

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

CITY OF NEW BERLIN

Involving Certain Employes of

CITY OF NEW BERLIN

Case 15

No. 53880 ME-3471

Decision No. 13173-G

Appearances:

Mr. Sam Froiland, Staff Representative, 212 South James Street, P.O. Box 944, Waukesha, Wisconsin 53187-0944, on behalf of the New Berlin Public Employees Union Local 2676.

Mr. Lowell Clapp, Director of Human Resources, 3805 South Casper Drive, New Berlin, Wisconsin 53151, on behalf of the City of New Berlin.

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

On February 22, 1996, the City of New Berlin filed a petition with the Wisconsin Employment Relations Commission seeking to clarify a bargaining unit by excluding the Administrative Assistant in the Department of Public Works from the unit as a supervisor. The exclusive collective bargaining representative of the employes in the affected unit, the New Berlin Public Employees Union Local 2676, AFSCME, Council 40, opposed the petition.

Hearing in the matter was held in the City of New Berlin before a member of the Commission's staff, Examiner Debra Wojtowski, on July 17, 1996. A stenographic transcript of the hearing was made available to the parties on July 23, 1996 and supplemental data was provided to the Examiner by the parties by facsimile on July 26, 1996. The parties waived their right to file written argument in the matter and did not make oral argument at the conclusion of the hearing.

The Commission, being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

No. 13173-G

1. The New Berlin Public Employees Union Local 2676, AFSCME, herein the Union, is a labor organization with offices at 212 South James Street, Waukesha, Wisconsin.

2. The City of New Berlin, herein the City, is a municipal employer with offices at 3805 South Casper Drive, New Berlin, Wisconsin. The City maintains a Department of Public Works (DPW), for which Hamid Hashemizadeh is the Director.

3. At all times material herein, the Union has been the sole and exclusive bargaining representative of a City employe bargaining unit described in the parties' 1994-1995 contract as:

all regular full-time and all regular part-time office clerical, technical and related occupational positions, professional library employees and craft employees, but excluding professional engineers, elected officials, department heads, supervisors, confidential employees, managerial employees, seasonal employees, student co-op employees, temporary employees, and employees employed in previously certified bargaining units, for the purpose of collective bargaining on matters concerning wages, hours and all other conditions of employment as certified by the Wisconsin Employment Relations Commission under date of January 6, 1975, Decision No. 13173, and amended by the Wisconsin Employment Relations Commission under date of May 29, 1991, Decision No. 13173D. (sic)

4. Within the bargaining unit described in Finding of Fact 3 is the disputed position of Administrative Assistant, for which the position description is as follows:

Plans, supervises, coordinates, and implements a variety of administrative office services and activities within the Department of Public Works as assigned by the Director. Assists in planning, implementation, evaluation and control of major clerical and bookkeeping functions, and performs administrative services as required. Must be thoroughly oriented with respect to the City and Department of Public Works policies and effectively communicate same to public and staff. Substantial direct public contact relating to a variety of city functions.

ESSENTIAL FUNCTIONS

- Implements and supervises appropriate bookkeeping and department budget controls, including accurate processing of

all department claims and other accounts.

- Responsible for monitoring specific budgetary line items in the following areas: Office Supplies, Part-Time Salary, Books and Pamphlets, and Membership Dues.
- Maintains and files department records and prepares statistical reports for various projects and Divisions.
- Oversees appropriate and orderly flow of department inquiries and communications between staff and public.
- Coordinates and prepares materials, brochures, and legal notices for all Divisions of the Department of Public Works and the New Berlin Recycling Center.
- Interviews, selects, directs, trains, schedules, and supervises temporary/part-time office clerical personnel and provides necessary liaison between office staff, supervisors, division heads, and the Director.
- Types and transmits all correspondence for the Department of Public Works and the Board of Public Works. Serves as the recording secretary to the Board of Public Works and maintains Board files as required. Provides additional secretarial assistance to all Divisions whenever needed.
- Responsible for processing employe contract agreements and maintaining department personnel files, including performance evaluations and other related sensitive matters requiring a certain amount of discretion and confidentiality for all divisions of the Department of Public Works.
- Maintain inventory for necessary office supplies and responsible for care and service of assigned office equipment and machines. Responsible for evaluating office systems, investigating technology available and recommending to the Director any purchases/changes necessary to assist Department in functioning more efficiently.
- Supervises the departmental clerk typist, approving new methods, tasks, and setting priorities for this position.

- Researches and prepares reports, forms, lists, and manuals as required to satisfy department needs.
- Prepares meetings records and develops correspondence from general outlines or verbal instructions.
- Manages the Director's meeting calendar and ensure telephonic communications are satisfactory to meet department requests.
- Provides training, assistance, and problem solving to users of the word processing software as needed.
- Serves as confidential administrative support by analyzing situations and projects, and researching and developing recommendations or appropriate actions to the Director of Public Works.
- Tracks and coordinates Division meetings.
- Coordinate meetings for clerical staff of Department of Public Works.
- Responsible for coordination, assists in creation, distribution, collection, categorizing of customer service surveys for all the division of the Department of Public Works.
- Performs other related Department of Public Works duties as required.
- Analyze and relay the Director's instruction to Division Heads and other staff. Also, to coordinate and follow up with the actions taken and report back to the Director.

