

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
 :
SCHOOL DISTRICT OF : Case IV
WAUSAUKEE : No. 21689 ME-1440
 : Decision No. 15620-A
Involving Certain Employees of :
 :
WAUSAUKEE UNITED SCHOOL :
DISTRICT NO. 1 :
 :

Appearances

Mr. James W. Freeman, Mulcahy & Wherry, S.C., Attorneys at Law, 414 East Walnut Street, P. O. Box 1103, Green Bay, WI 54305-1103, appearing on behalf of Wausaukee United School District No. 1.
Ms. Cindy Fenton, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 8356, Green Bay, WI 54308, appearing on behalf of Wausaukee School District Employees, Local 1752-D, WCCME, AFSCME, AFL-CIO.

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

The School District of Wausaukee having, on September 13, 1982, filed a petition requesting the Wisconsin Employment Relations Commission (the Commission) to clarify a bargaining unit of municipal employees employed by the District, and presently represented for purposes of collective bargaining by Wausaukee School District Employees, Local 1752-D, WCCME, AFSCME, AFL-CIO; and hearing in the matter having been conducted in Wausaukee, Wisconsin, on December 1, 1982, before Richard McLaughlin, an Examiner on the Commission's staff; and a stenographic transcript having been made of this hearing; and the parties having not filed briefs in the matter; and the transcript having been received by the Commission on February 21, 1983; and the Commission having reviewed the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wausaukee United School District No. 1, hereinafter referred to as the District, is a municipal employer which has its offices located at Tyler Street, Wausaukee, Wisconsin 54177, and which operates teaching facilities at Wausaukee, Amberg and McAllister.
2. That Wausaukee School District Employees, Local 1752-D, Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices located in c/o Ms. Cindy S. Fenton, P. O. Box 8356, Green Bay, Wisconsin 54308.
3. That the Union is the certified exclusive bargaining representative of certain District employees in a bargaining unit described thus: all regular full-time and regular part-time employees employed by Wausaukee United School District No. 1, excluding supervisory, professional, confidential and managerial employees. 1/
4. That on September 13, 1982, the District filed a petition requesting the Commission to clarify whether the employees occupying the position of Food Service Supervisor, Maintenance Supervisor, and Administrative Secretary, should be excluded from the bargaining unit represented by the Union; that the District and the Union are parties to a collective bargaining unit agreement in effect

1/ Wausaukee United School District No. 1., (15620) 8/77.

from July 1, 1982, until June 30, 1983; that the positions are referred to in that collective bargaining agreement, and will hereinafter be referred to as: Head Cook, Head Custodian, and Administrative Secretary; and that each of the employes occupying these positions is presently a member of the bargaining unit represented by the Union.

5. That the District employs a Head Cook and three other food service employes at its Wausaukee facility, one food service employe at its Amberg facility, and one food service employe at its McAllister facility; that the District contends, contrary to the Union, that the Head Cook, Stella Downs, is a supervisory employe; that Downs has been the District's Head Cook for about twelve years; that her immediate supervisor is William Bobbe, the District Administrator; that the District has not promoted or transferred any food service employes during Downs' employment as Head Cook; that she played no role in the two instances of layoff which occurred during that period; that she sought, and interviewed, applicants for two food service openings; that one applicant had previously filed an application with the District, and one had not; that she notified, and received, the District Administrator's approval of hiring these prospective employes only after she had offered them employment and had asked them to report for work; that she calls in necessary substitute help for the Wausaukee facility without any prior approval; that she is responsible for filling out evaluation forms for the District's five food service employes; that the forms, as completed, were presented by Bobbe to the School Board, and ultimately placed in the employes' respective personnel files; that the Board has not taken any action to reward or punish a food service employe on the basis of these evaluations; that Downs does receive, and attempts to resolve, employe complaints; that she has orally reprimanded employes when their work is deficient, and, if necessary, would report deficient work to Bobbe; that Downs regards Bobbe as the only District employe with the authority to formally discipline food service employes; that all of the District's food service employes are experienced employes who know their jobs; that Downs, on occasion, assigns work as necessitated by changes in menu, or by employe availability, but because of their experience, the District's food service employes do not rely on her for the daily assignment of work; that she oversees the work performance of the District's food service employes, although her oversight of employe work at the District's McAllister and Amberg facilities is limited, and is not done by her in person; that she assigns over-time, and excuses absences without prior approval; that the Head Cook received, for the 1982-1983 school year, \$5.41 per hour, while the remaining food service employes received \$5.02 per hour if classified as Cook I, \$4.50 if classified as a Cook II, or \$5.15 per hour if classified as a Baker; that Downs is not the most senior employe in the food service department; that she spends 90% of her working time in duties incident to preparing food; that she is responsible for planning the menu for each of the District's teaching facilities, for preparing groceries shipped to the Amberg and McAllister facilities, for ordering food from local distributors, for preparing certain inventory forms required by the State of Wisconsin, and for signing the time sheets for the food service employes working at the Wausaukee facility; that the District recently reorganized its food service operation so that hot food now is prepared only at the Wausaukee facility and shipped to the Amberg and McAllister facilities, which under the reorganized operations, are only responsible for the preparation and storage of cold foods; that Downs played a significant role in implementing this reorganization; that as a result of this reorganization, the District reduced the the total number of hours worked by all of its food service employes; that she effectively recommended the most appropriate reduced hours that food service employes should work under the reorganized operation, and helped allocate those hours to address the individual concerns of food service employes; that, for example, she recommended that the reduced hours of one employe be increased, and secured the District Administrator's approval for that increase; and that Downs exercises supervisory responsibility in sufficient combination and degree to make her a supervisory employe.

6. That the District employs a Head Custodian, Ralph McClellan, and four other custodial employes; that McClellan has been the District's Head Custodian for about six years; that the District, contrary to the Union, contends that McClellan is a supervisory employe; that his immediate supervisor is the District Administrator; that the District has not undertaken any transfers, layoffs, promotions, or formal discipline, of custodial employes during McClellan's tenure as Head Custodian; that no formal grievances have been filed by custodians against the District during his tenure; that the District has hired four to five custodians, using the same hiring procedures, during McClellan's tenure as Head

Custodian; that, under these procedures, McClellan reviews the application forms submitted by job applicants and selects the four or five most qualified applicants; that the District Administrator interviews these four or five applicants, following which they are interviewed by McClellan, who also describes the job duties and takes them on a tour of the District's facilities; that McClellan recommended the most qualified applicant in each case; that the District has, in each case, hired the applicants so recommended; that McClellan, has filled out evaluation forms on each of the District's custodial employes, reviewed the completed forms with the evaluated employe, and presented the completed evaluation to the School Board; that the School Board has not taken any action regarding these evaluations; that McClellan has handled certain work-related complaints from employes; that, for example, he recommended to the District Administrator that one substitute custodian receive a pay raise, which was ultimately granted by the School Board; that McClellan has reported deficient work by an employe in one case, but did not include, in his report, any recommendation regarding disciplinary action; that McClellan performs custodial duties at each of the District's three facilities; that during the school year he spends little, if any, time directing other employes in their duties, and oversees other employes only when his other duties permit, or when specifically instructed to do so by the District Administrator; that, prior to the summer break, he inspects District buildings to determine what, if any, repairs are necessary, and reports his conclusions to the District Administrator, who then informs the School Board; that the School Board decides what maintenance projects will be undertaken during the summer months; that McClellan assigns employe duties incident to those maintenance projects; that he has authorized over-time without prior approval, although the amount of over-time authorized is reviewed by the District Administrator and by the School Board, who recently instructed McClellan to grant over-time more judiciously; that McClellan, as Head Custodian, received for the 1982-1983 school year, \$7.07 per hour, while employes classified as Custodian I received \$6.24 per hour, and employes classified as Custodian II received \$5.60 per hour; that all custodians receive time and one-half for any over-time hours worked; that the Head Custodian spends little time supervising employes during the regular school year, and spends the bulk of his time in the summer months performing non-supervisory maintenance related duties; and that the Head Custodian is primarily supervising custodial activities rather than primarily supervising employes.

7. That the District employes four clerical employes: two Fiscal Assistants, a High School Secretary, and an Administrative Secretary; that the District, contrary to the Union, contends that the Administrative Secretary, Debbie Guarisco, is a confidential employe; that the two Fiscal Assistants are excluded from the bargaining unit represented by the Union, while the two secretaries are part of that bargaining unit; that the Fiscal Assistants assist with the preparation of the payroll, do some typing, and perform accounting services, including certain calculations relevant to costing wage proposals during contract negotiations; that the two Fiscal Assistants, and the Administrative Secretary, work in the District Administrator's offices, while the High School Secretary works at the High School offices; that Guarisco spends approximately one-half of her working time performing duties incident to the District's hot lunch program, and the balance of her time performing secretarial duties; that these secretarial duties include answering the phone, any typing and filing required by the District Administrator and the Elementary Principal, maintaining student absenteeism records for the District, performing the duties of a receptionist, and, enrolling new elementary school students; that her immediate supervisors are the Elementary Principal, and the District Administrator; that she serves as the District Administrator's personal secretary; that the District Administrator is the District representative at Step 1 of the three step grievance procedure set forth in the collective bargaining agreement existing between AFSCME and the District; that the District Administrator does not exchange written correspondence with other supervisory personnel when considering matters involving the disciplining of an employe, but discusses such matters in closed conferences, which Guarisco does not attend; that Guarisco does type those memoranda relevant to the administration of the contract which are ultimately disseminated to the Union or to the affected employe; that the District Administrator is not a member of the negotiating team which represents the District in collective bargaining with the Union but rather, he serves as an advisor to that negotiations team; and that Guarisco, as Administrative Secretary, spends a de minimus amount of her working time performing duties of confidential nature.

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

CONCLUSIONS OF LAW

1. That the occupant of the position of Head Cook is a "Supervisor" within the meaning of Section 111.70(1)(o)1. of the Municipal Employment Relations Act (MERA), and, therefore, is not a "Municipal employe" within the meaning of Section 111.70(1)(b) of the MERA.

2. That the occupant of the position of Head Custodian is not a "Supervisor" within the meaning of Section 111.70(1)(o)1. of the Municipal Employment Relations Act, and, therefore, is a "Municipal employe" within the meaning of Section 111.70(1)(b) of the MERA.

3. That the occupant of the position of Administrative Secretary is not a confidential employe and therefore, is a "Municipal employe" within the meaning of Section 111.70(1)(b) of the MERA.

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

ORDER 2/

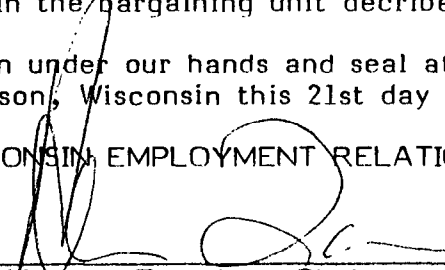
1. That the position of Head Cook be, and the same hereby is, excluded from the bargaining unit described in Finding of Fact No. 3.

2. That the positions of Head Custodian and of Administrative Secretary be, and the same hereby are, included in the bargaining unit described in Fact No. 3.

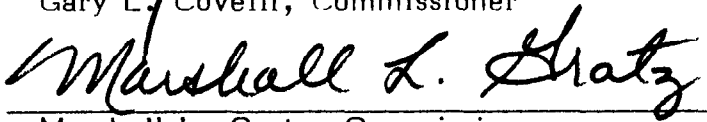
Given under our hands and seal at the City of
Madison, Wisconsin this 21st day of June, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

1/ Pursuant to Sec. 227.11(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. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 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.

(Footnote 2 continued on Page 5)

(Footnote 2 continued)

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 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. 227.12, 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. 227.11. If a rehearing is requested under s. 227.12, 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. 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.

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

The Head Cook and Head Custodian

The District contends, contrary to the Union, that the employees occupying the position of Head Cook, and of Head Custodian, are supervisory employees, and must, therefore, be excluded from the bargaining unit.

Section 111.70(1)(o)1. of the MERA defines the term "Supervisor" as follows:

. . . 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 employees, 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.

In its interpretation of the above definition, the Commission has, on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

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 skill or for his 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 spends a substantial majority of his time supervising employees;
7. The amount of independent judgment exercised in the supervision of employees.

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employee to be a supervisor. 3/

The Findings of Fact establish that the District employs a small number of food service employees, and that the Head Cook spends a substantial portion of her time in preparing food. She has, however, played a significant role in the hiring of two food service employees. In one instance, she sought applications without prior approval. In both instances, she interviewed prospective applicants, and offered the job to the applicant she deemed most qualified before reporting her actions to the District Administrator. In addition, she is the sole employee in charge of the day-to-day operations of the District's food service. She does oversee the work of food service employees, even though her oversight over the Amberg and McAllister sites is, necessarily, limited. She evaluates the District's five food service employees and said evaluations, without change have been placed in the employees' personnel files after having been presented to the

3/ Northwood School District, (20022), 10/82, at 5-6.

school board by William Bobbe, as District Administrator. In addition, she authorizes over-time, excuses absences, hires and calls in necessary substitute help, without prior approval. She played a significant role in implementing a reorganization of the District's food service operations which resulted in a reduction of total employe hours. As the Findings of Fact demonstrate, the District Administrator depended on her advice to set the most suitable employe hours under the reorganized operation. She also played a significant role in responding to employe complaints regarding the reorganized operations, and effectively recommended to the District Administrator that one employe's reduced hours be increased. She is not the most senior food service employe, but receives greater pay than those employes. In sum, the Head Cook exercises sufficient indicia of supervisory authority to be considered a supervisor. 4/

As was true in the School District of Cornell, 5/ the Head Custodian position at issue here involves an employe who does exercise some independent judgment and discretion in the direction of employes in the summer months. As was true in that case, the Head Custodian appears to be primarily supervising maintenance activities rather than supervising employes. McClellan spends little, if any, of his time during the school year directing or overseeing the work of custodial employes. His summer duties center on performing maintenance work, and the supervision of employes in those months is incidental in nature. Certain incidental indicia of supervisory authority do exist in this case. He does receive higher wages than other custodial employes, does evaluate other custodial employes, has authorized over-time without prior approval, and has played a role in the hiring process. The higher wages paid him, cannot, alone, be considered determinative of supervisory status. 6/ The District has not made any use of his evaluations, and does monitor his authorization of over-time. While he does play a role in hiring process, that role does not evince the independent authority exercised by the Head Cook. In sum, the Head Custodian primarily supervises maintenance activities, rather than custodial employes, and those incidental indicia of supervisory authority exercised by the head Custodian establish that he functions as a lead worker.

The Administrative Secretary

The District contends, contrary to the Union, that the Administrative Secretary, is a confidential employe.

In order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purpose it must be the type of information (1) that deals with the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2), is not available to the bargaining representative or its agents. The Commission has also held that a de minimis exposure to confidential labor relations materials is an insufficient ground for excluding an employe from a bargaining unit. 7/

The Findings of Fact establish that the District Administrator makes decisions concerning employe discipline in closed conferences of which no record is made. All memoranda relevant to personnel relations and typed by the Administrator's secretary are readily available to the Union. Even if the Administrator's secretary were to type all the contract negotiations strategy formulated by the District Administrator, but not made available to the Union, it is unlikely such typing would demand anything more than a de minimis amount of the Administrative Secretary's working time. The fact that two Fiscal Assistants, who can type, work at the District Administrator's offices, and are not members of the bargaining unit, is relevant here since those employes are available to perform

4/ See School District of Loyal, (18149), 10/80.

5/ School District of Cornell, (17982), 8/80.

6/ Ibid.

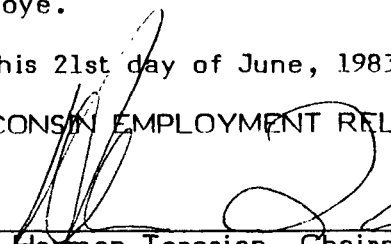
7/ Northwood School District, (20022), 10/82, at 6.


the minimal amount of confidential duties which could conceivably be required of the Administrative Secretary. Accordingly, the Administrative Secretary is not found to be a confidential employe.

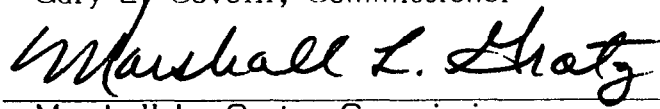
Dated at Madison, Wisconsin this 21st day of June, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner