

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**EAU CLAIRE SCHOOLS CLASSIFIED STAFF FEDERATION
LOCAL 4018, AFT-WISCONSIN, AFL-CIO**

Involving Certain Employees of
EAU CLAIRE AREA SCHOOL DISTRICT

Case 72
No. 68115
ME-1247

Decision No. 17124-D

Appearances:

James Mangan, AFT-Wisconsin Staff Representative, 2463A Parkview Lane, Menomonie, Wisconsin 54751, appearing on behalf of the Eau Claire Schools Classified Staff Federation, Local 4018, AFT-Wisconsin, AFL-CIO.

Victoria L. Seltun, Weld, Riley, Prens & Ricci, S.C., 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the Eau Claire Area School District.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On June 26, 2008, the Eau Claire Schools Classified Staff Federation Local 4018, AFT-Wisconsin, AFL-CIO filed a petition seeking among other matters to have the Integration and Software Specialist added to an Eau Claire Area School District collective bargaining unit represented by Local 4018. The District, contrary to Local 4018, asserts that the Specialist is a supervisor and thus cannot be included in the Local 4018 bargaining unit.

Hearing was held on September 17, 2008 and May 12, 2009 in Eau Claire, Wisconsin by Commission Examiner Michael R. O'Callaghan. The parties filed post-hearing briefs-the last of which was received on June 15, 2009.

No. 17124-D

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Eau Claire Area School District, hereinafter the District, is a municipal employer which has its principal offices at 500 Main Street, Eau Claire, Wisconsin.

2. Eau Claire Schools Classified Staff Federation, Local 4018, AFT-Wisconsin, AFL-CIO, hereinafter the Union, is a labor organization serving as the collective bargaining representative of a bargaining unit of District employees described in the parties' 2007-2009 agreement as:

. . . all regular full-time and regular part-time clerical, data personnel, educational assistants, and Bilingual Education Assistants, but excluding confidential and supervisory personnel, Head Start aides, and other restricted choice positions.

3. The District maintains a Department of Technology managed by Director of Technology Scidmore. The District's Network Manager, Data Processing Manager, Repair Supervisor and the disputed Integration and Software Specialist (Sarah Paul) all report directly to Scidmore. In addition, the Department of Technology Secretary (Fischer) directly reports to Scidmore.

Integration and Software Specialist Paul has one direct report-Information Technology Clerk Steuck. Paul's yearly salary is \$65,371. Steuck's yearly wages are \$23,474.

Director Scidmore, Secretary Fischer, Software Specialist Paul and Technology Clerk Steuck all work in a common office space on the first floor of the District's main office building. The Network Manager, Data Processing Manager and Repair Supervisor and the employees who directly report to them all work or report to work elsewhere in the office building.

4. Paul's job responsibility is to purchase and oversee implementation of the District's software needs, including training the District's staff as to software. Technology Clerk Steuck works 75% of her time supporting Paul in meeting her job responsibilities. The remaining 25% of Steuck's work is as an Assistive Technology Special Education Assistant with her work in this capacity being directed by District employees other than Paul.

5. Paul does have authority to direct and assign the work of Steuck during the 75% of her time that she works as Technology Clerk and exercises independent judgment when doing so. Paul also is generally responsible for administering Steuck's requests for vacation and sick leave. Paul annually evaluates Steuck's overall performance. If Steuck were to leave her position, Scidmore would give significant but not necessarily determinative weight to Paul's recommendation as to who should fill the position by way of transfer or hire.

6. Paul does not have the independent authority or the authority to effectively recommend the hire, transfer, suspension, lay off, recall, promotion, written reprimand, or discharge of Steuck or to adjust her grievances.

7. Director Scidmore has more supervisory authority over Steuck than does Paul.

8. Paul's level of compensation is based both on her skills and her responsibility to direct and assign Steuck's work.

9. Paul primarily supervises an activity as opposed to an employee.

10. Paul does not spend a majority of her time supervising Steuck.

11. Paul does not have supervisory authority in sufficient combination and degree to be a supervisor.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

Integration and Software Specialist Sarah Paul is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Integration and Software Specialist is hereby included in the collective bargaining unit set forth in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 10th day of September, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

Susan J. M. Bauman, Commissioner

EAU CLAIRE AREA SCHOOL DISTRICT

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

The District, contrary to the Union, asserts that Integration and Software Specialist Paul is a supervisor and thus cannot be included in the Union's bargaining unit.

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

. . . 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.

When applying Sec. 111.70(1)(o)1, Stats., to the evidence presented, the Commission considers the following factors when determining if the occupant of a position is a supervisor:

1. The authority to independently or effectively recommend the hire, transfer, lay off, recall, promotion, transfer, discipline or discharge of employees and the adjustment of their grievances;
2. The authority to direct and assign the work force;
3. The number of employees allegedly 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 alleged supervisor is paid for his/her skills or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor spends a majority of his/her time directing the work of employees; and
7. The amount of independent judgment exercised in the direction of employees.

