

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
JACKSON COUNTY SOCIAL SERVICES, LOCAL 2717-B, AFSCME, AFL-CIO	:	
Involving Certain Employees of	:	Case VII
JACKSON COUNTY (DEPARTMENT OF SOCIAL SERVICES)	:	No. 19736 ME-1249
	:	Decision No. 14129-B

Appearances:

- Mr. Daniel R. Pfeifer, District Representative, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, on behalf of the Petitioner.
- Mr. Marshall H. Graff, Director, Jackson County Social Services Department, on behalf of the Municipal Employer.

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

Jackson County Social Services, Local 2717-B, AFSCME, AFL-CIO, filed the instant petition with the Wisconsin Employment Relations Commission, herein the Commission, wherein it requested that the position of Basic Services Supervisor be included in an existing collective bargaining unit of Jackson County employes. Hearing was held in Black River Falls on August 7, 1979, before Examiner Peter G. Davis, who was appointed Examiner by the Commission for the purpose of issuing a proposed decision pursuant to Section 227.09(2), Stats. No transcript was made of the hearing, and no briefs were filed.^{1/} The Examiner has considered the evidence and arguments of the parties and hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. Jackson County Social Services, Local 2717-B, AFSCME, AFL-CIO, herein the Petitioner, is a labor organization which functions as the exclusive certified bargaining representative of:
 - all employes in the employ of the Jackson County Social Services Department, including professional employes, but excluding the Director, Basic Services Supervisor, supervisors and confidential employes.

2. Jackson County, herein the County, is a municipal employer.

^{1/} The parties waived a transcript of the record as well as compliance with Section 227.12, Stats., with respect to the above-captioned matter.

3. In 1975, when the Petitioner and the County voluntarily agreed upon the composition of the bargaining unit set forth in Finding of Fact 1 pursuant to a Stipulation for Election, they specifically excluded the position of Basic Services Supervisor (now known as the Income Maintenance Supervisor) which the Petitioner now seeks to have included in the bargaining unit.

4. The evidence contained in the instant record establishes that the Income Maintenance Supervisor possesses substantial supervisory duties and responsibilities.

Based on the foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

The position of Income Maintenance Supervisor is supervisory within the meaning of Section 111.70(1)(o)1, Stats.

Based on the foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER CLARIFYING BARGAINING UNIT

The position of Income Maintenance Supervisor shall be, and hereby is, excluded from the instant bargaining unit.

Dated at Madison, Wisconsin, this 30th day of August, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Peter G. Davis, Examiner

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

In unit clarification proceedings involving certified units, the Commission will not change the complement of a bargaining unit which was voluntarily agreed upon by the parties as being appropriate except where the composition of the unit contravenes the provisions of Section 111.70, Stats., or where changes have occurred which materially affect the status of the employes in dispute.^{2/} Although the record contains no evidence of any change in the duties and responsibilities of the Income Maintenance Supervisor from the date the parties executed the Stipulation for Election to the date of the instant hearing, the instant petition will be entertained on its merits because it would contravene the provisions of Section 111.70, Stats., to uphold a voluntary agreement which excludes an employe as a supervisor when in fact said individual may not have that status and may thus be entitled to the rights and protections of Section 111.70, Stats.

The Petitioner asserts that the Income Maintenance Supervisor does not exercise sufficient supervisory duties and responsibilities to warrant his continued exclusion from the bargaining unit. The County, while admitting that the incumbent has not been overly assertive in the exercise of available supervisory authority, contends that he nevertheless has exercised his supervisory authority and responsibilities on enough occasions to justify his continued exclusion from the bargaining unit.

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, layoff, 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 merely of a routine or clerical nature, but requires the use of independent judgment.

The Examiner, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position in question is supervisory, considers the following factors:

1. The authority to recommend effectively 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 skills or for his supervision of employes;

^{2/} Milwaukee Board of School Directors, (13134-A), 1/76.

5. Whether the supervisor is primarily supervising an activity or primarily supervising employes;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;

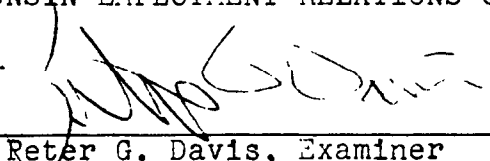
7. The amount of independent judgment and discretion exercised in the supervision of employes.^{3/}

The instant record reveals that the Income Maintenance Supervisor possesses independent control and authority over the day-to-day operation of the Social Services Department's Income Maintenance unit which consists of five para-professional employes.^{4/} He assigns, reviews and evaluates the para-professional's work and exercises independent judgment in altering their work assignments and schedules if the need arises. He has effectively recommended the disciplining of employes, acted upon sick leave and vacation requests, authorized overtime and advised the Director of Social Services as to the hiring of employes. In light of the foregoing, the Examiner can only conclude that the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the Income Maintenance Supervisor is indeed a supervisor, albeit a reluctant one, within the meaning of Section 111.70(1)(o)1, Stats., and thus that said position should continue to be excluded from the bargaining unit.

Dated at Madison, Wisconsin, this 30th day of August, 1979.

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^{3/} City of Milwaukee, (6960), 12/64; City of Merrill, (14707), 6/76.

^{4/} It is instructive that the Union has not sought the inclusion of the Social Work Supervisor who holds a position with duties and responsibilities which appear to parallel those of the Income Maintenance Supervisor.