in emergencies, which time he may perform bargaining unit work. Clearly, Subke is a supervisor and excluded from the collective bargaining unit.

Ted Dux, Crusher Foreman, is in charge of the Crusher operation and the transfer of the crusher from pit to pit. The crusher is in operation for approximately five months of the year. The remaining months Dux searches for new material and supervises the truckers who haul loads from the stockpiles. Occasionally, Dux will perform bargaining unit work such as snow plowing and brushing, but on the whole, Dux, spends 85% of his time supervising.

Don Zukowski is the General Foreman at the Owen Garage. He is the trucking Foreman and supervises the hauling of sand and gravel which requires a crew ranging from five to twelve employees. The

^{1/} Clark County, Decision 6268, 3/63.

sand and gravel operation continues for almost the whole year. Zukowski is also responsible for the operation of the Garage itself. While Zukowski may do some bargaining unit work, a substantial majority of his time is spent supervising.

While none of the above foremen have the authority to hire and fire, they do have authority to impose minor discipline. All of them receive \$3.46 per hour which is anywhere from 2¢ to 35¢ more than the men they supervise.

Based on all of the above, the Commission concludes that the positions occupied by Ayer, Schoenherr, Subke, Dux and Zukowski require supervisory duties and are, therefore, excluded from the bargaining unit.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

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