

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Case VI
No. 22956 ME-1545
Decision No. 16524

3. During the course of the hearing herein, the District, contrary to the Council, contended that the individual occupying the position of Head Custodian at Tomahawk Senior High School performed such supervisory and/or managerial duties so as to exclude him from the agreed upon unit consisting of "all regular full-time and regular part-time custodians in the employ of the Municipal Employer, excluding managerial, supervisory and confidential employees."

4. That the individual occupying the position of Head Custodian at the Tomahawk Senior High School, does not possess, or exercise, supervisory and/or managerial duties and responsibilities in sufficient combination or degree to be deemed a supervisory or managerial employee.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time custodians in the employ of the School District of Tomahawk, excluding managerial, supervisory and confidential employees constitutes an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d)2.a. of the Municipal Employment Relations Act.

2. That the occupant of one position of Head Custodian at the Tomahawk Senior High School is neither a supervisor nor a managerial employee within the meaning of the Municipal Employment Relations Act, and therefore, said position is appropriately included in the bargaining unit described in paragraph 3 hereof, and as a result, the individual occupying said position is eligible to vote in the election directed herein.

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

DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within thirty (30) days of the date of this Directive in the appropriate collective bargaining unit consisting of all regular full-time and regular part-time custodians in the employ of the School District of Tomahawk, excluding managerial, supervisory, and confidential employees, who are employed by the Municipal Employer on August 30, 1978, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees casting valid ballots desire to be represented by Wisconsin Education Association Council, UniServ Council No. 18 for the purposes of collective bargaining with the School District of Tomahawk with respect to wages, hours and conditions of employment.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

Herman Torosian
Herman Torosian, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING DIRECTION OF ELECTION

The Appropriate Unit:

The Union and the Municipal Employer agree that the appropriate collective bargaining unit should consist of all regular full-time and regular part-time custodians in the employ of the School District of Tomahawk; with the exception of managerial, supervisory and confidential employees. The record indicates that the duties of the custodians involve custodial and maintenance duties performed in the various schools of the District.

Issue as to Head Custodian - Senior High School

The District, contrary to the Union, contends that the Head Custodian at the Tomahawk Senior High School should be excluded from the unit on the basis of his supervisory and/or managerial status. 1/

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

"As to other than municipal and county firefighters, any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, 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."

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 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 less 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 primarily supervising employees.
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

1/ The parties agreed that all other positions noted in paragraph 2 of the Findings of Fact are properly included in the unit.

7. The amount of independent judgment and discretion exercised in the supervision of employees. 2/

In determining whether positions are to be excluded from the bargaining unit on the basis of managerial status the Commission considers the degree to which the individuals in question participate in the formulation, determination and implementation of management policy and possess the authority to commit the Employer's resources. 3/

George Larson, the Head Custodian at Tomahawk High School, is considered by the Superintendent to be the Head Custodian for the School District. Larson directs the activity of six full-time custodians and five part-time custodians who are employed at the various schools in the District. However, the vast majority of custodial work is carried out in a routine manner without direction from Larson. Special tasks to be performed at the elementary schools are either assigned by Larson or the Building Principal at each of said schools. Larson routinely inspects the custodial work. However, Larson does not routinely evaluate the performance of any of the custodians. Larson spends a majority of his time performing custodial and maintenance duties. He is an hourly paid employee.

Custodians requesting sick leave and time off for personal reasons report to the high school office without prior approval of Larson. Vacation schedules are mutually agreed upon among the custodians at the elementary schools without the approval of Larson. The four custodians at the Senior and Junior High Schools submit their vacation schedule preferences to Larson for his approval. Larson does not possess the authority to effectively hire, discipline, or terminate any District employee. On the basis of the above, we conclude that Larson is not a "supervisor" within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act. 4/

The record does not establish that Larson participates in decisions involving management policy. Larson does not discuss the annual custodial budget with the Superintendent prior to the approval of same by the District's Board, but he does have authority to order materials and supplies so long as the purchases are limited to those amounts of money allocated in the District for such purposes. Thus, Larson has only a limited role in the budgetary process, and he does not have the authority

2/ St. Croix County (14518) 4/76; Fond du Lac County (10579-A) 1/72.
Winter Joint School District, No. 1 (16467) 7/78.

3/ City of New London (12170) 9/73; Shawano County Sheriff's Department (15257) 3/77.

4/ Menomonee School District (11902) 5/73; Union Grove Grade School (13820-A) 12/76.

to commit the District's resources in a manner sufficient to warrant the conclusion that he is a managerial employe. 5/

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Morris Slavney
Morris Slavney, Chairman

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5/ In Shawano County (15257) 3/77 the Commission stated:

"The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison, the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgment and discretion are required in determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not a managerial power, even though managerial employes also have that authority . . ."