

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
McFARLAND SUPPORT STAFF ASSOCIATION,	:	
WFT, AFT, AFL-CIO	:	Case VIII
	:	No. 24333 ME-1652
Involving Certain Employees of	:	Decision No. 17005-A
	:	
SCHOOL DISTRICT OF McFARLAND	:	
	:	

Appearances:

Mr. Ronald Safran, Staff Representative, appearing for the Union.
Melli, Shiels, Walker & Pease, S.C., by Mr. James K. Ruhly,
 appearing for the Municipal Employer.

FINDINGS OF FACT, CONCLUSION OF LAW AND
ORDER DISMISSING CHALLENGES

Pursuant to a Direction of Election previously issued in the above-entitled matter, the Wisconsin Employment Relations Commission, herein the Commission, conducted an election on May 31, 1979, pursuant to Section 111.70(4)(d), Municipal Employment Relations Act, among certain employees of the School District of McFarland, herein the District, to determine whether said employees desired to be represented for the purposes of collective bargaining by the McFarland Support Staff Association, WFT, AFT, AFL-CIO, herein the Association; and that during the course of said election, the District filed challenges to the ballots cast by Ronald Heinz, Manuel Shanks, and Ed Taber. Hearing on said challenges was held in Madison, Wisconsin on July 13, 1979, before Hearing Examiner Timothy E. Hawks. Having considered the evidence, briefs and arguments of the parties, and being fully advised in the premises, the Commission hereby issues the following Findings of Fact, Conclusion of Law and Order Dismissing Challenges.

FINDINGS OF FACT

1. The Association, on March 22, 1979, filed a petition which requested the Commission to conduct an election among certain employees of the District to determine whether said employees desire to be represented by the Association for the purposes of collective bargaining. A hearing on said petition was scheduled for July 13, 1979, however, prior to going on the record at said hearing the parties entered into a stipulation for election. On May 4, 1979 the Commission issued a Direction of Election wherein it directed an election in the following appropriate unit: all regularly employed Support Staff Personnel, full and part-time, who are not supervisory or confidential employees within the meaning of the law, and are not included in the recognized instructional unit, including all maintenance, custodial, clerical, secretarial and food-service personnel, and aides who are employed on May 4, 1979, except such employees who may prior to the election quit their employment or be discharged for cause for the purpose of determining whether the required number of such employees desire to be represented by the above-named labor organization for the purposes of collective bargaining with the Municipal Employer named above.

2. Thereafter, on May 31, 1979 the Commission conducted an election among the employes in the above-described unit. During the course of the election, the Employer challenged the ballots cast by custodians Ronald Heinz, Manuel Shanks and Ed Taber on the ground that said employees are supervisory employees within the meaning of Section 111.70(1)(o), MERA. At the conclusion of the election the tally of ballots showed that there were 44 employes eligible to vote. 41 employes cast ballots, and of those ballots cast, 19 voted in favor of representation and 19 voted against representation with the three challenged ballots making up the remaining vote.

3. The three challenged ballots were cast by individuals occupying positions classified as "Chief Custodian".

4. Taber is a Chief Custodian at the District's elementary school. He has never hired, promoted, transferred, disciplined or discharged a Custodian I or any other employe of the School district, nor has he effectively recommended the same. Taber has only restricted authority to direct and assign the work force. Taber exercises such limited authority over one full-time employe and one part-time employe. Taber has not evaluated the Custodians I even though the job description for chief custodians ascribes such job responsibilities to him. For all but a brief period at the end of his shift Taber is the only custodian in the elementary school building. Although Taber like the other Chief Custodians makes \$5.62 per hour, which is greater than the hourly pay of the Custodians I who earn from \$4.00 to \$5.10, the greater pay of the Chief Custodian reflects compensation for the additional responsibilities for the maintenance of the building and its operating machinery. The Chief Custodians primarily supervise the maintenance activities.

5. The supervisory responsibilities of Mr. Taber are limited to the assignment of non-routine work, the discussion of any complaints regarding work done by the Custodians I which are brought to Taber's attention, and the occasional review of applicants for Custodian I job openings.

6. The work performed by Mr. Shanks is substantially similar to that described above in Findings of Fact 4 and 5 regarding Mr. Taber, with the exception that Shanks exercises limited supervisory authority over one bargaining unit employe, namely Mr. Nygaard. Nygaard and Shanks shifts overlap by only 15 minutes.

7. The work performed by Mr. Heinz is substantially similar to that described above in Findings of Fact 4 and 5 regarding Mr. Taber, with the exception that Heinz exercises limited supervisory authority over three Custodians I currently and may exercise such authority over an additional two in the coming year. Unlike either Taber or Shanks, Heinz has been involved in the disciplinary interview of one non-unit bargaining employe.

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

CONCLUSION OF LAW

That Ed Taber, Manuel Shanks and Robert Heinz are not clothed with sufficient duties and responsibility to constitute said individuals as supervisors as that term is defined by Section 111.70(1)(o), MERA, and therefore, said individuals are "municipal employes" within the meaning of Section 111.70(1)(b) of MERA.

Based upon the above and foregoing Findings of Fact and Conclusion of Law the Commission makes and issues the following

That Ed Taber, Manuel Shanks and Robert Heinz are not clothed with sufficient duties and responsibility to constitute said individuals as supervisors as that term is defined by Section 111.70(1)(o), MERA, and therefore, said individuals are "municipal employes" within the meaning of Section 111.70(1)(b) of MERA.

Based upon the above and foregoing Findings of Fact and Conclusion of Law the Commission makes and issues the following

ORDER DISMISSING CHALLENGES

1. That the District challenges to the ballots of Heinz, Shanks and Taber shall be, and hereby are, dismissed.

2. The ballots of said three employes shall be opened and included in the final tally of ballots at Madison, Wisconsin on Wednesday, October 3, 1979 at 9:00 a.m. at the Commissioner's Offices, 14 West Mifflin Street, Suite 200, Madison, WI 53703. The District and Union may have observers present at such time.

Given under our hands and seal at the
City of Madison, Wisconsin this 21st
day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Commissioner


Gary L. Covelli, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER DISMISSING CHALLENGES

Section 111.70(1)(b) of MERA defines the term "supervisory" as follows:

. . . Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or discipline other employes, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the 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 employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
7. The amount of independent judgment exercised in the supervision of employes. 1/

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 employe to be a supervisor. 2/

Briefly applying the above criteria to the actual job duties of the Chief Custodians in question, we note the following:

1/ Fond du Lac County, (10579-A); St. Croix County (Health Care Center, (14518) 5/76; Wood County, (10345-A).

2/ Wood County, supra.

1. Although the School District claims the Chief Custodians have the authority to effectively recommend the hiring, promotion, transfer, discharge or discipline of Custodians I, the Chief Custodian's involvement in this regard has been minimal. The record establishes only three instances within the memory of the Superintendent of such involvement: the hiring of a Custodian I at the elementary school by Taber, the transfer of a Custodian I to the junior high school by Shanks, and the disciplinary interview of a non-unit part-time employe at the high school by Heinz. However, Taber testified, contrary to the testimony of the District Superintendent, that he was not involved in the hiring process of the new Custodian I at the elementary school and that he first became aware of such hire when said employe reported for work. Taber, however, indicated he had been involved occasionally in hiring procedures. With respect to Shanks and Heinz, the record establishes that Shanks apparently was asked for and provided his approval of the transfer of a Custodian I to the junior high school, and that Heinz in fact cooperated with the high school principal in the disciplinary interview of an employe.

The Commission concludes that the Chief Custodian's de minimus involvement in the area of hire, promotion, transfer, discipline or discharge of employes is insufficient to justify a conclusion that they are supervisors.^{3/}

2. The work assignment authority exercised by the Chief Custodian is customarily limited to the assignment of nonroutine aspects of the Custodian I's work and such assignment occurs during the limited overlap of the Chief Custodian's shift with that of the Custodian I (15 minutes). Particularly, the Chief Custodian would only communicate to the Custodian I those tasks either not completed during the day, for example routine repair of equipment or facilities, such as bathroom fixtures, or especially pressing custodial tasks, for example, the cleaning of a particularly littered room.

3. Taber exercises limited authority over two employes, one of whom is part time; Shanks directs the work of only one bargaining unit employe; and Heinz currently directs the activities of three employes, although he may direct the work of an additional two employes in the coming year. Additionally, the building principals exercise authority regarding personnel decisions as does the District's Superintendent.

4. The Chief Custodians are compensated at a higher level than Custodians I primarily for their maintenance responsibilities.

5. The Chief Custodians are primarily responsible for the supervision of the cleanliness and maintenance of the building and not the supervision of employes.

6. The Chief Custodians are in fact working supervisors who spend the majority of their time performing maintenance or custodial duties.

^{3/}See Winter Joint School District No. 1 Dec. No. 16467 7/78 where the Commission under facts almost identical to the facts herein held that the Head Custodians were not supervisory or managerial employes. See also, Hortonville Joint School District No. 1, Dec. No. 11242-A, 8/77, and Union Grove Grade School, Joint School District No. 1, Dec. No. 13820-A, 12/76.

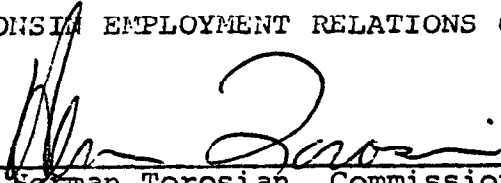
7. The exercise of independent judgment by the Chief Custodians in a supervisory setting would be limited to the assignment of nonroutine tasks discussed above.

It is clear from the above that the Chief Custodians Taber, Heinz and Shanks do not possess sufficient indicia of supervisory authority to justify their exclusion from the collective bargaining unit.

Dated at Madison, Wisconsin this 21st day of September, 1979.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

BY



Neriman Torosian, Commissioner



Gary L. Covelli, Commissioner