

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Joint Petition of  
**CITY OF WASHBURN and GENERAL DRIVERS UNION NO. 346**

Involving Certain Employes of

**CITY OF WASHBURN**

Case 4  
No. 58185  
ME-995

**Decision No. 17535-B**

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Appearances:

Falsani, Balmer, Peterson & Quinn, by **Attorney Timothy W. Andrew**, 1200 Alworth Building, 306 West Superior Street, Duluth, Minnesota 55802, appearing on behalf of General Drivers Union No. 346.

Weld, Riley, Prenz & Ricci, S.C., by **Attorney Kathryn J. Prenz**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, Wisconsin 54702-1030, appearing on behalf of the City of Washburn.

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

On November 10, 1999, the City of Washburn and General Drivers Union No. 346 filed a joint petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of City of Washburn employes by determining whether the Director of Recreation Programming should be included within the unit. The City, contrary to Union No. 346, asserts the Director should be excluded from the unit as a supervisor and/or a managerial employe.

Examiner John R. Emery, a member of the Commission's staff, conducted a hearing on February 29, 2000, in Washburn, Wisconsin. The parties filed briefs and the record was closed on June 2, 2000.

Dec. No. 17535-B

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

### **FINDINGS OF FACT**

1. The City of Washburn, herein the City, is a municipal employer with offices at 119 Washington Avenue, Washburn, Wisconsin and maintains a Recreation Department.

2. General Drivers Union No. 346, herein the Union, is a labor organization with its offices located at 2802 West First Street, Duluth, Minnesota. The City and Union are parties to a collective bargaining agreement which contains the following recognition clause:

#### **ARTICLE 1 - RECOGNITION AND REPRESENTATION**

- A. **RECOGNITION**: The Employer agrees to and does hereby recognize the General Drivers Local Union No. 346 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and those persons authorized to and acting on behalf of said Labor Union.
- B. **REPRESENTATION**: The Union shall be the sole representative of all classifications of employees covered by this Agreement in collective bargaining with the Employer, and there shall be no discrimination against any employee because of non-Union affiliation.

The bargaining unit currently consists of 11 City employees.

3. When the bargaining unit was first established in 1979, the City did not maintain a Recreation Department, and the Park Director was responsible for summer recreation programming, as well as collecting user fees for the public campgrounds operated by the City. The Park Director also supervised the temporary employees hired by the City to staff the recreation programs.

4. In 1985, the position, now known as Park and Recreation Director, was combined with that of Senior Citizens Director, a bargaining unit position, and Emergency Medical Technician. By agreement between the City and the Union, the new position was added to the bargaining unit at that time, and has remained so until the present. Between 1991 and 1999, the position was titled Recreation Director and, in 1995, began adding after school recreation programs in addition to the summer programs already in existence.

5. In November, 1996, Kathy Wright was hired as Recreation Director and held the position until March, 1999. During that time, she was supervised by, and answerable to, the Mayor and City Clerk on day to day matters, and the Park and Recreation Committee of the

City Council on policy and budgetary matters. In August, 1998, as part of a City reorganization, the newly hired City Administrator became her direct supervisor. Her position was paid an hourly wage and was limited to an average of 30 hours per week. Her wage rate in 1999 was \$13.24 per hour, or \$20,654.40 annually.

Wright supervised the City's recreation programs, which included overseeing the activities of the City's temporary recreation employees. There were as many as seven temporary employees at any given time, including aides and life guards, who were each limited to 600 total hours of work under their contracts. Typically, Wright spent approximately one-half hour per week scheduling the temporary employees and dealing with supervision issues, one hour per day preparing for the recreation programs, responding to telephone messages and ordering supplies and the balance of her time leading recreation activities or senior citizens' activities.

When employees were hired, Wright was either part of the City interview panel or the sole interviewer if other panel members were unavailable. She made recommendations as to who should be hired and her recommendations were generally followed. She could recommend discipline of an employee to her superiors, but had no independent disciplinary authority beyond a verbal reprimand, which she had occasion to do once during her employment. She did not formulate employee policies and procedures or prepare the recreation budget, but acquired and replaced equipment and supplies within budgeted monies. Wright resigned in March, 1999, after the birth of her second child.

6. Prior to her resignation, Wright met with Michael Srenock, the City Administrator, to discuss concerns about her position. She raised issues regarding her lack of input into strategic decisions, such as the construction of a new recreation center and need for more autonomy in running programs. She also noted that there was a need for clarification regarding the chain of command, as she had, at various times, been told to address any particular concerns she had with the Mayor, the City Clerk and the Chairman of the Park and Recreation Committee. She also indicated a need for clarification as to whether her position was salaried or hourly, as there was inconsistency between the hours she worked and the method of payment. Finally, she expressed the opinion that the position of Recreation Director needed to be elevated to the level of a department head in the City.

7. Subsequent to Wright's resignation, Srenock met with the City Park and Recreation Committee to discuss options regarding the recreation program, including whether to cancel the City's recreation programs, hire a replacement for the existing position or restructure the department. The Committee recommended that the Recreation Director be elevated to a full-time position at department head level. The recommendation was forwarded to the City Council, which approved the recommendation on April 12, 1999. In May, the City hired John Murray as Interim Recreation Director.

8. The following job description for the position of Director of Recreation Programming, was adopted by the City Council on May 12, 1999:

. . .

**General Statement:**

This is a full-time, supervisory and managerial position responsible for all aspects of the City's recreation programs. Under the supervision of the City Administrator, the Director of Recreation Programming coordinates recreational programming for all citizens of the City of Washburn.

Responsibilities include, among other duties: planning and implementation of all recreational programs of the City; scheduling and coordination of the use of all City owned park and recreational facilities, excluding the campgrounds; coordinating with all outside organizations which provide recreational opportunities within City owned facilities; preparation and administration of departmental budgets; preparation, submission and administration of grant applications; scheduling, supervision and evaluation of other departmental employees; and, assisting in the hiring process of other departmental employees.

**Essential Functions and Related Tasks:**

- 1) Planning and implementation of all recreational programs of the City
  - Researches, studies and keeps abreast of current "industry standards" related to municipal recreational practices and developments
  - Conducts comprehensive community recreational needs and interest analysis – considers needs and interests of all age groups and populations
  - Inventories community capabilities (facilities and personnel) for delivering programming and service
  - Develops programmatic offerings
  - Formulates staffing strategy
  - Develops and carries out program promotion and publicity
  - Coordinates registration and scheduling of staff/volunteers
  - Conducts program evaluations

- Prepares and maintains records
- 2) Scheduling and coordination of the use of all City owned park and recreational facilities, excluding the campgrounds
- Inventories existing park and recreational facilities
  - Identifies days and times during which facilities will be utilized by City program offerings
  - Coordinates the scheduling of other organizations which utilize City parks and facilities on an annual and routine basis (Washburn School District, Washburn Little League, Washburn Tennis Association, Soccer Association)
  - Formulates and forwards a Facility Use Policy for approval by the Parks and Recreation Committee. Elements of the Policy to include:
    - Rental and use of Civic Center, pavilions, fields, tennis courts, Athletic Field Complex
    - Use of City parks and facilities for “private” or organizational concession sales
  - Coordinates with other individuals/agencies who request the use of facilities
  - Develops and maintains proper forms for facility use requests
  - Processes request forms in accordance with the Facility Use Policy
- 3) Coordinating with outside organizations in providing recreational opportunities within the City
- Remains in close contact with the Washburn School District, the Washburn Chamber of Commerce, and others who regularly coordinate recreational offerings in the City
  - Insures that City recreational programming does not unnecessarily duplicate offerings of other agencies.
  - Participates in cooperative ventures whenever practical and beneficial

- Develops and maintains a symbiotic relationship with Northland College and other local educational institutions which provide specific courses of study related to recreation and outdoor education
- 4) Preparation and administration of departmental budgets
- Reviews and analyzes financial needs
  - Identifies possible alternative and additional sources of revenue/resources and makes recommendations regarding the same to the City Administrator
  - Prepares annual budget request for all aspects of the Recreation Department and submits them to the City Administrator for inclusion in the budget adoption process
  - Administers Recreation Department budgets within the approved limits. Activities to include authorizing the payment of bills, purchase of supplies and equipment, and approval and submission of staff time sheets.
  - Supervises financial operations of the Recreation Department including registration fees, facility rent, and operation of the concession areas and develop policies and procedures relating to the same.
- 5) Preparation, submission and administration of grant applications
- Determines needs of the Recreation Department and researches possible grant monies which may be available, in coordination with the City Administrator
  - Prepares all necessary grant applications with the approval of the Parks and Recreation Committee and the Common Council and submits applications to the granting agency(ies) for review and possible approval
  - Administers grant funds when awarded in accordance with all applicable provisions and submits reports as required by the granting agency
- 6) Assisting in the hiring process of other departmental employees
- Determines staff needs
  - Makes recommendations to the City Administrator when additional staffing is necessary

- Assists with the recruitment, screening and selection of other departmental employees in accordance with City hiring practices
- 7) Scheduling and supervision of other departmental employees in a manner which assures safe, efficient and effective program implementation
- Determines appropriate staffing levels for each recreational program
  - Orients and trains new staff members
  - Assigns staff to tasks in accordance with staffing needs and individual ability and expertise
  - Supervises, evaluates and disciplines staff members
  - Approves leave requests for departmental employees
  - Adjusts grievances of departmental employees
- 8) Attending meetings as required
- Attends Parks and Recreation Committee meetings on a regular basis. Answers questions, provides reports and makes presentations as required
  - Attends City Council meetings and other committee meetings as required, including closed sessions
  - Attends various service club and organizational meetings to encourage and develop voluntary participation in the delivery of recreational programs and to maintain cooperative planning and implementation of various area parks and recreational facilities
  - Attends conferences and meetings with others in the area and state who deliver recreational programming and activities
- 9) Coordinating with other City departments
- Coordinating with the Public Works Department
    - Prepares maintenance requests at City parks and recreational facilities
    - Initiates and participates in planning of future, long range park and facility development

— Notifies Director of Public Works of any deficiencies in playground equipment or other safety concerns within City parks and recreational facilities

- Coordinates with the Library on facility use and programming
- Coordinates with the City Clerk

— Authorizes financial transactions in a timely fashion – activities to include: payment of bills, recording of receipts, preparation and submittal of payroll time sheets

— Files, in a timely fashion, reports to be included with Committee and Council agendas, when appropriate

- Attends meetings of the City Department Heads on a regular basis

10) Performs related duties as required

**Qualifications:**

An equivalent combination of education, training, and/or experience which provides the knowledge, ability and skills necessary to perform the duties of the job satisfactorily.

**Required:**

- Associates or Bachelor's Degree in Parks and Recreation, Leisure Studies, or other related field
- Knowledge of State regulations pertaining to recreational programs
- Ability to plan and organize the work of the Recreation Department staff
- Ability to supervise employees
- Ability to prepare, analyze and administer budgets
- Ability to orally and verbally express ideas clearly and concisely
- Ability to establish and maintain an effective working relationship with young children, adolescents, and adults of all ages



- Valid Wisconsin motor vehicle operator's license
- Ability to work collaboratively in a team setting

**Desired:**

- Three or more years satisfactory experience organizing activities, serving the public, or performing other relevant activities related to recreational programs
- Certification by the National Recreation and Parks Association as a Certified Leisure Professional (CLP), Certified Leisure Technician (CLT), or Certified Leisure Provisional Professional (CLPP)
- Municipal work experience

**Physical Requirements in Performing Tasks Listed:**

The physical demands described here are representative of those that must be met in order for an individual to successfully fulfil the essential functions of the position of Director of Recreation Programming. Reasonable accommodations may be offered to enable an individual with disabilities to perform the essential functions.

Work is performed in both indoor and outdoor settings. The Director of Recreation Programming will be frequently required to sit, walk, talk, hear, pick up and move recreational equipment, navigate stairs, and participate in the recreational programs.

While performing the duties of this job, the employee will work in an office setting with adequate lighting and a light to moderate noise level. The employee is required to monitor recreational programs in a variety of indoor and outdoor settings. The indoor settings include a gymnasium where the noise levels are magnified and a recreational game room. The outdoor settings are primarily city-owned parks and beaches where the employee will be expected to operate within various types of weather and terrain and where the employee will be exposed to allergens.

Working hours and days will vary with the seasons and may periodically require attendance as early as 5:30 AM and as late as 10:30 PM. Periodic attendance during weekend days is expected.

The position was advertised locally, throughout the State universities and in a national trade journal with a listed starting salary range of \$27,000-32,000.

9. In August, 1999, John Murray, the Interim Recreation Director, was hired as Director of Recreation Programming at a starting salary of \$27,000 per year. At the time of his hiring, Murray had one semester remaining to complete a Bachelor's Degree. In addition to his service as Interim Recreation Director, Murray had previous relevant experience as the Campground Attendant for the City of Washburn and as owner of a canoe and recreational supply company, which offered recreational programs privately to individuals, schools, groups and the City of Washburn.

Since taking the position, Murray has been solely responsible for the selection and hiring of the temporary employees who staff the Recreation Department, of which there are between three and six at any given time. He is authorized to administer discipline, up to a second written warning and has issued written reprimands to employees. He can effectively recommend that more serious discipline be imposed by the City Administrator.

He oversees the operation of the Civic Center, public ice rink, public ball fields and public parks. He develops and oversees the implementation of all recreational programs for the City. He prepares the annual budget for the Department, which is submitted to the City Administrator along with the budgets for the other City Departments and participates in writing grant applications for outside funding. He has sole authority to allocate and spend the Department operating budget, outside of payroll, as he deems necessary. He has developed a policies and procedures handbook for Department employees and use policies for the Civic Center and public ice rink, subject to the approval of the Park and Recreation Committee. He attends City leadership meetings with the other department heads and is directly supervised only by the City Administrator.

10. The Director of Recreation Programming has supervisory responsibilities in sufficient combination and degree to be a supervisor.

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

#### CONCLUSION OF LAW

1. The Director of Recreation Programming is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, is not a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

**ORDER CLARIFYING BARGAINING UNIT**

The Director of Recreation Programming is hereby excluded from the bargaining unit referenced in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin this 22<sup>nd</sup> day of September, 2000.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner

CITY OF WASHBURN

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

**BACKGROUND**

Prior to 1999, the City of Washburn employed a Recreation Director to run its municipal recreation programs. The Recreation Director was included in the City General Employees bargaining unit represented by General Drivers Local No. 346, International Brotherhood of Teamsters. In 1999, as part of a general reorganization, the City created the position of Director of Recreation Programming to run the Recreation Department. On November 10, 1999, the City and the Union jointly petitioned the Wisconsin Employment Relations Commission for a determination as to whether the Director of Recreation Programming is properly included in the bargaining unit or excluded as a supervisor or a managerial employe.

**POSITIONS OF THE PARTIES**

**The City**

The position of Director of Recreation Programming is properly excluded from the bargaining unit as it encompasses supervisory and/or managerial responsibilities in sufficient combination and degree to be exempted.

Applying the statutory definition of a supervisor found in Sec. 111.70(1)(o), Stats., to the facts, the City argues the Director is a supervisory employe. The incumbent testified that he supervises between three and six employes at any given time and is solely responsible for hiring decisions. He disciplines employes, as evidenced by a letter of reprimand entered into the record and may suspend employes under appropriate circumstances. He also transfers and assigns employes to different tasks. While he does not have authority to discharge employes, he could effectively recommend such action to the City Administrator.

The Director's authority to direct and assign the workforce is set forth in the job description for the position, which states that the Director is responsible for

Scheduling and supervision of other departmental employes in a manner which assumes safe, efficient and effective program implementation [including] . . . assign[ing] staff to tasks in accordance with staffing needs and individual ability and expertise. (Jt. Ex. 2-3).

The incumbent testified that he exercises this authority in assigning the Recreation Aides to various tasks and directing their work.

The Director has direct, daily supervisory authority over three to six employees at any given time. Further, no one else has an equivalent degree of authority. The Union may assert that the City Administrator exercises greater supervisory authority, but in reality this only occurs in discharge cases and day to day supervision is the province of the Director.

The compensation level of the Director further supports his supervisory status. The incumbent is paid more than twice the amount of the employees he supervises, and is paid a salary, rather than an hourly wage, unlike the Recreation Aides. Further, although much of his time is spent in hands-on activities, he also spends much time setting hours, approving time sheets, directing employees and carrying out the various management functions of the position.

The incumbent testified that he is a “hands-on” supervisor, but this does not disqualify him from having supervisory status. Clearly he carries out many supervisory functions, such as monitoring staff, handing out discipline when appropriate, approving timesheets, scheduling staff and assigning and directing their work. He is, therefore, supervising people, not just activities, and the fact that he works along side those he supervises does not change the fact that he has a sufficient combination of responsibilities and functions to be a supervisor.

It is also clear that the Director exercises independent judgment and discretion in his supervision of employees. His authority in most supervisory matters is unfettered. He is solely responsible for interviewing and hiring employees and personally handles the first steps of the disciplinary process. He does not seek approval for most supervisory decisions and testified that he independently adjusts employees’ complaints. The City Administrator has very little input into the day to day operation of the Recreation Department, leaving the Director nearly a free hand to administer the Department as he sees fit.

The Director also qualifies as a “managerial” employee. The Commission has held that a “managerial” employee is one who participates in the formulation, determination, and implementation of policy to a significant degree or who possesses effective authority to commit the employer’s resources. The Director develops programs for the Department and meets monthly with other department heads as part of the City’s leadership team to plan coordinated interdepartmental action. He drafted and administers the Department’s Employee Guidelines and Procedures manual, which encompasses policies covering such areas as sexual harassment, inclement weather, employee injuries and drug and alcohol use. Clearly, therefore, the Director is involved in the formulation, determination and implementation of policy to a significant degree.

He also has authority to commit the employer’s resources. He testified that the Department has a \$7,000 operating budget over which he has total control. Since he also determines the program offerings, he has great discretion in allocating the payroll. The job

description for the position establishes that the Director determines financial needs, identifies potential sources of revenue, prepares the Department budget, administers the budget, makes purchases, pays bills, approves timesheets and supervises the financial operations of the Department. He develops use policies for the various City recreation facilities, such as the Civic Center and ice rink and, thus, clearly occupies a managerial role in the City organizational structure.

There is also legal precedent for excluding the position from the bargaining unit. In CITY OF LA CROSSE, DEC. NO. 27361-A (WERC, 1994), the Commission ruled that the position of Program Director of the Recreation Department was properly excluded from the unit based, in part, on the Director's responsibility "for the planning, organizing, development and supervision of the City recreation program," which is also true of the incumbent here. Further, the Commission noted the Director's control over \$50,000 of the Department's annual budget of \$360,000. Although the incumbent here controls fewer dollars, this is indicative of the comparatively smaller size of the community, not the reduced authority of the position. In CITY OF RICHLAND CENTER, DEC. NO. 17950 (WERC, 1980), the Commission excluded the position of Recreation Director in a more comparably sized city, based on the managerial nature of the position. These cases support a finding here that the position is supervisory and/or managerial and should be excluded.

### **The Union**

The Recreation Director is not a supervisory employe under Sec. 111.70(1)(o), Stats.

He only supervises three temporary part-time employes at any given time, who only work very limited hours. The Department time records establish that these employes only work an average of six and one-third hours per week during the busiest time of the year. This small number of employes and hours argues against finding the position to be supervisory.

Likewise, the level of pay for the position supports the Union's contention. The previous Recreation Director, as a member of the bargaining unit, was paid \$13.24 per hour under the collective bargaining agreement. This person testified that she spent an average of a half an hour per week doing supervisory tasks while in the position. The City contends that the redesigned position has a great many more supervisory responsibilities, yet the incumbent is paid a salary of \$27,000 per year. Based on an assumed 40-hour week, or 2,080 hours per year, this averages only \$12.98 per hour. If one credits the testimony of the incumbent that he works 52-60 hours per week, it is even less. It is clear the City is not paying this employe for supervisory duties.

There is little need for this position to exercise independent judgment and discretion in supervising employes. During the school year, the Recreation Aides run after school activities and monitor an open gym on weekends. In the winter, they staff the public ice rink. Nothing

about these tasks requires any great degree of supervision. Scheduling the employees is merely a process of fitting the available staff members into the needed time slots. The incumbent testified that he schedules staff based on availability and the even distribution of hours, with little regard to skills or qualifications.

Likewise, the lack of need for discretion and judgment in supervising the workforce waters down any claimed authority to assign and direct the workforce. Assignments involve scheduling the temporary employees to work at the after school program, open gym or ice rink and are routine and unvarying in nature. This does not support a claim of supervisory status.

An examination of the incumbent's work schedule also reveals that he is a working supervisor and does not spend a significant amount of his time supervising employees. He testified that he works between 52-60 hours per week. Joint Exhibit 4 indicates that the Recreational Aides work only a combined 19 hours per week on average. Clearly, most of the incumbent's time is spent in other than supervisory tasks. This contention is supported further by his testimony that he is active in the programs and works with the participants along with the Aides, and by the testimony of his predecessor that she only spent a half an hour per week on supervisory activities.

The record further reveals that the position is primarily involved with supervising programs, rather than people. Most of the program implementation falls to the Director because he is the only permanent employee and the Recreation Aides are used only on a limited basis. The previous Director testified that most of her work involved running programs and very little of her time was spent in staff development. Her role was confirmed by the Mayor and City Clerk when she questioned not being involved in the planning of a new recreational center and was told her job was to run programs.

While it is true that the Director is involved in the hiring of Recreation Aides, it does not rise to the level of a supervisory activity. The hiring is informal and unstructured with no structured selection process or hiring criteria. The employees are only part-time temporary Aides, so the degree of importance attached to their hiring is limited. Moreover, the Director has no power of promotion, as no opportunities for promotion exist within the Department and, while he has the authority to transfer Aides to different duties within the Department, there is no evidence that he has ever done so. His disciplinary authority is limited to giving written warnings, and even a second warnings is to be discussed beforehand with the City Administrator according to department guidelines. His authority with respect to hiring, promotion, transfer and discipline is, therefore, very limited and involves very little use of discretion or independent judgment.

The City introduced evidence of the Director's involvement with an aerobics instructor and a karate instructor, but these are not employees of the City. By Commission precedent, set forth in JACKSON COUNTY, DEC. NO. 17828-E (WERC, 3/91), supervision of non-employees cannot be used to find supervisory status, as such persons are clearly not "employees" for the

purposes of Sec. 111.70(1)(o) 1., Stats. In the same way, the Recreation Aides are hired and used very much like temporary agency employees, in that they work for the City for only a fixed and very limited duration, and the Commission should not consider the Director's role in supervising them as evidence of supervisory status.

The Director of Recreation Programming is not a managerial employee. In VERNON COUNTY, DEC. No. 13805-B (WERC, 4/91), the Commission set forth the criteria for managerial status as being one who participates in the formulation, determination and implementation of management policy, or one who has authority to commit the employer's resources and must entail "a relatively high level of responsibility." This is clearly not the case here. The Director submits an annual budget request, but may be overridden by the City Administrator or City Council. The annual budget is only \$60,000, of which \$53,000 represents salaries, leaving only \$7,000 in discretionary funds. Clearly, this does not rise to the level of a managerial position as contemplated in the Commission's decisions and, therefore, the position should not be excluded from the bargaining unit on that basis.

### City Reply

The Union asserts that the position is not supervisory based on the fact that there are only three temporary part-time employees in the Department. In fact, three is the smallest number of employees the Department has at any given time, and it will have as many as six employees aside from the Director. Further, the Commission and courts have frequently found supervisory status even in cases where relatively few employees are supervised. [cf., COLUMBIA COUNTY V. WERC, DEC. No. 25092 (1990); CITY OF RACINE, DEC. No. 24840-A (WERC, 9/97); CITY OF TWO RIVERS, DEC. No. 21959-A (WERC, 2/91); SHAWANO COUNTY (MAPLE LANE HEALTH CENTER), DEC. No. 7197-E (WERC, 11/96); CLARK COUNTY, DEC. No. 19744-G (WERC, 10/97)]. The Union also is incorrect in its calculations of the hours worked by Department employees, asserting only 38 hours to have been worked in a period where two employees alone worked 90 hours.

The Union's argument that the position's level of pay does not reflect supervisory status does not bear close scrutiny. The Union asserts that the position pays less per hour than the wage of the former Director, but ignores the facts that the current incumbent (1) is paid a salary instead of an hourly wage, (2) works full-time instead of part-time, as his predecessor had, and 3) is still completing his undergraduate degree, which affects his pay level.

The Union makes a number of other false assertions. The Union contends that the Recreation Aides only staff the ice rink in winter, when in fact they also run the after school and open gym programs. It challenges the Director's direction of the Department staff as being "routine," but fails to note that programs change throughout the year and that the Director also directs the workforce through development and implementation of policy. It characterizes him as a "working supervisor," although this is not necessarily a disqualifying



factor under Commission decisions. The Union notes the little amount of time available for staff development. This is one of the reasons the position was changed and is now distinct from the previous Recreation Director position.

With respect to hiring and oversight of employees, the Union notes the informal and unstructured approach utilized by the Director. This actually supports the independence of his position and the fact that his duties are not routine. Further, the incumbent testified to his authority to transfer and discipline staff, up to imposing a suspension, without needing higher approval.

There is also no support for the Union's argument that the Recreation Aides are akin to temporary agency employees. The Wisconsin courts have determined the factors that define an employer-employee relationship [cf., ACE REFRIGERATION & HEATING COMPANY V. INDUSTRIAL COMMISSION, 32 WIS.2D 311, 315, 145 N.W.2D 777, 779 (1966)] and all these factors are present here.

As to the position's managerial status, the Union focuses on the relatively small budget and number of employees to support its position. In VERNON COUNTY, DEC. NO. 13805-B (WERC, 4/91), the Commission noted that managerial status can be based on "participation in program and policy . . . at a relatively high level of responsibility." The Director here personally develops the policies for his Department in areas of great importance, such as sexual harassment, where the City could potentially be exposed to great liability. Also, the size of the budget is not dispositive. While small, it is proportionate to the size of the City, and control of a relatively small amount of money can significantly affect the operations of the Department.

### **Union Reply**

The Union declined to submit a reply brief.

## **DISCUSSION**

### **Supervisory Status**

Section 111.70(1)(o)1, Stats., defines a supervisor as:

. . . 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.

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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 over 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 is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

MILWAUKEE PUBLIC SCHOOLS, DEC. No. 6595-C (WERC, 5/96).

We have consistently held that not all of the above factors need to reflect supervisory status for us to find an employee to be a supervisor. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an employee to be a supervisor. See, for example, ONEIDA COUNTY, DEC. NO. 24844-F (WERC, 1/99).

