

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
DANE COUNTY
Involving Certain Employees of
DANE COUNTY

Case 50
No. 40852 ME-276
Decision No. 14844-C

Appearances:

Ms. Kristi A. Gullen, Deputy Corporation Counsel, Dane County, City-County Building, 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53709, appearing on behalf of the County.
Mr. Darold Lowe, with Mr. Laurence Rodenstein, on the brief, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Union.

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
CLARIFYING BARGAINING UNIT

Dane County having, on July 8, 1988, filed a petition requesting that the Wisconsin Employment Relations Commission clarify an existing collective bargaining unit of its employees, represented by Dane County Local 65, AFSCME, AFL-CIO, by determining whether the positions of (one) Highway Lead Mechanic and (six) Highway Crew Leaders should be excluded from said unit; and hearing in the matter having been held on October 14, 1988 and November 2, 1988; in Madison, Wisconsin, before Examiner Martha K. Askins, a member of the Commission's staff; and transcripts of the proceedings having been received by November 18, 1988; and the parties having filed briefs, the last of which was filed December 27, 1988; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises, hereby makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Dane County, hereinafter referred to as the County, is a municipal employer having its offices at the City-County Building, 210 Martin Luther King Jr. Blvd., Madison, Wisconsin.
2. That Dane County Local 65, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at 5 Odana Court, Madison, Wisconsin.
3. That the Union is the certified exclusive bargaining representative of the County employees 1/ described as follows: all employees of the Dane County Highway Department, Dane County Exposition Center, Zoo, except casual employees, and all employees of the Dane County Regional Airport, excluding craft, supervisory, confidential, managerial, clerical and law enforcement employees and all other employees for the purpose of conferences and negotiations with the Employer, or its authorized representative on questions of wages, hours and other conditions of employment.
4. That, on July 8, 1988, the County initiated this proceeding by petitioning the Commission to clarify the bargaining unit described in Finding of Fact 3, above, by excluding the positions of (one) Highway Lead Mechanic and (six) Highway Crew Leaders as supervisors; and that the Union, contrary to the County, asserts that these positions are not supervisory and should continue to be included in the unit.

1/ Dane County, Dec. No. 14844-B (WERC, 11/76).

5. That Franklin Wahl is the Lead Highway Mechanic and had been for a couple of months at the time of the hearing in this matter; that Wahl has an office in the shop on Fish Hatchery Road; that Wahl is supervised by Robert Anderson, Shop Superintendent, who also has an office in the Shop; that Anderson reports directly to the Highway and Transportation Commission; that Anderson's primary duty is the overall management of the shop, including the maintenance and repair of highway equipment, and overseeing equipment specifications and equipment purchase negotiations; that Wahl's job is to assess equipment needing repair, assign the repair work to an individual mechanic, and see that the work is done; that the Job Description for the position prepared by the County is as follows:

DEFINITION

Under supervision, to act as a lead worker for personnel involved in the maintenance and repair of heavy construction and highway maintenance equipment; and to do related work as required.

EXAMPLES OF DUTIES

Directs, assigns, trains, and monitors the work of personnel involved in the repair and maintenance of motor driven highway department vehicles and equipment; maintains vehicle and equipment maintenance records; monitors adherence to safety rules and regulations, effectively recommends discipline and evaluates employee performance; approves overtime as required; may assist in budget planning and specification preparation; inspects, maintains and repairs varied automotive equipment such as automobiles, trucks, tractors, graders, sweepers, bulldozers, cranes, rollers, and compressors; assists in building special construction, maintenance or other equipment; conducts road tests on equipment; may perform welding, brazing, cutting, or other automotive shop work.

EMPLOYMENT STANDARDS

Education and Experience: Any combination equivalent to four years of experience in the repair of light and heavy automotive, construction, and maintenance equipment which includes a substantial emphasis on diesel engines. Experience in a lead work position and/or supervisory training is preferred.

Knowledge and Abilities: Knowledge of supervisory principles; ability to evaluate and prioritize varied work requests; ability to train personnel and monitor worker performance; ability to maintain varied performance and maintenance records; knowledge of appropriate safe work methods and accident prevention principles; ability to read and understand maintenance manuals, plans, and specifications; ability to communicate with and maintain effective relationships with superiors, employees, and the public; ability to perform varied mechanical work; knowledge of the methods, tools and equipment used in the repair of light and heavy automotive construction, and maintenance equipment; knowledge of the theory, care and operation of gasoline and diesel engines and related mechanical, electrical and hydraulic systems; ability to diagnose mechanical, electrical, and hydraulic troubles and determine appropriate maintenance, repair, or replacement work.

Special Requirements: Must have (or be eligible for) a valid Wisconsin driver's license.;

that there are approximately 900 to 1000 pieces of equipment in the Department; that Wahl oversees the work of approximately ten mechanics; that Wahl also oversees the work of a clerical employee who assists him with paperwork; that Wahl has authority to direct the work of this clerical employee and to discipline this employee, but that Wahl had not exercised his authority to discipline the employee as of the hearing; that the procedure for repair of equipment in the department is

generally as follows: that an individual notifies Wahl in person or by radio that a piece of equipment needs to be repaired; that Wahl schedules the equipment for repair; that the equipment is brought into the shop where Wahl then prepares a work order for the equipment; that Wahl decides when the piece of equipment will be repaired and by which mechanic; that in doing so, Wahl makes judgments about which mechanic can best do the work and assigns work accordingly; that much of the scheduling of mechanics is determined according to season, including overtime call-in; that Wahl would not have authority to call in a mechanic at variance with the usual procedure or schedule; that Wahl then oversees the completion of the work; that Wahl rarely, if ever, actually works on a piece of equipment and has been instructed by Anderson that if he is doing his job properly, he will not have time to do repair work; that, in the event of a severe backlog in repairs, Wahl would consult with Anderson as to how to cure the backlog; that Wahl can recommend that a mechanic work overtime, but cannot assign overtime without approval; that Anderson must also get overtime approved; that Wahl has authority to verbally reprimand an employee and has done so; that he has authority to effectively recommend more severe discipline, but has not done so during his tenure as Lead Highway Mechanic; that Anderson acts as the first level of the grievance procedure for mechanics; that Wahl has interviewed job applicants for employment in the Department principally on the applicants' knowledge of equipment and then discussed with Anderson the ability of the applicants and which applicants would "best suit (their) operation;" that Wahl initials employee time cards after the Department secretary checks them over; that Wahl has never participated in the promotion or transfer of an employee, but that he can move an employee from specific job to job in directing his work; that Wahl discusses employee evaluations with Anderson, but that Anderson writes them and presents them to the employees; that Wahl may approve sick leave, but that sick leave requests also go to Anderson for approval; that Wahl has authority to grant compensatory or holiday time or vacation; that Wahl can approve requisition forms; that Wahl's hourly rate at the time of the hearing was \$12.27, which was the step four regular rate of range 19 in 1988; and that the mechanics are at range 16 of the 1988 labor rates, ranging from an hourly rate of \$10.52 at the first step to \$11.63 at the fifth step.

6. That there are six Highway Crew Leaders for six different crews in Dane County, including bridge, pavement repair, seal coat, sign and bridge, grade, and culvert crew; that the six Highway Crew Leaders are James Disch, Robert Pings, Arlyn Johnson, Paul Ziehli, Ronald Zurbuchen and Logan Kleppe; that the Highway Crew Leaders are currently included in the bargaining unit described in Finding of Fact 3, above, and have been since the unit was certified in 1976 2/; that the Crew Leaders are supervised by the Maintenance Superintendent, Clifford Schlough; that, also above the Crew Leaders in the Highway Department organization are the Construction Superintendent, Assistant Maintenance Superintendent, Assistant Highway and Transportation Commissioner and the Highway and Transportation Commissioner; that the Highway Crew Leaders generally arrive at the shop between 6:30 a.m. and 7:00 a.m. and meet with the Maintenance Superintendent; that the Maintenance Superintendent assigns work, work locations and crew personnel to the Crew Leaders during this time; that if Crew Leaders want to "trade" crew members, they do so in the Maintenance Superintendent's office when the assignments are made; that the Maintenance Superintendent spends approximately fifteen to thirty minutes per day with the crews, and that, as he generally works in his office throughout the day, he rarely sees the crews at work out in the field; that none of the Crew Leaders have an office in the shop; that the overall job duties of the six Crew Leaders are substantially the same, but have some variations due to the varying kinds of work performed by the different crews; that the job description for Highway Crew Leader prepared by the County is as follows:

DEFINITION

Under direction, to supervise the work of a crew of skilled and unskilled highway personnel in the maintenance and repair of bridges, asphalt and concrete highways, culverts, drains, and sealcoat operation; and to do related work as required:

2/ Dane County, Dec. No. 14844-B (WERC, 11/76). The testimony suggests that, at that time, the Crew Leaders were called Foremen.

