

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case XII  
No. 22324 ME-1494  
Decision No. 16050-C

Mr. James L. Koch, Business Representative, appearing on behalf of the Petitioner  
Mr. Arthur Wiesender, District Attorney, appearing on behalf of the Municipal Employer.

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, having filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a bargaining unit, previously certified by the Commission, consisting of all regular full-time and regular part-time employees of Green Lake County, excluding elected officials, supervisory and confidential employees, and all employees of the highway and law enforcement departments; and hearing on said petition having been held on April 4, 1978 at Green Lake, Wisconsin before Examiner Ellen J. Henningsen; and the Commission, having considered the evidence and arguments of the parties and being fully advised in the premises, hereby issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

4. That at the election the County challenged the ballots of individuals occupying the positions of Tax Lister, Janitor/Purchasing Agent and Zoning Administrator on the grounds that they were supervisors. 1/

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5. That the Tax Lister, Janitor/Purchasing Agent and Zoning Administrator employed by the County do not possess or exercise supervisory authority in sufficient combination or degree to be deemed supervisors.

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

CONCLUSION OF LAW

That since the Tax Lister, Janitor/Purchasing Agent and Zoning Administrator are not supervisors within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, they are "municipal employees" within the meaning of Section 111.70(1)(b) of said Act and, therefore, the individuals occupying said positions are appropriately included in the bargaining unit described above.

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

ORDER CLARIFYING BARGAINING UNIT

That the positions of Tax Lister, Janitor/Purchasing Agent and Zoning Administrator be and hereby are, included in the above-described unit.

Given under our hands and seal at the  
City of Madison, Wisconsin this 30th  
day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commisisoner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

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

AFSCME filed a petition with the Commission on February 22, 1978, requesting that the Commission determine whether certain positions were or were not supervisory within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act.

Section 111.70(1)(o)1 of MERA defines the term "supervisory" 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 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 merely of a routine or clerical nature, but requires the use of independent judgment."

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or 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 and discretion exercised in the supervision of employees.

The three classifications at issue are those of Tax Lister (presently filled by LaVoun Wruck); Janitor/Purchasing Agent (Elmer Deibert) and Zoning Administrator (Gilbert Voss).

Tax Lister

LaVoun Wruck has been employed as Tax Lister for two years and is the first full-time employee to occupy said position. Another employee, Florence Lemke, works part-time as Wruck's assistant and part-time running an off-set machine in the janitor's offices; Lemke is the only employee working with or under Wruck. Both Wruck and Lemke work on deeds, prepare documents and maps and run a copying machine; Lemke also does virtually all the typing required in the office. Both work in one office separated from other departments of the County.

Lemke was hired as a result of Wruck's complaints concerning the backlog of work that had built up. The record shows that Wruck was involved in the hiring process to the extent that she prepared the initial job description, received and reviewed the 11 applications that were filed and subsequently was present, asked questions and recommended that Lemke be hired,

at a series of interviews at which the County's Finance and Personnel Committee, in its entirety, was also present. The record also shows, however, that the Committee agreed with Wruck's recommendation and that there was no dispute over which applicant should be selected. At the hearing, testimony was introduced to the effect that Wruck was allegedly free to select her assistant without the Committee's involvement, but there is no evidence that Wruck was ever informed with respect thereto, nor is there evidence that Wruck was ever informed that she had any other supervisory authority, as defined above, over Lemke.

The evidence indicates that most of the work of the Tax Lister's office is routine and that few directions need be given; that Wruck has never formally evaluated Lemke or recommended either raises or discipline; and that Wruck spends only a minimal amount of time assigning and checking Lemke's work. Wruck did not set Lemke's rate of pay or hours and has no authority to schedule overtime; and the testimony indicates that such matters as leave scheduling and the distribution of much of the workload are worked out mutually between Wruck and Lemke. Finally, while Wruck, in common with the other two persons alleged to be supervisors herein, attends the meetings held monthly for department heads, the testimony establishes that these meetings are not concerned with any sensitive labor relations matters and, indeed, that Lemke has substituted for Wruck at one such meeting.

On the basis of the above facts, the Commission finds that LaVoun Wruck does not possess or exercise supervisory authority of the type or quantity contemplated in the Act to make her a supervisor. 2/

#### Janitor/Purchasing Agent

Elmer Deibert has been employed as Janitor/Purchasing Agent for approximately 12 years and is listed on the employe roster at the head of the custodial department, over three other employes. Testimony shows, however, that Deibert exercises no authority over one, the groundskeeper, and that the two others work part-time, namely, Laura Dietzman, a janitress, and Lemke in her afternoon function of operating the offset machine. Deibert himself spends the vast majority of his time either cleaning the premises or doing various maintenance and machine repair tasks. Deibert has authority to purchase such commonly-used items as pens, pencils and paper and does so, including selecting supplies, without intervention or approval from others, but these are routine purchases for which the budgets are set in advance, and Deibert is not consulted as to the size of the budget for these items. 3/

While Deibert trained Lemke to operate the offset machine, the record shows that he was not involved in her or Dietzman's hire, the setting of their hours or wage rates, or the scheduling of their vacations. He seldom assigns work, as Lemke's work is given to her by other departments and his and Dietzman's are routine; and he has yet to lay off, suspend, discipline, or give a raise to anyone, neither has he been told he has the authority to do so. The record also shows that Deibert has not reprimanded Dietzman though he has sometimes thought she was not working hard enough.

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2/ Midway Manor Corporation (14820) 8/76; Eagle River Memorial Hospital (12888-C) 10/74.

3/ While it was not expressly contended in this matter that Deibert's purchasing authority makes him a managerial employe, testimony in the record is sufficient for the Commission to conclude that such purchases involve insufficient independent judgment to render the position of Janitor/Purchasing Agent managerial within the Act's meaning, and we so find.

The Commission concludes, from these facts, that Deibert is not a supervisor within the Statute's meaning.

### Zoning Administrator

Gilbert Voss has been Zoning Administrator for about two years; the only employe who works with him, Rebecca Keipe, is variously titled, but is listed in the employe roster as Zoning Secretary and Aide. Voss is responsible for reviewing all sanitary permits, plumbing plans, land use permits, rezoning petitions and other related matters, and also for conducting sanitary inspections and providing information about his office's functions to the public. Keipe acts as receptionist and secretary, but also substitutes for Voss when he is absent. Much of Keipe's work is either routine or is dictated by the demand of the public, and the only work which Voss actually assigns to Keipe are occasional pieces of research, some of which she does on her own initiative, and letters, which he dictates to her. Keipe was already employed in the office when Voss was hired and he has never been told he has any of the indicia of supervisory authority, as listed above, in regard to her, nor has he exercised any with the exception of granting Keipe time off on request, and assigning and reviewing some of her work. Voss spends only about 10% of his time in activities related to supervision of Keipe. The testimony shows, moreover, that the granting of time off is generally dictated by the amount of work to be done and that vacations are taken by both Voss and Keipe by mutual agreement.

Voss has no effective authority over Keipe's job tenure or wages, has no authority to suspend, discipline, or lay her off and spends little time assigning or checking her work, and the Commission concludes that the extent of Voss's control over Keipe's work assignments and time off is insufficient to render him a supervisor within the meaning of the Act.

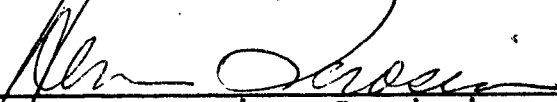
Accordingly, the positions of Tax Lister, Janitor/Purchasing Agent and Zoning Administrator are found not to be supervisory and are included in the bargaining unit.

Dated at Madison, Wisconsin this 30th day of May, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner