

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

TOWN OF MADISON

Appearances:

Mr. Richard Ely, Town of Madison Board Member, for the Employer.

Teamsters Union Local No. 695 having petitioned the Wisconsin Employment Relations Commission to issue an order clarifying an existing collective bargaining unit consisting of certain employees of the Town of Madison; and a hearing on such petition having been conducted at Madison, Wisconsin, on September 15, 1975, Peter G. Davis, Hearing Officer, having been present; and the Commission having considered the evidence and arguments of counsel, and being fully advised in the premises, makes and files the following

That the position of Highway Department foreman shall be, and the same hereby is, included in the collective bargaining unit consisting of all regular employees of the Town of Madison, including public works employees and clerical employees, but excluding employees with the power of arrest, the fire chief, assistant fire chiefs and supervisory employees.

Given under our hands and seal at the
City of Madison, Wisconsin this 26th
day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING
ORDER CLARIFYING BARGAINING UNIT

In May, 1975, the Commission directed an election among "all regular employees of the Town of Madison including public works employees and clerical employees, but excluding employees with the power of arrest, the fire chief, assistant fire chiefs and supervisory employees" to determine whether the employees in said unit wished to be represented by Teamsters Union Local 695, referred to herein as the Union. As the parties had been unable to agree regarding the unit status of the Highway Department foreman, it was agreed that the Commission's election agent would challenge his ballot and, if the challenged ballot would affect the election result, the Commission would determine his unit status. As the challenged ballot had no effect on the election result, no Commission determination was made at that time. On July 18, 1975, the Union, having been certified as the exclusive collective bargaining representative of all employees in the aforementioned unit, 1/ requested that the Commission determine whether the position of Highway Department foreman should be included in the aforementioned unit.

The Union asserts that the position is not supervisory and thus is appropriately included in the bargaining unit. The Town of Madison, referred to herein as the Municipal Employer, contends that the position is supervisory and thus that it should be excluded from the collective bargaining unit.

The Highway Department foreman, a position currently held by Robert C. Wilson, is responsible for a five man highway crew which collects garbage, repairs streets, trims trees and performs various other service functions for the Employer. The foreman's immediate supervisor is the Highway Superintendent. The foreman spends the majority of his time actually working with his crew, the work load of which is largely determined by a pre-existing schedule or by a priority work list established by the Town Board. While thus having little authority to independently assign work to various employees, the foreman does have the ability to shift individual employees from job to job. He has the authority to authorize overtime for employees, to receive and resolve minor employee complaints, to grant employees time off in emergency situations and to recommend extra compensation for employees. The foreman performs no employee evaluation function and has no policy-making rule. Any major purchases of supplies or equipment are made by the foreman after consultation with the Highway Superintendent.

The Town Board retains all authority to hire, fire, discipline, layoff and recall an individual employee. The foreman can effectively recommend the hiring of a specific individual, with his recommendation then being channeled through the Highway Superintendent to the Town Board. Recommendations regarding possible disciplinary action are made by the Highway Superintendent, after consultation with the foreman and are then passed on to the Town Board. The Foreman has the theoretical authority to send an employee home for misconduct, but any formal discipline must be approved by the Board.

When the Highway Superintendent is ill or on vacation, the foreman assumes the Superintendent's responsibilities. A member of the work crew performs the foreman's duties when he is unavailable for work. The foreman is paid a salary which is approximately \$50 per month higher than the net pay of the average work crew member. He receives no fringe benefits beyond those received by his crew and, while not receiving overtime pay, the foreman does receive compensatory time off for any overtime work performed.

1/ Town of Madison (13640), 5/75, Certified 6/75.

DISCUSSION:

The position of Highway Department foreman is comprised of a mixture of apparently supervisory and non-supervisory duties and responsibilities. His participation in the hiring process and his ability to authorize overtime, to grant employees time off, and to resolve minor complaints are all indices of supervisory status. However, upon weighing the countervailing factors on each side, the Commission concludes that the non-supervisory aspects of the position prevail, and thus that the position is appropriately included in the bargaining unit.

The fact that the foreman spends the majority of his day actually working with his crew, has no evaluatory or policy-making function, exercises little independent judgment in the assignment of work, and has only theoretical disciplinary authority requires this conclusion. The Commission also notes that the foreman's acknowledged "authority" in hiring is subject to the approval of both the Highway Superintendent and the Town Board. On the basis of these factors it is concluded that the position of Highway Department foreman is not supervisory and thus is appropriately included in the bargaining unit.

Dated at Madison, Wisconsin this 26th day of September, 1975.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

Herman Torosian
Herman Torosian, Commissioner