

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

**MID-STATE VOCATIONAL, TECHNICAL, AND
ADULT EDUCATION DISTRICT NO. 14**

Decision No. 16094-D

Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING
ORDER PARTIALLY GRANTING PETITION FOR REHEARING
AND AMENDING CONCLUSION OF LAW

In its petition for rehearing 1/ the Petitioner alleges as follows:

"1. The Commission's conclusion that 'the position of Food Service Supervisor combines duties and responsibilities of a supervisory and managerial nature to an extent sufficient to make the incumbent in said position [David Hall] not a 'municipal employe' within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act', which according to the Commission is based upon its Finding of Fact No. 5, constitutes a material error of fact and of law in that such a conclusion that the Food Service Supervisor exercises supervisory and/or managerial authority sufficient to make him other than a 'municipal employe' is not supported by Finding of Fact No. 5 and contrary to the clear weight of the credible evidence and the record in this case as a whole.

2. The Commission's conclusion that the Food Service Supervisor exercises sufficient supervisory and managerial authority to warrant his exclusion from the bargaining unit, in view of the evidence and record in this case, constitutes a material error of law in that such conclusion is inconsistent with and contrary to the Commission's own decisions in this area of the law, and in particular its decisions in Germantown Joint School District No. 1 (14762) 7/76; Union Grove Grade School (13820-A) 12/76; LaCrosse Area Joint School District No. 5 (14653) 5/76.

3. The Commission's conclusion that the Food Service Supervisor exercises sufficient managerial authority to warrant his exclusion from the bargaining unit constitutes a material error of fact and of law in that such conclusion is supported by neither the record in this case nor the case cited as authority for such conclusion by the Commission.

4. The Commission's conclusion that the Food Service Supervisor exercises sufficient supervisory authority to warrant his exclusion from the bargaining unit constitutes a material error of fact and of law in that such conclusion is supported by neither the record in this case, nor the Commission's own findings as set forth in its decision.

5. The Commission's conclusion to exclude the Food Service Supervisor from the bargaining unit, apparently based upon its conclusion that, although David Hall does

1/ Section 227.12(3) Stats. provides that rehearing will only be granted on the basis of:

- (a) Some material error of law
- (b) Some material error of fact
- (c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

not exercise sufficient supervisory authority to exclude him as a supervisory employe within the meaning of Sec. 111.70(1)(o)(1), Wis. Stats., nor sufficient managerial authority to exclude him as a managerial employe, his exercise of combined authorities sufficiently aligned him with management 'to make him other than a 'municipal employe' despite the fact that a majority of his time is spent at bargaining unit tasks', constitutes a material error of law in that the Commission is without statutory authority to create a 'managerial/supervisory employe' category and to exclude such an employe from the bargaining unit, particularly where such employe shares a substantial community of interest with the other bargaining unit employes."

REPLY OF THE PETITIONER

Pursuant to Section 227.12(4) the District filed a reply to the petition that reads as follows:

"1. The Petitioner alleges, in paragraph 1 of its Petition for Rehearing, that the conclusion of law reached by the Commission in its decision of April 27, 1978, is not supported by Finding of Fact #5 and is contrary to the evidence in the record. This allegation is frivolous. A reading of Finding of Fact #5 clearly supports the Conclusion of Law which follows. Finding of Fact #5 consists of a listing of supervisory and managerial duties performed by the employee in question and, therefore, on its face, supports the conclusion that such employee performs supervisory and managerial duties to such an extent so as to exclude him from the classification of municipal employee. Apparently, the petitioner's real allegation is that Finding of Fact #5 is not supported by the evidence. Finding of Fact #5 states in essence:

- a) Mr. Hall was hired in January, 1976 (TR 102).
- b) Mr. Hall was hired as Food Service Supervisor (TR 13).
- c) Mr. Hall 'is generally responsible for the operation of the Municipal Employer's cafeteria,' (TR 30,98).
- d) 'that in addition to Hall, the Municipal Employer employs in the cafeteria, a part-time cook, as well as eight student employees.' (TR 14,21).
- e) 'Hall participated, along with the Municipal Employer's Administrator and its Home Economist, in the hiring of the part-time cook,' (TR 20 & Municipal Employer's Exhibit 3 as to Keller; TR 14,17,48 as to Bouton).
- f) 'that Hall hired the student employes, who function as cashiers, dishwashers, servers and general kitchen help,' (TR 15,25,26,50 and 135).
- g) 'that Hall prepares work schedules and directs all the employes in the cafeteria,' (TR 27, 28, 29 and 56).
- h) 'that Hall has the responsibility for purchasing food and supplies and, in that regard, spends approximately \$30,000.00 annually. (TR 31,36; Municipal Employer's Exhibit 4).
- i) 'that Hall prepares the cafeteria budget, which requires school board approval,' (TR 31-2).

- j) 'that in preparing the budget Hall estimates cost for salaries, fringe benefits, supplies and equipment,' (TR 32).
- k) 'that Hall also sets food prices,' (TR 33).
- l) 'and that Hall effectively recommends purchase of equipment to be utilized in the cafeteria.' (TR 33-4).

From the foregoing phrase-by-phrase analysis of Finding of Fact #5, it appears that it is entirely supported by the credible and undisputed evidence. So much for petitioner's challenge to Finding of Fact #5.

2. The petitioner next alleges, in paragraph 2, that the conclusion reached by the Commission is not based on the evidence and record, and is contrary to the reported cases. As to the evidence and the record, we refer the Commission to paragraph 1 above and the Municipal Employer's previous memorandum filed in this case. As to the cases cited by the petitioner, each of them is clearly distinguishable from the case at bar. In none of them were there the multiplicity of supervisory and managerial duties presented in one case as there were here.

3. The allegations contained in paragraphs 3 and 4 of the Petition for Rehearing are merely a rehash of the allegations in paragraphs 1 and 2. The record clearly supports the findings of fact and the findings clearly support the conclusion of law.

4. The allegation in paragraph 5 of the Petition for Rehearing is pure fantasy and is based upon an extremely twisted interpretation of a very simple and straight forward conclusion. Nowhere in the findings or in the conclusion did the Commission express the opinion that David Hall did not 'exercise sufficient supervisory authority to exclude him as a supervisory employe within the meaning of Section 111.70(1)(o)(1), Wis. Stats., nor sufficient managerial authority to exclude him as a managerial employe,' as alleged in paragraph 5 of the Petition for Rehearing. Thus, any conclusion that the Commission is creating a new category of 'managerial/supervisory employe' is pure fantasy. The decision of the Commission states that there are enough [sic] supervisory duties and enough managerial duties to exclude Mr. Hall; and we read this as meaning on either count."

DISCUSSION:

The petition for rehearing and brief filed in support thereof, are based on the Petitioner's belief that the Commission's decision was affected by material errors of fact and law as set out above. It does not seek further proceedings for the purpose of adducing additional evidence. Instead, it asks the Commission to reconsider its decision based on the evidence of record.

Our conclusion of law and memorandum may be susceptible to the interpretation suggested in the petition for review, i.e., that the evidence supported the conclusion that the position should be excluded because of the combination of supervisory and managerial duties performed. However, the evidence supports the conclusion that the position is not only supervisory, but also managerial. Therefore, it is unnecessary in this case to reach or decide the question of whether Section 111.70(1)(b) of the MERA authorizes the exclusion of a position which does not possess sufficient duties of a supervisory nature or managerial nature to be excluded on either basis, but does possess duties of a managerial and a supervisory nature in sufficient combination to justify its exclusion.

Contrary to the Petitioner's assertion, we believe the record amply supports the findings of fact set out in Finding of Fact No. 5, and that those findings support the conclusion that Hall is a supervisor as well as a managerial employee. The cases relied upon by the Petitioner wherein the Commission reached a different conclusion all involved situations where the authority possessed by the employees allegedly performing supervisory duties in addition to the bargaining unit work, was considerably less than that possessed in this case. Hall possesses substantial supervisory authority sufficient to exclude him as a supervisor.

In addition, Hall is responsible for the operation of the District's food service program. He prepares its budget and is frequently thereafter called upon to make managerial judgments about purchasing, pricing and expenditures within the budget he previously prepared. The fact that he spends a majority of his time doing bargaining unit work is attributable to the size of the District's food service operation and does not nullify his supervisory role or his managerial role in that operation.

Therefore, we are satisfied that our conclusion of law should be modified to more accurately reflect the conclusions which are supported by the evidence in this case, but that our findings, conclusion and order should otherwise remain unchanged.

Dated at Madison, Wisconsin this 6th day of June, 1978.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Morris Slavney, Chairman


Herman Torosian, Commissioner


Marshall L. Gratz, Commissioner