

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

JACKSON COUNTY

Involving Certain Employees of

JACKSON COUNTY

### Case XXI

No. 25439 ME-1771

**Decision No. 17828-A**

Appearances:

Ms. Mary Marco, Personnel Coordinator, Jackson County, Jackson County Courthouse, 307 Main Street, Black River Falls, Wisconsin 54615, appearing on behalf of Jackson County.

Mr. Daniel Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of the Union.

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

Jackson County having on April 27, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its employees, represented by Local 2717, AFSCME, AFL-CIO, by determining whether the position of Parks Supervisor should be excluded from said unit; and a hearing on said petition having been conducted at Black River Falls, Wisconsin on July 14, 1983, before Examiner Duane McCrary; and a transcript of the proceedings having been received on August 10, 1983; and the parties having filed no post-hearing briefs; and the Commission having considered the evidence and being fully advised in the premises, hereby makes and issues the following

## FINDINGS OF FACT

1. That Jackson County, hereinafter referred to as the County, is a municipal employer and has its offices in the Jackson County Courthouse, Black River Falls, Wisconsin 54615.

2. That Local 2717, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at Route 1, Sparta, Wisconsin 54656.

3. That the Union is the certified exclusive bargaining representative of certain of the County's employees employed in a bargaining unit described as all regular full-time and regular part-time employees of the Jackson County Courthouse and nurses department, including professional nurses, but excluding elected officials, supervisory and confidential employees.

4. That the instant proceeding was initiated on April 27, 1983, by a petition filed by the County, wherein it contends, contrary to the Union, that the position of Parks Supervisor is supervisory/managerial in nature and, therefore, should be excluded from said bargaining unit.

5. That Russell Rodenberg became employed by the County in April, 1981 as the Parks Supervisor in the County's Parks and Forestry Department under the direction of Merlin Lambert, the County's Forestry and Parks Administrator; that in May, 1982 the County's Parks and Forestry Committee divided the Parks and Forestry Department into two divisions with Rodenberg in charge of the parks division and Lambert in charge of the forestry division; that now both Rodenberg and Lambert report directly to the Parks and Forestry Committee; and that Ruth Jacobson, who is the Parks and Forestry Assistant, works with both Rodenberg and Lambert, but reports to Lambert.

6. That Rodenberg and Jacobson prepared the initial 1983 Parks Division budget, primarily from the 1982 budget, for the County Parks and Forestry Committee's approval; that said budget was for approximately \$37,000.00 and was approved by the Parks and Forestry Committee, which in turn referred it to the County Board of Supervisors for its approval; that Rodenberg has not allocated funds for different program purposes than were established by the budget; that Rodenberg may spend up to \$200.00 from the parks division budget without the approval of the Parks and Forestry Committee, but that to spend over this amount

he must have the Committee's approval; that Rodenberg has taken bids to purchase a lawn mower valued at around \$1,000.00 and a pick-up truck; that after receiving bids, Rodenberg recommended to the Parks and Forestry Committee that the lowest bid be accepted; that the Committee has accepted all of Rodenberg's recommendations regarding purchases; that Rodenberg effectively recommended to the Parks and Forestry Committee that a parking lot be built at East Arbutus Park; that Rodenberg has made recommendations to the Parks and Forestry Committee concerning the operation of the parks, such as creating no-parking areas and prohibiting unlicensed vehicles from operating in the parks, which recommendations the Committee has accepted; and that Rodenberg participates in the monthly meetings of the County Parks and Forestry Committee.