POSITION REQUIREMENTS

- High School Diploma plus additional vocation or associated training preferred.
- Minimum of three years experience in related administrative office service including supervisory responsibilities.
- Thorough knowledge and practical skills related to

bookkeeping, typing, dictation, word processing, and general office practices with shorthand skills preferred.

- Ability to perform wide variety of office duties in accurate fashion under exacting deadline pressure.
- Ability to communicate effectively with the public and other City personnel both verbally and in writing.
- Knowledge of all available office equipment.
- Ability to work well under pressure.
- Ability to monitor assigned budgetary items.
- Ability to interview, select, direct, train, schedule, and supervise clerical personnel.
- Ability to provide liaison between office staff, supervisors, division and the Director to coordinate Department activities.
- Ability to provide training and assistance to users of word processing software.
- Ability to serve as confidential administrative support to the Director.
- Ability to investigate, research and analyze requests and direct to appropriate personnel.

5. The incumbent in the Administrative Assistant position is Karrie Schmittinger, who reports directly to the Director of Public Works, Hamid Hashemizadeh. The DPW is comprised of five divisions: Streets, Engineering, Utility, Inspection and Building Maintenance. Within DPW there are eight bargaining unit clericals who report to the various division heads, including Diane Berka who holds a full-time clerical position in the Engineering division and reports directly to City Engineer Mark Schultz. Schultz is Berka's supervisor for the purpose of grievance consideration and the issuance of discipline pursuant to the collective bargaining agreement.

Ms. Schmittinger oversees the work of Ms. Berka. This includes assigning work to her, setting priorities and ensuring that timelines for work completion are met. Ms. Berka transferred into her current DPW position from another City Department, filling a position formerly occupied by Ms. Schmittinger. Ms. Schmittinger had no involvement in Berka's transfer. Like other

members of the bargaining unit, Ms. Berka does not receive a formal written evaluation. When Ms. Berka wishes to take a vacation or sick day, she contacts Ms. Schmittinger who communicates the information to Schultz and Hashemizadeh.

6. Ms. Schmittinger has limited involvement with the other DPW bargaining unit clerical employees, all of whom are directly supervised by their division heads. Ms. Schmittinger coordinates special projects among these employees and among temporary clericals and ensures that all departmental staff are exchanging necessary information. She also coordinates departmental meetings. Ms. Schmittinger has made recommendations to the Director regarding courses and workshops that departmental clerical employees could take to improve their work performance, which recommendations or suggestions the Director has accepted. When employees in a particular DPW division other than Engineering have vacation requests or sick leave requests, they contact the division head not Ms. Schmittinger.

7. The City hires temporary clerical personnel to fill in for permanent employees who are on vacation, to catch up on backlogs, to fill vacant positions while a permanent replacement is hired, and for special projects. Ms. Schmittinger has participated in interviews conducted to hire temporary employees and has also coordinated their work and schedules. Temporary employees worked a total of 539 hours for the Department in 1995 and 87 hours in the first six months of 1996.

In the twelve instances of need for which temporary clericals were utilized during 1995 and 1996, two individuals (Blessing and Hause) were each hired on four separate occasions. A temporary help agency supplied clericals in three other instances and in the twelfth instance, an individual (Graber) was hired for 33 hours of work.

Once Blessing and Hause were hired to meet an initial need for temporary help and performed satisfactorily, the City did not go through a formal re-hiring process when Blessing or Hause performed work on subsequent occasions. The City simply offered them additional work opportunities.

When interviews were conducted for temporary clericals, the DPW hire of temporary personnel began with the determination of need, followed by advertising by the Human Resources Department (HRD). After an initial screening as to qualifications by the HRD, HRD and DPW conduct joint interviews. Schmittinger participated in these interviews and posed questions to the applicants along with HRD personnel and, on occasion, the DPW Director. The DPW Director makes the actual appointment, effectively based on Ms. Schmittinger's recommendation. Ms. Schmittinger determines the length of time temporaries are used when they are hired for special projects. Schmittinger has the authority to discipline a temporary employee, in consultation with the Director and the HRD, but has not done so during her tenure. At the time of the hearing, the Department did not have any temporary employees, owing in part to a budget reduction.

8. The Administrative Assistant, Department of Public Works, does not possess supervisory duties and responsibilities in sufficient combination and degree to be deemed a supervisor.

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

CONCLUSION OF LAW

The Administrative Assistant, Department of Public Works, is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats. and is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Upon the basis of the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties 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.

227.53 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 therefor 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 under this paragraph shall be served and filed within 30 days after

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The Administrative Assistant shall continue to be included in the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 25th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

1/ (Continued)

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.

City of New Berlin

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

DISCUSSION

The City initiated this proceeding on February 22, 1996, by filing a petition to clarify the existing bargaining unit by excluding from it the position of Administrative Assistant, Department of Public Works. The City claims the position is supervisory, which assertion the Union rejects. The parties declined the opportunity to make either oral or written arguments as to the merits of their positions. The sole witness at hearing was the incumbent Director of Public Works, the supervisor of the subject position.

In 1983, these same parties litigated over the supervisory and/or confidential status of a position then known as Coordinator of Office Services - Public Works Department. We then held:

The Coordinator's duties in relation to the cooperative high school student who works twenty hours per week during the school year and full-time during the summer, while supervisory in nature, are too insubstantial to render her a supervisor. The cooperative program with the high school appears to be designed, in part, to give students on-the-job experience and Derosier's oral instructions to the students concerning office conduct and attire apparently result more from her desire to be a good mentor in preparing them for successful careers, than from the City's need to direct and discipline the work force. Derosier selects and hires the student employe. She also terminated one student based on the student's unavailability to work the full year. Nonetheless, in light of the full range of Derosier's functions, her hiring of the cooperative student and her oversight of the student's work are de minimus and insufficient in combination and degree to render her a supervisor, and therefore, Derosier is appropriately included in the bargaining unit.

After considering the record in its entirety, we conclude that the position still does not possess sufficient indica of supervisory status to warrant the finding that the position is supervisory.

Section 111.70(1)(o)1, Stats. defines a supervisor as:

. . . 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 employes, 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.

When determining whether an individual is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., we consider the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employes; and
7. The amount of independent judgment exercised in the supervision of employes. 2/

Not all of the above factors need to be present for an employe to be found a supervisor.

2/ Town of Brookfield, Dec. No. 26426 (WERC, 4/90).

Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employe occupying the position is a supervisor. 3/

As Administrative Assistant in the Department of Public Works, Ms. Schmittinger interacts with three categories of clerical employes: temporary employes, the one clerical employe in the Engineering division of the DPW, and bargaining unit clericals who work in DPW divisions other than Engineering.

Under the statutory criteria, Ms. Schmittinger possesses the greatest degree of supervisory authority with respect to temporary clerical workers. Ms. Schmittinger distributes work, coordinates project activities and prioritizes the tasks of temporary clerical workers. Should they warrant discipline, Ms. Schmittinger is authorized to impose discipline after consultation with the Human Resources Department and the Director. In the few instances where temporary workers were hired pursuant to an interviewing process, Ms. Schmittinger's participation in the interview was an active one, and she posed questions along with the personnel from the Human Resources Department and, on occasion, the Director. The Director followed Ms. Schmittinger's recommendation when he made his hiring decisions.

Balanced against the foregoing is the reality that the use of temporary clericals is minimal and apparently decreasing; and that instead of going through a "hiring" process, the City most often simply uses temporary help agencies or previously employed individuals when it needs temporary clerical workers.

Ultimately, we are persuaded (as we were in 1983) that possession of the supervisory authority over temporary clerical help is not sufficient under the facts in this record to warrant exclusion of the position from the unit as supervisory.

The City argues that in addition to her supervisory duties with respect to the temporary employes, Ms. Schmittinger supervises the one full-time Engineering division bargaining unit employe, Debra Berka. Schmittinger does oversee Berka's work. However, Ms. Schmittinger has played no part in the selection of Debra Berka who transferred into her position pursuant to contract in 1996 after Ms. Schmittinger took the subject position and vacated the job currently held by Ms. Berka. Ms. Schmittinger keeps track of the calendar but does not grant or deny Ms. Berka's leave requests. Most significantly, Ms. Berka directly reports to her division head, the City Engineer, who has responsibility for the issuance of discipline and for processing any grievances she may file.

Given the foregoing, Schmittinger's supervisory authority over Berka is not significant.

3/ City Firefighters Union v. City of Madison, 48 Wis.2d 262 (1970); City of Two Rivers, Dec. No. 21959-A (WERC, 2/91).

Finally, the record establishes that with respect to the clericals working in other divisions of the DPW, Schmittinger facilitates and coordinates various departmental activities. Ms. Schmittinger's job description states she:

- Oversees appropriate and orderly flow of department inquiries and communications between staff and public.
- Tracks and coordinates Division meetings.
- Coordinate meetings for clerical staff of Department of Public Works.
- Analyze and relay the Director's instruction to Division Heads and other staff. Also, to coordinate and follow up with the actions taken and report back to the Director.

Ms. Schmittinger's coordination and communication responsibilities among clerical workers in the Department does not evidence significant supervisory authority over these employees.

In summary, Schmittinger's supervisory authority over temporary clericals is not sufficient in and of itself to warrant her exclusion from the unit as a supervisor. Her authority over Berka and other DPW clericals is not significant and thus does not provide any substantial supplement to Schmittinger's supervisory authority over the temporary clericals. Therefore, we conclude she is not a supervisor.

Dated at Madison, Wisconsin, this 25th day of April, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner