

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

VILLAGE OF GERMANTOWN

Decision No. 12315-B

Mr. Robert W. Lyons, District Representative, District Council 40,
WCCME, AFSCME, AFL-CIO, appearing on behalf of the Petitioner.
Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. Ronald Rutlin,
appearing on behalf of the Municipal Employer.

District Council 40, AFSCME, AFL-CIO, having requested the Wisconsin Employment Relations Commission to issue an Order clarifying the existing certified collective bargaining unit consisting of "all regular full-time and regular part-time employees of the Village of Germantown employed in the Highway, Utility, and Sanitation Departments, excluding professional, supervisory, managerial, confidential, temporary, casual, seasonal and clerical employees", presently represented by the Petitioner, to determine whether the Equipment and Maintenance Superintendent and the Buildings and Grounds Superintendent should be included or excluded from the aforementioned bargaining unit; and the Commission, by Order dated June 17, 1976, having directed that a hearing should be held in the matter to take evidence with respect to said disputed positions; and prior to the conduct of a hearing in the matter the parties having agreed that as presently constituted and structured the Equipment and Maintenance Superintendent should properly be included in the aforementioned bargaining unit; and hearing in the remaining matter having been held at Germantown, Wisconsin, on September 16, 1976, Dennis P. McGilligan, Hearing Officer, being present; and the Commission having considered the evidence, and arguments of the parties, and being fully advised in the premises, makes and files the following

That the position of Superintendent of Buildings and Grounds is hereby excluded from the bargaining unit consisting of "all regular full-time and regular part-time employees of the Village of Germantown employed in the Highway, Utility and Sanitation Departments, excluding professional, supervisory, managerial, confidential, temporary, casual, seasonal and clerical employees," represented by the Petitioner.

Given under our hands and seal at the
City of Madison, Wisconsin this 6th
day of April, 1977.

By

~~Morris Slavney, chairman~~

Herman Torosian, Commissioner

Charles D. Hoornstra, Commissioner

No. 12315-B

MEMORANDUM ACCOMPANYING ORDER
CLARIFYING BARGAINING UNIT

Petitioner is the certified bargaining representative of employees employed by the Village of Germantown in the aforementioned bargaining unit. The Commission, by Order dated June 17, 1976, directed that a hearing be conducted to clarify the aforementioned bargaining unit in order to determine whether the Equipment Maintenance Superintendent and Buildings and Grounds Superintendent should be included or excluded from said unit. Prior to the hearing the parties resolved their differences regarding the Equipment Maintenance Superintendent position and agreed that said position as currently constituted and structured is properly within the aforesaid unit represented by the Petitioner. Hearing in the remaining matter was held on September 16, 1976, at Germantown, Wisconsin. A transcript was issued on November 5, 1976. The Municipal Employer filed a brief on November 22, 1976. The Petitioner filed its brief on December 14, 1976.

PETITIONER'S POSITION:

Petitioner contends that the position of Superintendent of Buildings and Grounds is neither supervisory, nor managerial in nature, and therefore falls within the scope of the collective bargaining unit for the following reasons:

- "A. Neither the job title nor the placement of the position on the organizational chart can be considered determinative;
- "B. The Superintendent of Buildings and Grounds exercises no supervisory authority with respect to the bargaining unit employees or any other regular employees of the Village;
- "C. The Superintendent of Buildings and Grounds spends the majority of his time performing manual tasks similar to those performed by bargaining unit employees;
- "D. The supervisory and managerial functions performed by the Superintendent of Buildings and Grounds comprise only a minor fraction of his daily work routine and therefore must be considered incidental in nature."

MUNICIPAL EMPLOYER'S POSITION:

The Municipal Employer, on the other hand, submits that the position of Building and Grounds Superintendent is clearly managerial and/or supervisory in nature and must, therefore, be excluded from the instant unit.

The Municipal Employer argues that the Building and Grounds Superintendent participates in the formulation, determination and implementation of management policy. In this regard the Municipal Employer maintains that the Building and Grounds Superintendent has authority to commit the Employer's resources; that he is directly responsible to only the Village Administrator as are other department heads; that he is compensated on the department head level and that he directs and oversees the activities of a substantial operation.

In addition the Municipal Employer contends that the Building and Grounds Superintendent functions as an agent of the Employer with respect to employee-employer relationships.

DISCUSSION:

The Municipal Employer seeks the exclusion of this position as managerial. The Petitioner, on the other hand, would include the position in the unit, contending that the Superintendent of Buildings and Grounds possesses no managerial authority.

The Commission has defined managerial employees as those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources. ^{1/}

Under the current organizational chart of the Village of Germantown, the Village Board is ultimately responsible for the management of its affairs. Directly under the Village Board and responsible only to the Village Board are the Village Attorney, the Village Clerk and Administrator, and the Police Chief. Under and directly responsible to the Village Clerk and Administrator are six department heads including the Buildings and Grounds Superintendent. The Superintendent of Buildings and Grounds is responsible only to the Village Clerk and Administrator. No other department head has any authority over him.

Employees in the bargaining unit are paid on an hourly basis. The Buildings and Grounds Superintendent, on the other hand, is paid a salary as are all other department heads. Similarly, while the bargaining unit employees receive overtime pay for hours in excess of their normal work week, the Buildings and Grounds Superintendent and all other department heads do not.