EXAMPLES OF DUTIES

Directs a crew in the maintenance and repair of asphalt highways including spreading and raking asphalt, rolling asphalt and finishing surfaces to grade; directs a crew in the maintenance and repair of concrete highways including grading of streets and shoulders, mixing and pouring concrete, finishing cement surfaces, sealing expansion joints and repairing concrete base cuts; directs a crew in the sealcoat operation including ordering of materials, planning the work, and assigning the proper equipment; directs the operation of construction equipment in grading operations, cleaning ditches and installing drain pipes; sees that trucks are loaded with proper materials and equipment; measures the work before and after the material is laid. Contacts clients or their representatives to confirm scope of work; ensures that equipment is in good working order; maintains written records, handles invoices for materials, and inspects and/or corrects time cards; is responsible for adherence to safety rules and regulations and is responsible for work progressing according to project plans and specifications; is in charge of a crew for miscellaneous highway maintenance during off-season times.

EMPLOYMENT STANDARDS

Education and Experience: Any combination equivalent to graduation from high school and four years of experience in maintaining and repairing bridges, asphalt and concrete highways, culverts and drains, sealcoating. Leadwork experience is preferred.

Knowledge and Abilities: Knowledge of the materials, equipment, methods and practices used in maintaining and repairing bridges, asphalt and concrete highways, culverts, and drains or sealcoating a highway; knowledge of the preparation of highways to grade; knowledge of the operation of construction equipment; knowledge of cement and concrete finishing and of asphalt taking and rolling; knowledge of other highway operations such as signing, removal of brush and trees; ability to supervise the work of others; ability to read blueprints and understand specifications; ability to maintain effective working relationships with superiors, employees and the public.

Special Requirements: Possession of (or eligibility for) a valid chauffeur's license.

that the crews' size range from an average of four people (Kleppe's crew) to about fourteen people (Pings' crew); that many of the work orders are under state direction, and that the great majority of work orders are known well in advance; that much of the Department's work depends on the season, and is predetermined based on the season; that once the crews are set, the crews go to their assigned job sites; that, at the job site, the Crew Leader assigns work to the crew members, however, the crew members generally know in advance what work they are expected to perform, and often perform the same type of work and operate the same piece of equipment over an extended period of time, diminishing the need for direction by the Crew Leader; that the Crew Leaders spend a substantial part of their work day performing the same type of work performed by the crew members, although their work varies more from day to day than that of the crew as they generally fill in where needed 3/; that some of the crews assigned to Crew Leaders 4/ are split up among a number of job sites, in which case the Crew Leader

3/ The Crew Leaders' testimony reveals a range of as low as 25% (Arlyn Johnson) and a high of nearly 100% (Logan Kleppe) of their work day is spent doing the same work as the crew members.

4/ e.g., Robert Pings' crew and Arlyn Johnson's crew.

spends a substantial amount of time going from one site to another to supervise the work of the crew members; that the Crew Leaders are responsible for resolving conflicts between crew members on the job site, making decisions regarding how work is to be performed on the job site, and ensuring to the extent possible the safety of the crew; that each of the Crew Leaders maintains a diary with such information as what work is performed each day, what materials and equipment were used, and whether any special problems arose or accidents occurred; that none of the crew members keep such a diary, but may be assigned to fill it in in the Crew Leaders' absence; that many of the work orders for at least two of the crews 5/ are on projects for the State of Wisconsin and that the State exercises significant control over the work and ensures that it is done properly; that, of the Crew Leaders, only Disch and Ziehli have had a role in hiring; that in the last instance of hiring, Disch and Ziehli interviewed a group of 25 to 30 applicants which had been narrowed down from the original pool of applicants; that Disch and Ziehli asked the applicants a series of questions that had been prepared in advance by others, and then gave points to the applicants based on their answers; that the interview questions were primarily related to the applicants' substantive knowledge; that the results of these interviews further narrowed the pool of applicants; that the final decision as to who to hire was made by another individual (Phil Keller, Schlough's assistant, in the most recent example) and that Disch and Ziehli were not part of the final decision; that in one instance of hiring in which Disch interviewed applicants, none of the applicants he interviewed was hired; that none of the Crew Leaders has promoted an employee or effectively recommended such a promotion 6/; that the Crew Leaders have the authority to move employees from job to job within the crew to which he or she has been assigned; that if a crew member is moved to another job site, or goes home sick, the Crew Leader must call the Maintenance Superintendent to so notify him; that the Maintenance Superintendent must know where each crew member is in the event of an emergency; that none of the Crew Leaders have authority to discipline a crew member beyond the level of an oral reprimand; that, in general, when problems arise with an individual, the Crew Leader speaks to that employee, and that if the problem persists, the Crew Leader speaks to the Maintenance Superintendent about it; that none of the Crew Leaders have the authority to effectively recommend to the Maintenance Superintendent that an employee be disciplined beyond a verbal warning 7/; that if a Crew Leader advises the Maintenance Superintendent that he is having trouble with an employee, the Maintenance Superintendent may assign that employee to another Crew Leader, but that a Crew Leader may not make that same reassignment independently; that the Maintenance Superintendent has authority to verbally reprimand an employee, but does not have authority to independently issue more severe discipline; that since 1983 or thereabouts, the Crew Leaders have done performance evaluations for the members of their crews; that previously, the Maintenance Superintendent completed the evaluations; that the Crew Leaders were instructed on how to complete the evaluations; that the Crew Leaders sign the evaluations; that the evaluations are done on a standard form; that evaluations are performed at the end of three and six months for new employees, and then yearly; that such evaluations may be considered in determining whether an employee passes probation, but that the Crew Leaders were told that they would not be used for disciplinary purposes; that the Crew Leaders are responsible for any needed training of employees at the job site; that the Crew Leaders can request overtime, and such requests are generally granted; that the decision whether overtime is necessary is generally determined by the season, 8/ supplies and equipment; that in the absence of volunteers to do the overtime, the Crew Leaders must assign it; that the Crew Leaders lack authority to grant or deny vacation requests; that the Crew Leaders rotate