The position of Recreation Director of Recreation Programming for the City of Washburn has gone through many changes over the years. At the time the bargaining unit was created in 1979, the position did not exist and recreational programs, to the extent they existed at all, were overseen by the Senior Citizens Director, who was in the bargaining unit, and the Park Director, who was not. In 1985, the Senior Citizens Director resigned and shortly thereafter the two positions were combined into the position of Park and Recreation Director/EMT. By agreement between the City and the Union, the position was included in the bargaining unit, and has remained so until the present time.

In 1998, the City undertook a restructuring of its administration and created the position of City Administrator. The person hired to fill that position, Michael Screnock, thereupon reviewed the City's various programs and departments. At that time, the position of Recreation Director was a three-fourths time position, held by Kathy Wright. Screnock met

with Wright to discuss the status of the Recreation Director position and Wright told him she felt the position did not have adequate authority over recreational programming or enough input into departmental decision making. She also expressed frustration with the chain of command, since she reported to the Mayor, the City Clerk and the City Parks and Recreation Committee. Wright resigned in March, 1999.

In April 1999, the City Council voted to create a full-time position of Director of Recreation Programming and elevate it to department head level, on a par with the administrators of the other City departments. The current job description was adopted in May 1999, and the incumbent, John Murray, was hired in August. As Director, Murray develops and oversees all the policies and programs of the Department. These include community recreation programs, after school programs for youth, a public swimming beach in the summer and a public ice rink in the winter. The Department has, at any one time, three to six temporary employees. Murray hires these individuals, trains them, as necessary, assigns them to their tasks and oversees their work. He can issue a written reprimand to an employe on his own authority and effectively recommend more significant discipline to the City Administrator. He grants time off, but does not address vacation requests, promotions or individual pay increases, as the employes are temporary and so generally are not eligible. Murray also spends a significant amount of time actually running the City's recreation programs and interacting with participants.

The Union argues that the impact of the Director's independent hiring authority should be discounted because the hiring process he uses is informal and because the employes hired are not permanent employes. We disagree. If anything, the informality of his interviews with applicants strengthens the case for his supervisory status because of the independent judgment and discretion he thereby exercises. Further, the temporary part-time status of the employes in no way diminishes their importance in delivering recreational services to the community. Therefore, hiring these employes is no less important than the hiring of permanent employes. Thus, we find his hiring authority to be a very significant indicator of his supervisory status.

The Union asserts that the impact of the Director's disciplinary authority should be discounted because he does not utilize independent judgment and discretion when disciplining employes. We view the record differently. The Director's testimony reflects that he does exercise discretion and judgment when deciding whether or not to impose discipline for employe misconduct. Further, we are satisfied this same judgment and discretion would be exercised when the Director decided whether to recommend the suspension or discharge of an employe.

The Union also argues that a supervisory finding is not appropriate because the limited tenure of the temporary employes (maximum 600 hours) produces little opportunity for any employe-supervisory relationship to develop. We again disagree. The record clearly establishes that the Director has and exercises authority over the employes. Thus, contrary to

the Union, we do not find the relationship between the Director and employes of the Recreation Department to be akin to the relationship between the employes of a temporary employment agency and the contracting entity.

The Union correctly points out that the Director spends a substantial amount of time performing the same type of work as the employes whose work he directs. The Union also persuasively argues that because his current pay level is essentially the same as the pay rate received by his bargaining unit predecessor, the Director is being paid for his skills rather than his supervisory responsibilities. However, because the Director has significant hiring and disciplinary authority, because he exercises independent judgment in directing and assigning the employes and because he is the only supervisor of the employes, we are satisfied that the Director is a supervisor. Therefore, he is excluded from the bargaining unit.

Given our conclusion that the Director is a supervisor, we need not and do not respond to the substantial arguments made by the City that the Director is also a managerial employe.

Dated at Madison, Wisconsin this 22<sup>nd</sup> day of September, 2000

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

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James R. Meier, Chairperson

A. Henry Hempe /s/

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A. Henry Hempe, Commissioner

Paul A. Hahn /s/

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Paul A. Hahn, Commissioner