The responsibilities of the Superintendent of Buildings and Grounds include maintenance of the buildings and grounds at the Village Hall, the Library, the Police Station and the two parks operated by the Village. In carrying out these responsibilities, the Superintendent of Buildings and Grounds spends 50% of his time in the performance of manual tasks. More specifically he performs the following tasks; cuts grass; trims bushes; sprays weeds; operates a jeep and snow blower during snow removal operations, maintains ball diamonds and tennis courts in the Village Parks; sweeps and mops floors in the three Village Buildings; vacuums carpeted areas; empties ashtrays and wastebaskets; sets up tables and chairs in the various meeting rooms; washes windows and replaces them when necessary; replaces light bulbs; cleans restrooms and strips floors. During those times of the year when the seasonal employees are working, they assist the Superintendent of Buildings and Grounds in the performance of the above tasks. During the balance of one year, some eight and one half months - the Superintendent is solely responsible for the performance of all grounds work and custodial work noted above.

In addition to the grounds work and custodial work, the Superintendent spends approximately 5% of his time performing routine maintenance work in the various buildings. Tasks involved in this function include the following: minor repairs on and adjustments to the heating and air conditioning equipment; minor plumbing repairs; minor electrical installations and repairs and painting. Again, seasonal or other Village employees assist the Superintendent in these tasks from time to time, but the Superintendent is solely responsible for the performance of these tasks during the balance of the time.

^{1/} City of Milwaukee, (12035-A) 2/74, affd. 71 Wis 2d 709 (1976).

In addition to the above functions, the Superintendent of Buildings and Grounds also tears down and repairs lawnmowers as part of a regular equipment maintenance program. This function is performed during the winter months, and could occupy up to 15% of his work time.

The Superintendent of Buildings and Grounds, spends approximately 10% to 15% of his time in management meetings, budget preparation and deliberation, book work and planning the work of others. The Municipal Employer argues that the Superintendent participates in the formulation determination and implementation of management policy. The Municipal Employer also argues that the Superintendent has authority to commit said Employer's resources. The Petitioner, on the other hand, contends that said duties account for a small part of his work time; are incidental to the true function of his job and therefore are insufficient to warrant his exclusion for the bargaining unit.

The record indicates that the Buildings and Grounds Superintendent participates in monthly management meetings which are also attended by all other department heads of the Village. At these meetings, management policy is formulated on such subjects as employee productivity, personnel relations and the carrying out of policies formulated by the Village Board. Not only does the Buildings and Grounds Superintendent have an equal role in the determination and formulation of policies at these meetings, he has sole responsibility for the implementation of those policies that would affect the Building and Grounds Department.

The record also indicates that the Superintendent of Buildings and Grounds participates in the preparation of the annual budget by providing estimates and projections regarding the cost of supplies, maintenance of the buildings and grounds and capital improvements and expenditures. He makes recommendations with respect to equipment that is needed within his department. Once the Village Board sets the budget, however, the only restraint placed on the Superintendent of Building and Grounds is that he stay within the budgeted items and amounts. In this regard, during 1976, he selected and purchased a \$2,200.00 lawnmower without prior approval from anyone within the Village. In addition, he is authorized to make all purchases of maintenance materials, supplies and any other equipment needed for his operation.

All of the foregoing clearly establishes that the individual occupying the position of Superintendent of Buildings and Grounds is responsible directly to the Village Clerk and Administrator and compensated in a manner similar to other Department heads. He is in sole charge of the maintenance of the buildings and grounds at three Village buildings and two parks. He aids in the preparation of the budget for his department, and is responsible for operating his department within the budget. The Superintendent of Buildings and Grounds expends large sums of money for his operation, and is authorized to make all purchases of maintenance materials, supplies and any other equipment needed for his operation. He is privy to confidential information and is responsible for participation in management related decisions and policies. He functions as an integral part of the management team within the Village of Germantown.

Therefore, based on all of the above, the Commission is satisfied that the newly created position of Superintendent of Buildings and Grounds is managerial. 2/ Accordingly, said position is excluded from the bargaining unit.

2/ City of Ashland (11860-A) 6/73; City of Wausau (14801) 7/76.

The question remains whether the position of Superintendent of Buildings and Grounds is supervisory. The Municipal Employer maintains that his position should be excluded from the unit as supervisory. To the contrary, the Petitioner argues that the Superintendent of Buildings and Grounds possesses no supervisory authority.

The record is clear that the Superintendent of Buildings and Grounds exercises many of the normal supervisory responsibilities with respect to the seasonal employees. However, he spends only a small fraction of his time actually supervising and scheduling the activities of these seasonal employees. Since the Commission has already excluded the position of Superintendent of Buildings and Grounds from the bargaining unit on the basis of its managerial status, the Commission finds it unnecessary to make a determination whether the factors necessary to establish supervisory status are present in sufficient combination to clearly establish that the position is supervisory.

Dated at Madison, Wisconsin this 6th day of April, 1977.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman
Herman Torosian
Herman Torosian, Commissioner
Charles D. Hoornstra
Charles D. Hoornstra, Commissioner