Not all of the above factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

We begin our analysis by noting that as to some important matters (such as the authority to discipline or to effectively recommend same), the testimony of Director Scidmore and Specialist Paul differs. When sorting out these discrepancies, we have given determinative weight to the testimony of Director Scidmore who is Paul's supervisor and thus is presumed to speak more authoritatively on behalf of the District as to Paul's actual authority.

As to the hiring and transfer portion of the Factor 1 analysis, the testimony of Director Scidmore makes clear that Paul's recommendation as to whom to hire or accept as a transfer into the Technology Clerk position would be given significant weight. However, on balance, Scidmore's testimony indicates that he reserves the final effective recommendation to himself and would, if he strongly disagreed with Paul's choice, overrule same. Thus, while Paul's participation in the hiring or transfer process is significant, it falls short of constituting an effective recommendation.

As to the disciplinary portion of the Factor 1 analysis, Paul testified that she had the independent authority to issue verbal and written reprimands to Steuck. However, at least as to written reprimands, Scidmore testimony indicates he would be heavily involved in any decision to issue a written reprimand. As to the more serious discipline of suspension and discharge, Scidmore's testimony during the second day of hearing at pages 55-63 satisfies us that he would again be heavily involved and would effectively be the decision-maker. Thus, as to the issue of disciplinary authority, we discount Paul's (and Steuck's) testimony as to the extent of Paul's independent or effective disciplinary authority and conclude that Scidmore has retained that authority over Steuck.

As to promotions and lay off/recall decisions, the record does not contain any persuasive evidence of significant involvement by Paul.

As to the adjustment of grievances, Scidmore's testimony indicates that such matters are referred to the District's Human Resources Department.

As to Factors 2 and 7, Paul exercises independent judgment and authority when she directs and assigns Steuck's work.

As to Factor 3, Paul only directs the work of one employee and we are satisfied from our Factor 1 analysis that Director Scidmore exercises more authority over Steuck than does Paul.

As to Factor 4, Paul's pay substantially exceeds that of Steuck (and of Union bargaining unit employees generally) and reflects both her skills and responsibilities and her direction of Steuck's work.

As to Factors 5 and 6, the evidence satisfied us that Paul spends no more than on hour a day directing Steuck's work and is primarily supervising Steuck's activities rather than her status as an employee.

Considering all of the above, we conclude that Paul is not a supervisor.¹ In this regard we are strongly influenced by the small number of employees (one) whose work Paul directs, the absence of significant disciplinary authority, and the physical proximity of Scidmore to Steuck's work site during the 75% of her time that she is serving as the Information Technology Clerk. Thus, although it is a close question because Paul independently assigns, directs and evaluates Steuck's work and plays a significant role in any hiring and transfer decisions, we reject the District's position that she is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.² Thus, we have ordered her inclusion in the bargaining unit.

Dated at Madison, Wisconsin, this 10th day of September, 2009.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Judith Neumann /s/

Judith Neumann, Chair

Paul Gordon /s/

Paul Gordon, Commissioner

Susan J. M. Bauman /s/

¹ When reaching this conclusion, we have considered the various prior Commission decisions cited by the District but conclude that each of them is significantly distinguishable from the instant matter in the following ways. In FREDERIC SCHOOL DISTRICT, DEC. NO. 22583-B (WERC, 8/06), the Food Service Supervisor found to be a supervisor directed the work of five employees while Paul only directs the work of one employee. In HARTFORD UNION HIGH SCHOOL DISTRICT, DEC. NO. 23116-C (WERC, 6/06), the Computer Lab Supervisor and the AV Coordinator found to be a supervisors each only supervised one employee but, unlike Paul, each had the effective authority to hire and impose significant discipline. In BROWN COUNTY, DEC. NO. 15681-C (WERC, 11/88), the individual found to be a supervisor had the effective authority to recommend discipline that Paul lacks. In WOOD COUNTY, DEC. NO. 28172-B (WERC, 8/01), in contrast to Paul, the Supervisor-Parks Construction found to be a supervisor regularly directed the work of multiple employees at work sites where no other supervision was present. In GLENWOOD CITY, DEC. NO. 32214-B (WERC, 3/08), the Director of Public Works found to be a supervisor had the effective authority to hire and fire employees and directed the work of four employees.

² Throughout this litigation, the District's formally-stated basis for Paul's exclusion from the bargaining unit has been her alleged supervisory status. In its reply brief, the District first alluded to Paul's potential managerial status. While Paul has substantial authority to commit the District's resources through software purchases and plays a significant role in the District's implementation of software technology, these responsibilities do not rise to the level necessary for managerial employee status. See FREDERIC SCHOOL DISTRICT, DEC. NO. 22583-B (WERC, 8/06) and the analysis of managerial status contained therein.

Susan J. M. Bauman, Commissioner