7. That the Parks Supervisor is responsible for directing the activities of eight (8) employees at two parks, East and West Arbutus; that of the eight (8) employees, three (3) are employed through the Green Thumb program, which is a State administered program, three (3) are employed through a school district sponsored Summer Youth Program, and, one is employed through the County's Social Services Department; that the Summer Youth employees work thirty-two (32) hours per week from June through August, the Green Thumb employees work twenty-four (24) hours per week on a year round basis, and, the employee placed by the Social Services Department works fifteen (15) days per month on an annual basis; that Rodenberg had no input into the selection of the seven (7) individuals to be employed through the Green Thumb, Summer Youth and Social Services Department programs; that pursuant to instructions from the coordinator of the Summer Youth program, Rodenberg evaluates the performance of the Summer Youth employees which are the only evaluations Rodenberg performs; that Rodenberg maintains records of the time worked by all the employees he supervises and approves the time sheet for the one part-time employee whom he hired; that both Rodenberg and Jacobson are authorized to approve the time sheets of the Summer Youth employees and Jacobson normally signs such sheets; that the crew leader of the Green Thumb program approves the time sheets of the employees in said program; that in 1982 after jointly interviewing several applicants, Jacobson and Rodenberg hired an employee to work thirty-four (34) hours per week during the months of June, July and August; that in 1983 Rodenberg interviewed the applicants alone and selected the one to fill a similar position; that the Parks and Forestry Committee has decided to make a part-time position now occupied by an employee who works in both the forestry and parks division, into a full-time position with the occupant working most of the time in the parks division under Rodenberg's supervision; that Rodenberg has verbally reprimanded employees for such actions as smoking marijuana or drinking alcoholic beverages on the job and for taking too many rest breaks; that in 1981 Rodenberg discharged an employee for sleeping during work hours, after discussing the incident with Lambert; that the Parks and Forestry Committee authorized Rodenberg to hire employees and, as he understood it, to fire employees subject to the Committee's approval; that Rodenberg spends approximately twenty-five percent (25%) of his time working with the employees under his supervision performing such tasks as mowing lawns, raking, splitting and cutting wood, making signs, and, performing cleaning and maintenance duties; that he spends additional time away from the employees performing duties similar to their duties; that most of his remaining time is spent directing the work activity of the employees, registering campers, and, patrolling both the east and west parks; and that registering campers involves the collection of fees which are turned over to the County.

8. That the position of Parks Supervisor possesses sufficient duties and responsibilities of a supervisory nature to make the incumbent in said position a supervisory employee.

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

#### CONCLUSION OF LAW

That the Parks Supervisor is a supervisory employee within the meaning of Sec. 111.70(1)(a) of the Municipal Employment Relations Act and, therefore, the incumbent is not a municipal employee within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act and appropriately is excluded from the collective bargaining unit described above.

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

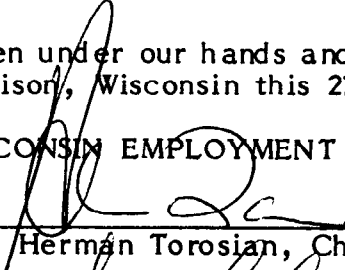
ORDER CLARIFYING BARGAINING UNIT 1/


The position of Parks Supervisor be, and the same hereby is, excluded from the bargaining unit involved herein.

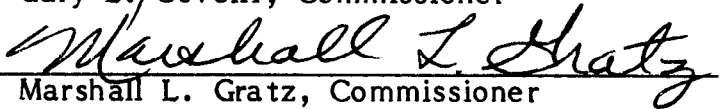
Given under our hands and seal at the City of  
Madison, Wisconsin this 27th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner

- 1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.12(1) and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.16(1)(a), Stats.

227.12 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

227.16 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.15 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.12, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.11. If a rehearing is requested under s. 227.12, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 182.70(6) and 182.71(5)(g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

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

Contrary to the Union, the County contends that, because the Parks Supervisor reports to the Parks and Forestry Committee, prepares the parks division budget, purchases supplies and materials necessary for the operation of the two (2) parks and makes recommendations to the Parks and Forestry Committee regarding the operation of the parks, the occupant is a managerial employe and should be excluded from the existing courthouse bargaining unit. At hearing the County asserted, contrary to the Union's position, that the Parks Supervisor position is also supervisory in nature, based on his authority to hire, discipline, direct and discharge employes.

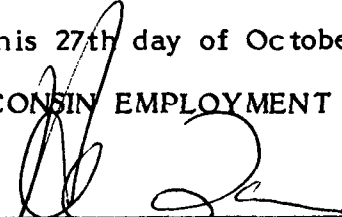
Rodenberg hired a part-time seasonal employe in 1983, after interviewing several applicants. Although Rodenberg has not discharged an employe since becoming the Parks Supervisor in 1982, he has the authority to effectively recommend such an action to the Parks and Forestry Committee. Further, the discharge of an employe in 1981 was initiated by Rodenberg. Rodenberg has issued oral reprimands without prior approval of the Parks and Forestry Committee. While Rodenberg does spend a substantial portion of his time performing the same or similar duties as are performed by the employes he supervises, he does possess the ultimate responsibility for their work. Based on Rodenberg's authority to hire, discipline, direct and discharge employes, it is concluded that he is a supervisor.

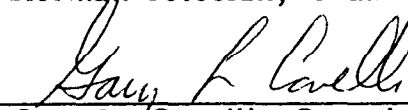
Having concluded that Rodenberg is a supervisor and, therefore, appropriately excluded from the bargaining unit, the Commission finds it unnecessary to determine whether Rodenberg is also a managerial employe.


Dated at Madison, Wisconsin this 27th day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Herman Torosian, Chairman

  
Gary L. Covelli, Commissioner

  
Marshall L. Gratz, Commissioner