5/ e.g., James Disch's crew and Robert Pings' crew.

6/ Although he wasn't asked, Disch gave his opinion regarding a possible promotion; however, he and others testified that they did not know whether they even had the authority to make such a recommendation.

7/ The testimony of three of the Crew Leaders indicates that they have never been told they would have authority to discipline a crew member.

8/ For example, overtime is standard for Pings' crew on Fridays during the summer when their work week is a four ten-hour day week and they need to open up the roads for weekend travel.

dispatching duties, which is often overtime; that when the Maintenance Superintendent is absent, the Assistant Maintenance Superintendent fills in rather than the Crew Leaders; and that the Highway Crew Leaders are paid at pay range 17 of the 1988 labor rate schedule in the Department; that the regular rate ranges from an hourly rate of \$10.78 to \$11.95; that the skilled laborers are at pay range 14 of that schedule and receive a regular hourly rate of \$10.03 to \$11.02; that the semi-skilled laborers are at pay range 13 of that schedule and receive a regular hourly rate of \$9.92 to \$10.78; and that laborers are at pay range 12 and receive a regular hourly rate of \$9.61 to \$10.52.

7. That Franklin Wahl, the Lead Highway Mechanic, possesses supervisory duties and responsibilities in sufficient combination and degree to be found a supervisor.

8. That James Disch, Robert Pings, Arlyn Johnson, Paul Ziehli, Ronald Zurbuchen and Logan Kleppe, the six Highway Crew Leaders, lack supervisory duties and responsibilities in sufficient combination and degree to be found supervisors.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Lead Highway Mechanic in the Dane County Highway Department is a supervisor within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act and not a municipal employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

2. That the occupants of the position of Highway Crew Leader in the Dane County Highway Department are not supervisors within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act, but are municipal employees within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

On the basis of the Finding of Fact and Conclusions of Law, the Commission makes and issues the following


ORDER CLARIFYING BARGAINING UNIT 9/

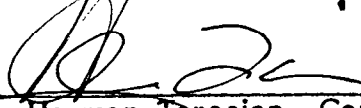
1. That the position of Lead Highway Mechanic in the Dane County Highway Department, shall be excluded from the bargaining unit described in Finding of Fact. 3.

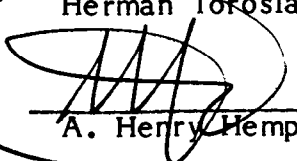
2. That the position of Highway Crew Leader in the Dane County Highway Department shall continue to be included in the bargaining unit described in Finding of Fact 3.

Given under our hands and seal at the City of
Madison, Wisconsin this 26th day of April, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
S. H. Schoenfeld, Chairman


Herman Torosian, Commissioner


A. Henry Hempe, Commissioner

(See Footnote 9/ on Page 7)

- 9/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and 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.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

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 therefore 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 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.

DANE COUNTY (HIGHWAY DEPARTMENT)

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

POSITIONS OF THE PARTIES

Position of the County

The County argues that the Highway Lead Mechanic is a supervisory employee because the incumbent, Franklin Wahl, meets the criteria for a supervisory employee as established by statute and interpreted by the Commission. The County asserts that Wahl has authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of an employee, and that he has recently participated to a significant degree in the hiring of new mechanics, that he has the authority to make recommendations regarding promotions, grievances and whether an employee passes probation, and has sole authority to transfer employees. The County argues that Wahl has authority to discipline and has exercised that authority by orally reprimanding employees. The County takes the position that Wahl directs the work of the mechanics, and essentially runs the shop floor, and that he is paid more than the mechanics because of his supervisory responsibilities rather than his higher skills as a mechanic. Further, the County asserts that Wahl is a supervisor because he supervises a large number of employees, including ten mechanics, that he exercises a great deal of independent judgment, such as approving vacation and sick leave and recommending overtime, and that he spends a substantial part of his day supervising employees rather than doing the kind of work done by the mechanics. In sum, the County argues that Wahl is not a "working supervisor;" rather, his duties have sufficient indicia of supervisory status to warrant his exclusion from the unit.

The County's position on the Highway Crew Leaders is that they, also, are supervisors within the meaning of Commission law interpreting the statutes. It argues that the Crew Leaders do performance evaluations and sign them on the line designated for the first line supervisor. It states that the Crew Leaders can recommend employees for promotion, can discipline employees and effectively recommend that employees be disciplined, can transfer employees and have been effectively involved in the hiring process. The County asserts that the Crew Leaders clearly direct and assign the work force as they are the only supervisors at the various job sites, and that, once at the job sites, the Crew Leaders are primarily supervising the employees rather than their activities. It argues that the Crew Leaders supervise a large number of workers, exercise a significant amount of independent judgment in supervising the workers, and spend a significant amount of their work day performing work other than that performed by the Crew members. Finally, the County asserts that the Crew Leaders are paid more than the crew members due to their supervisory duties rather than a higher level of skill. In sum, the County's position is that these Crew Leaders are not "working supervisors" because they possess a significant degree of supervisory responsibilities such that they should be excluded from the unit.

The Union argues that the position of Lead Highway Mechanic is essentially a lead worker position which is appropriately included in the bargaining unit. Citing Columbia County, Dec. No. 25092 (WERC 1/88) and Madison School District, Dec. No. 20836-A and Dec. No. 21200 (WERC, 11/83), the Union asserts that what may appear to be a significant degree of independent judgment on the part of the Lead Highway Mechanic is really simply a reflection of the high level of technical skill required of the Lead Highway Mechanic to ensure that the work in the shop is completed properly. The Union takes the position that the evidence fails to show that Wahl has ever exercised any authority to transfer, promote or discipline an employee beyond the level of an oral reprimand. It argues that the authority and discretion Wahl does hold is severely circumscribed in that decisions (on overtime, for example) are based on necessity, paperwork, such as the filling out of records, is ministerial, and the other decisions are subject to scrutiny from Wahl's supervisors. In sum, the Union takes the position that the supervising Wahl does is the supervising of activities rather than employees, and that the assigning and prioritizing of work is routine and technical and does not represent a significant degree of independent judgment so as to render his position supervisory.

The Union argues that the Highway Crew Leaders also do not meet the supervisory criteria set forth by the Commission in sufficient degree to warrant their exclusion as supervisory. It asserts that the Crew Leaders do not have the authority to effectively recommend the promotion, transfer, discipline or discharge of employees, and that their involvement in hiring does not rise to the level of decision making or the significant exercise of discretion. The Union takes the position that the Crew Leaders' authority to direct and assign the work force is quite limited because the work assignments are routine and established in advance by the department, and because few decisions can be made by the Crew Leaders without approval from their supervisor. The Union argues that the Crew Leaders supervise the activities of the crews, but not the employees themselves, and that the Crew Leaders are working supervisors as they spend, on average, a majority of their work time working along side of the crew members, doing the same kind of work. Finally, the Union argues that the Crew Leaders exercise very little independent judgment in carrying out their duties. In sum, the Union asserts that the record as a whole cannot support their exclusion from the bargaining unit.

