

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF WAUPACA

Case I  
No. 19068 ME-1186  
Decision No. 16963

Ms. LeNore J. Hamrick, Business Representative, appearing on behalf of the Union.

The City of Waupaca having, on August 11, 1978, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to determine whether the position of Park Superintendent should be included in the certified collective bargaining unit presently represented by Waupaca City Employee's Union Local 1756-B, AFSCME, AFL-CIO; and a hearing on said petition having been held at Waupaca, Wisconsin, on October 2, 1978 before Ellen J. Henningsen, a member of the Commission's staff; and the Commission, having considered the evidence and arguments of the parties, issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

1. That the Waupaca City Employee's Union Local 1756-B, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 1036 Mount Vernon, Oshkosh, Wisconsin 54901.

2. That the City of Waupaca, hereinafter referred to as the Municipal Employer, has its offices at Waupaca, Wisconsin and, among its governmental functions, operates a Department of Parks and Recreation in which the following people are employed: full-time Parks and Recreation Director; part-time secretary; part-time Senior Citizen Coordinator; full-time Park Superintendent; and various seasonal employes such as referees, crafts instructors and laborers.

3. That, after conducting an election among eligible employees, the Commission certified the Union on June 10, 1975 as the bargaining representative of the collective bargaining unit consisting of all full-time employees of the Street Department, Water Department, Water Treatment Department and Recreation Department, excluding all supervisory, managerial, confidential and professional and all other employees 1/; that the parties agreed at the time of the election

1/ The parties later changed the unit description to include only regular full-time employees of the above departments.

that the employe occupying the position of Park Caretaker, now known as Park Superintendent, was eligible to vote in the election, although the Parks Department was not specifically mentioned in the unit description; that the position of Park Superintendent has been included in the above bargaining unit since the certification and is designated in the parties' collective bargaining agreements as Park Caretaker; that the above unit includes only blue collar employes; and that the Park Superintendent is the only employe of the Parks and Recreation Department included in the bargaining unit.

4. That the Municipal Employer, contrary to the Union, contends that Tom Rice, Park Superintendent, should be excluded from the above bargaining unit on the basis of supervisory, and/or managerial status and further on the basis that Rice, if found to be neither supervisory or managerial, does not share a community of interest with the other employes in the bargaining unit.

5. That Rice does not exercise a sufficient combination or degree of supervisory duties to conclude that he is a supervisor; that Rice does not participate in the formulation, determination and implementation of management policy, nor does he have sufficient authority to commit the Municipal Employer's resources, to conclude that he is a managerial employe; and that there is a sufficient community of interest between Rice and the other members of the bargaining unit to retain Rice as a member of said bargaining unit.

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

#### CONCLUSION OF LAW

That Rice is a municipal employe within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

#### ORDER CLARIFYING BARGAINING UNIT

IT IS ORDERED that Tom Rice, Park Superintendent, is, and shall be, included in the bargaining unit described above.

Given under our hands and seal at the  
City of Madison, Wisconsin this 11th  
day of April, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney  
Morris Slavney, Chairman

Herman Torosian  
Herman Torosian, Commissioner

Marshall L. Gratz  
Marshall L. Gratz, Commissioner

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

Section 111.70(1)(o)1 of the Municipal Employment Relations Act contains the following definition of the term supervisor:

As to any other than municipal and county fire-fighters, 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 determining whether an individual is a supervisor, the Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individual in question is a supervisor, 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 lesser authority of 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.

Tom Rice began working as Park Superintendent in early May, 1978. <sup>2/</sup> The great majority of Rice's time is spent performing manual labor, such as mowing grass, emptying garbage cans and building fences and bathroom facilities, either alone or alongside the seasonal employees whose work he directs. During the course of the year, Rice directs eight to ten seasonal employees, all of whom are laborers. Seasonal employees generally work from April through October. At times Rice will have no seasonal employees under his direction; at the time of the hearing, one seasonal employee worked with Rice. A

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<sup>2/</sup> Although the Park Superintendent is normally a permanent position, Rice was hired as a temporary employee due to the dispute about his status.

few of the seasonal employees work a part-time schedule of thirty hours a week while the rest work forty hours a week. None of the seasonal employees are represented for collective bargaining purposes. Rice is the only regular full-time blue collar employee in the Parks and Recreation Department. Rice's, immediate supervisor, the Director of Parks and Recreation, seldom visits the job site where Rice or the seasonal employees are working.

Rice assigns the seasonal employees' work, checks their time cards for accuracy and checks to see that they were performing their assigned tasks. In the event of inclement weather, Rice sends them home and reschedules them to work beyond their regular work day on the same day or on another day. Rice grants employees' request for time off, which is taken as compensation for additional hours previously worked or as unpaid leave time; seasonal employees accrue no paid sick leave or vacation. Rice can direct employees to work overtime and can decide whether said work is compensated by time off or payment of wages; the City Council has previously set a limit, however, on the amount to be paid for overtime.

Rice interviewed by himself three to four applicants for two seasonal jobs. Most of the seasonal employees had been hired prior to the beginning of his employment. Rice recommended to the Director that all of the applicants Rice interviewed be hired. Two were. Because the Director's independent approval was needed and because Rice recommended three or four applicants for employment despite the fact that there were two vacancies, it appears that Rice does not exercise independent judgment in his involvement in the hiring process.

The record does not indicate how Rice's wages compare with the wages of the seasonal employees with whom he works. However, he is near the bottom of the pay scale compared to other members of his bargaining unit.

Although the Municipal Employer contended that Rice is the first step in the grievance procedure for non represented employees which is available to seasonal employees, Rice's testimony revealed that he is not aware that he has any part to play in such grievance procedure.

Rice has given three separate employees one verbal warning each for tardiness. Rice reported his actions to the Director who did not investigate the situation or modify or reverse the verbal warnings. No other discipline has occurred during Rice's employment. Rice has the authority to promptly remove an employee from his job if an employee poses a threat to himself or others; the final resolution of the matter is up to the Director. Although Rice has the authority to make a recommendation to the Director, it is uncertain if Rice's recommendation would be effective. Other major employee misconduct which would not require immediate action would involve a final decision by the Director with a recommendation offered by Rice. Again, because it has never happened, it is uncertain whether Rice's recommendation would be effective.

The Commission concludes that Rice does not exercise a sufficient combination and degree of supervisory duties at this time to conclude that he is a supervisor. The great majority of his time is spent performing manual labor. Some of his other duties such as assigning work and checking time cards are of a routine nature. His involvement in the hiring process does not indicate that he exercises independent judgment. Although he disciplined several employees independently of the Director, these occasions involved very minor disciplinary action. Major disciplinary measures require the action of the Director and it is not certain that Rice could make an effective recommendation concerning such discipline.

For the above reasons, the Commission concludes that Rice is not a supervisor, but a working foreman.

The Commission has ruled that, in order for a position to be deemed managerial, ". . . employees [must] participate in the formulation, determination and implementation of management policy . . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources." 3/ Rice participates to a rather limited extent in the preparation of the departmental budget by suggesting items to the Director for possible inclusion in the budget; there is no evidence that Rice's suggestions affect or influence the budget-making process. Rice also requisitions necessary supplies up to a value of \$300; the items are previously included in the budget and the requisitions are subject to the approval of the Director. In addition, Rice can, on his own, determine if overtime work is needed and can decide whether said work is compensated by time-off or payment of wages; the City Council has previously set a limit, however, on the amount to be paid for overtime work. Based on the above, the Commission determines that Rice is not a managerial employee.

The bargaining unit involved herein is composed entirely of regular full-time blue collar workers whose job duties and working conditions, including those of Rice, are similar. Although Rice is the only Parks and Recreation Department employee included in the bargaining unit, there is no evidence that his interests are sufficiently different from the interests of the employees in the other departments that he cannot be adequately represented. In addition, Section 111.70(4)(d)2a of MERA requires the Commission to avoid fragmentation whenever possible. The Union represents all but one of the Municipal Employer's fifteen regular blue collar employees. To unnecessarily split these fifteen employees into more than one bargaining unit would be contrary to the anti-fragmentation directive.

It should be noted that the Parks Department was not specified by name in the certification. However, the Recreation Department was included in the certification. Given the fact that the correct name of the department is the Parks and Recreation Department and that the position of Park Superintendent has always been included in the bargaining unit under the title of Park Caretaker, it is possible that a reference to the Parks Department was unintentionally omitted by the parties. In any event, because Rice is not a supervisory or managerial employee and because he shares a community of interest with the other members of the bargaining unit, he is appropriately included in that bargaining unit.

Dated at Madison, Wisconsin this 11th day of April, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Morris Slavney, Chairman

  
Herman Torosian, Commissioner

  
Marshall L. Gratz, Commissioner

3/ City of Milwaukee (Library) (16483) 8/78, citing City of Milwaukee v. W.E.R.C. 71 Wis. 2d 709, 239 N.W. 2d 63, at 67 (1976).