DISCUSSION

At the hearing, the Union argued that the County's petition should be dismissed on the grounds that the disputed positions have been included in the bargaining unit described in Finding of Fact 3, above, since 1976. At that time, the Commission conducted a representation election and subsequently certified the results of that election wherein the Union was elected to be the certified bargaining representative of the unit. The Union argued that over that period of time the County could not establish that the incumbents of the disputed positions were in fact supervisors. Although Dane County, Dec. No. 14844 (WERC, 8/86) reflects that the representation election for this unit was conducted pursuant to stipulation, where the continued inclusion of a disputed position would contravene the provisions of the Municipal Employment Relations Act, 10/ the Commission will, through a petition for unit clarification, review the status of employees who the parties have previously agreed to include in a bargaining unit. The Commission will, therefore, clarify the petitioned-for positions.

The Commission considers the following factors in determining whether a position is supervisory. Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described below are present in sufficient combination and degree to warrant the conclusion that the position is supervisory:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
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 employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of his or her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 11/

10/ Dane County, Dec. No. 22976 (WERC, 10/85); City of Cudahy, Dec. No. 19451-A,B (WERC, 12/82).

11/ Town of Conover, Dec. No. 24377-A (WERC, 7/87), Portage County, Dec. No. 6478-C (WERC, 10/87).

Lead Highway Mechanic

Applying these criteria to the Lead Mechanic position, we conclude that Wahl, on balance, is a supervisor. In his short tenure as Lead Highway Mechanic, he has proven to possess a sufficient degree of the supervisory criteria just articulated to warrant his exclusion from the unit described in Finding of Fact 3.

As of the hearing, Wahl had been Lead Mechanic for only a couple of months. As noted above, in that time he had been effectively involved in the hiring of mechanics. Wahl has not only interviewed applicants' regarding their substantive knowledge, but also, following the interviews, he discussed with Anderson which applicants "would best suit (their) operation." This additional involvement in the hiring process shows that he had effective input into the hiring decision. His role goes beyond that played by two Highway Crew Leaders, discussed below, who served as interviewers.

The record shows that Wahl also has the authority to effectively recommend that a mechanic's helper be promoted to mechanic, but that he had not had occasion to do so as of the time of the hearing. He has no authority to effectively recommend transfer of employees. With respect to the authority to discipline and discharge, the record reflects that Wahl does have the authority to issue verbal reprimands and has done so, and that he has the authority to effectively recommend to Anderson more severe discipline. He lacks the authority to discharge an employee as does his supervisor, Anderson.

Wahl also has the authority to direct and assign the work force. The job description for this position specifically states that the incumbent directs and assigns the work of personnel, and Wahl's actual job duties are consistent with the job description. Wahl's work day primarily consists of taking and prioritizing work orders and assigning repair work to the mechanics. In so doing, Wahl may move a mechanic from job to job, depending on the type of machinery involved and a mechanic's skills; he may answer questions on the shop floor, and order parts. He also has authority to direct and assign the work of the clerical employee in the office. To back up his authority to direct and assign the work force, Wahl has a role in evaluating the employees. Although Wahl does not complete and sign the evaluation forms, Anderson consults with Wahl before he completes them. He also has the authority to recommend to Anderson that an employee not be retained beyond his or her probation, though Wahl has not exercised that authority.

Wahl supervises ten mechanics, a clerical employee, heavy equipment machinist, lub rack worker and tire repairer. As noted above, Wahl is supervised by Anderson, the Shop superintendent, who reports to the Highway and Transportation Commissioner. Of the three, Wahl alone has day-to-day supervisory authority over these employees and is effectively the only person who directs and assigns the work force. On the other hand, Anderson and the Commissioner have greater authority than Wahl to hire, promote, transfer and discipline employees.

As noted above, Wahl's regular hourly rate of pay at the time of the hearing was \$12.27. This rate is in range 19, at step 4 of the 1988 labor rates. The mechanics' pay ranged from \$10.52 at the first step to \$11.63 at the first step. The step four mechanic rate was \$11.30, or \$.97 below Wahl's rate of pay. We conclude that, on the basis of the record as a whole, Wahl is paid more than the mechanics not because of his higher level of skill, but because of his supervisory duties. Specifically, we conclude that Wahl's higher rate of pay is due in large part to his responsibilities to prioritize work, and direct and assign the work force.

We conclude that the Lead Mechanic is not a working supervisor as articulated in the criteria quoted above. The record shows, on the contrary, that Wahl spends a substantial majority of his time supervising employees. Unlike the Highway Crew Leaders, discussed below, Wahl spends very little time doing the same work as the mechanics. Instead, his work day consists of prioritizing work, directing and assigning the work force, and performing administrative duties. Finally, we

conclude that Wahl exercises sufficient independent judgment in the supervision of employees to warrant his exclusion from the unit. 12/

This case is distinguishable from the cases cited by the Union. The issue in Columbia County, Dec. No. 25092 (WERC, 1/83) was whether the Licensed Practical Nurses in the Columbia County Home were supervisors. We concluded that they were not, and found that they were properly included in the bargaining unit. We stated:

In summary, the record establishes that while the LPN's at the Columbia County Home do perform some tasks which are supervisory in nature such as participating in the evaluation of nursing assistants, giving verbal and written counseling, and recommending disciplinary action, they do not have authority to effectively recommend transfer, promotion, suspension, termination, or hiring. They cannot grant requests for vacation, personal days, sick leave, or overtime. Supervision of the work tasks of nursing assistants is routine in nature and does not require the significant exercise of independent judgment. Accordingly, we conclude that the position of LPN at the Columbia County Home does not possess sufficient indicia of supervisory status to warrant a finding that this position is supervisory.

Unlike the LPN's in Columbia County, the supervision exercised by the Lead Mechanic here is not routine in nature; it requires significant discretion and judgment. More important, unlike the LPN's, the Lead Mechanic has played a significant role in hiring. As noted above, Wahl both interviewed applicants and discussed the results with Anderson, including who would best fit in the department.

In Madison Metropolitan School District, Dec. No. 20836-A and 21200, (WERC, 11/83), also cited by the Union, one of the issues was whether the Nurse Practitioners were supervisors. We concluded that they were not supervisors, but excluded them from the bargaining unit on the ground that they were managerial employees. We noted that the District relied primarily on the Nurse Practitioners' role in hiring to support its argument that they were supervisors. On their hiring role, we stated:

One of the Nurse Practitioners sat in on the interviews of candidates for the aides' positions and rated the applicants on an equal basis with the Coordinator. The Nurse Practitioner, however, did not prepare the rating system used but rather assigned points on the basis of answers given in the interviews. While this clearly involves the use of independent judgment in evaluating the information provided, the application of judgment and its effect on the hiring process were limited by the use of the criteria established by the Coordinator. While the Nurse Practitioners have significant involvement in the hiring interviews it appears that the Practitioners' authority in the hiring process is not extensive.

Again, this is different from the Lead Mechanic here. We conclude that, unlike these Nurse Practitioners, the Lead Mechanic had a significant role in hiring. The Lead Mechanic here is also distinguishable from the Nurse Practitioners in that he is the only individual who exercises day-to-day supervision over the mechanics, and is the only individual who directs and assigns this work on a daily basis.

The Union concedes that the Lead Highway Mechanic position does possess some indicia of supervisory content. It argues, however, that a close examination of that position reveals that the advanced level of technical skill required by the position gives the appearance of those supervisory criteria, but that those

12/ We note that the evidence that Wahl will, in the future, attend management seminars, is not probative of his current supervisory status.

indicia cannot survive closer scrutiny. We reject that assertion. There is no doubt that Wahl possesses great technical skill. As noted above, however, he also exercises supervisory authority over employees in the shop, and, as such meets the supervisory test set forth above.

Highway Crew Leaders

Applying the supervisory criteria to the Highway Crew Leaders, we conclude that the position of Highway Crew Leader in the Dane County Highway Department does not possess the requisite indicia of supervisory status to warrant its exclusion from the unit. We conclude that the Highway Crew Leaders are "working supervisors" and that they are primarily supervising an activity rather than the employees.

The record shows that the Highway Crew Leaders do not have authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. Although two of the Crew Leaders have been involved in the hiring process, it was primarily to test the applicants on their substantive knowledge. The Crew Leaders were given a set of questions and were instructed that they had to ask all applicants the same questions. While the testimony suggested that the Crew Leaders could have recommended the addition of other questions, they were never told of that possibility. While the scoring of the applicants' answers did require some exercise of judgment, it is clear that the Crew Leaders had a limited role as to hiring; effective authority belonged to the Maintenance Superintendent and his assistant. Indeed, the Crew Leaders' role in hiring is akin to that of the Nurse Practitioners who were found not to be supervisors in Madison Metropolitan School District discussed above.

The evidence also shows that the Crew Leaders have virtually no authority to effectively recommend promotion or transfer, that the Crew Leaders have not been told they have such authority, and that, apart from James Disch, none of them has voiced an opinion on a promotion. In addition, none of the Crew Leaders have demonstrated the authority to discipline or effectively recommend the discipline of an employee beyond the level of an oral reprimand. The record indicates that these Crew Leaders have not been told they have disciplinary authority, disciplinary authority is not specified in their job descriptions, and that they do not believe it is their place to discipline employees. As for decisions regarding sick leave, overtime and vacation, the Crew Leaders again exercise little independent judgment. The Crew Leaders must notify the Maintenance Superintendent of any such requests so that, in an emergency, the employee can be located. By implication, however, the Maintenance Superintendent has the authority to to override any decision of the Crew Leaders.

The Crew Leaders do possess authority to direct and assign the workforce once the crews are out in the field. If questions arise as to how to do a job, the Crew Leader makes the decision. If a conflict arises, the Crew Leader must resolve it. On the other hand, the evidence shows that the Crew Leaders exercise little independent judgment in directing the work force and that the employees require little direction from the Crew Leaders. Much of the Department's work is determined well in advance and the crew members often perform the same kind of work on the same piece of equipment continuously over a period of time.

As with the Lead Mechanic, the Crew Leaders' ability to direct and assign the work force is backed up by their duty to evaluate the crew members. This responsibility is an indicia of supervisory status. We conclude, as further discussed below, that their role in performance evaluations is insufficient to confer supervisory status alone, or in combination with the Crew Leaders' other duties. Although performance evaluations can be used to determine that an employee will not pass probation, the Crew Leaders were told that the purpose of the evaluations was to better the department, and was not designed to be disciplinary. In addition, we note that the fact that the Crew Leader's signature is on the line on the evaluation form which is designated for the first line supervisor is of little or no probative value. We have stated repeatedly that we will not raise form over substance in these cases; we look at what duties the individual performs, not his or her title.

The record shows that the number of employees the Crew Leaders supervise ranges from an average of four to fourteen, although the crews can vary in size beyond that, depending on the job. While the Crew Leaders are generally the only individuals who supervise the employees out in the field, the Crew Leaders share supervisory authority with the Maintenance Superintendent, Assistant Maintenance

Superintendent, Construction Superintendent, Highway and Transportation Commissioner and Assistant Highway and Transportation Commissioner. The individuals in these positions have greater authority with respect to hiring, promotion, transfer, discipline and discharge than do the Crew Leaders.

The record also shows that the 1988 regular step one hourly rate of the Crew Leaders is \$.75 above that of the skilled laborers. We conclude that the higher level of pay is due to the Crew Leaders' skill, administrative duties such as the diary, and their responsibility to supervise the activities of the crews out in the field.

We conclude that the Highway Crew Leader is a working supervisor under the criteria articulated above. The record shows that most of the Crew Leaders' time is spent doing the same work as that performed by the others in the crew, and that very little time is spent "supervising." Furthermore, we conclude that the Highway Crew Leaders do not exercise sufficient independent judgment in the supervision of employees to warrant their exclusion from the bargaining unit. Again, the crew members require little direction at the work site. In addition, the Crew Leaders lack sufficient supervisory tools, such as the ability to effectively recommend significant discipline, to back up the supervisory authority that they do possess. Finally, in the job description for the position created by the County states that the individual supervises the "work of the crew," rather than the employees themselves, and unlike the Lead Mechanic's job description, makes no reference to disciplinary authority.

We have already discussed two other Commission decisions above, Columbia County and Madison Metropolitan School District. We concluded in both decisions that the disputed positions were not held by supervisors. The record in this case shows the Crew Leaders to be comparable in supervisory duties and authority to the LPN's in Columbia County. They, like the LPN's, have some authority which is supervisory in nature, such as the evaluation of employees and the authority to give a verbal reprimand. They, however, like the LPN's, lack authority to effectively recommend transfer, promotion, significant discipline, termination or hiring. They have very limited disciplinary authority. They lack significant discretion to grant vacation, personal days, sick leave or overtime and the role they do possess in these areas is largely ministerial. Like the supervision of the nursing assistants by the LPN's, the supervision of the work of the crew members is routine in nature and does not require the significant exercise of independent judgment. As we concluded in Columbia County, we likewise conclude that, on balance, the Highway Crew Leaders are not supervisors.

In summary, the record establishes that Franklin Wahl, Lead Highway Mechanic does possess sufficient indicia of supervisory status to warrant his exclusion from the bargaining unit, but that the Highway Crew Leaders do not.

Dated at Madison, Wisconsin this 26th day of April, 1989.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By S. H. Schoenfeld
S. H. Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
A. Henry Hempe
A. Henry Hempe, Commissioner