

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
	:	
LOCAL 2717, WCCME, AFSCME,	:	
AFL-CIO	:	
	:	Case 21
and	:	No. 36746 ME-79
	:	Decision No. 17828-B
JACKSON COUNTY	:	
	:	
Involving Certain Employes of	:	
	:	
JACKSON COUNTY	:	
	:	

Appearances:

- Ms. Mary Marco, Personnel Coordinator, Jackson County, Jackson County Courthouse, 307 Main Street, Black River Falls, Wisconsin 54615, appeared on behalf of Jackson County.
- Mr. Daniel Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appeared on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CLARIFYING BARGAINING UNIT
AND DIRECTION OF ELECTION

Jackson County having, on April 11, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its employes, represented by Local 2717, AFSCME, AFL-CIO, by determining whether the presently included position of County Conservationist should be excluded from said unit; and Local 2717 having on May 14, 1986, filed a petition requesting the Wisconsin Employment Relations Commission to clarify the same collective bargaining unit of Jackson County employes by determining whether the presently excluded position of Assistant District Attorney should be included in said unit; and a hearing on these petitions having been conducted at Black River Falls, Wisconsin on August 7, 1986, before Examiner William C. Houlihan; and a transcript of the proceedings having been received on September 3, 1986; and the parties having waived the filing of 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 employes employed in a bargaining unit which the parties' current collective bargaining agreement describes as all regular full-time and regular part-time employes of the Jackson County Courthouse excluding elected officials, supervisory, managerial, confidential, seasonal, temporary, casual, and all other employes of the County.
4. That in Jackson County, Dec. No. 17828, (WERC, 7/80) the Union was certified as the exclusive representative of County Courthouse and Public Health Department employes, after an election conducted by the Commission, wherein the professional registered nurses voted to be included in the same unit with nonprofessional employes, which combined unit consisted of:

all regular full-time and regular part-time employes of the Jackson County Courthouse and Nurses Department, including professional nurses, but excluding elected officials, supervisory and confidential employes.

and that in Jackson County, Dec. No. 14129-D, (WERC, 7/86) the unit described above was changed as a result of a reorganization which led to inclusion of the Registered Nurses in a different unit and left no other professional employees in the instant unit.

5. That on April 11, 1986, the County filed a petition for unit clarification wherein it alleged that the position of County Conservationist is supervisory/managerial in nature and, therefore, should be excluded from said bargaining unit.

6. That on May 14, 1986, the Union filed a petition for unit clarification wherein it alleged that the position of Assistant District Attorney is a full-time courthouse employe without supervisory and/or managerial authority and should therefore be included in said bargaining unit.

7. That Warren Printz, who retired on April 30, 1986, had been employed by the County for twenty-two years; that just prior to his retirement Printz was the County Conservationist; that the County Conservation Department consisted of Printz, one part-time secretarial employe and a Resource Planner, who was not an employe of the County but rather was retained through a contract for services arrangement.

8. That annually, for a period of about fifteen years, Printz drafted an initial budget for submission to the County Land Conservation Committee (herein Committee); that the largest portion of that budget consisted of employe salaries, two of which were determined through collective bargaining and one of which was set by the Conservation Committee; that there were other items in the budget such as a banquet account, a County Board tour account and a miscellaneous account; that budgeting projections for these accounts were made based upon prior experience; that once the budget was drafted it was submitted to the Land Conservation Committee for review and approval; that the Committee did an actual review of the budget and, at times, cut money from the budget submitted; that the budget was then submitted to the County Board; that the County Board has not deleted money from a Committee recommended budget, but has, on occasion, restored funds deleted by the Committee; that once the budget was established Printz had authority to spend money allocated but could not spend more than \$300 without prior Committee approval and could not spend money for items not contained within the budget; that Printz's role in budget preparation did not involve him in the allocation of resources in a manner which significantly affects the nature and direction of the County's operations; and that neither that role in budget preparation nor any other aspect of his duties is sufficient to render the County Conservationist position managerial.

9. That Printz participated in the hiring of Gaylord Olson, the Resource Planner, in 1984; that Printz's role was to send out the notification announcing the vacant position, receive the applications, review those applications with the Committee, interview and question applicants with the Committee; that thereafter, each Committee member, but not Printz, rated each applicant and the applicant with the highest composite rating was hired; that there has been no discipline nor any discharges in the Department; that Printz did assign work to the secretarial employe and did direct the work of the Planner and that he spent approximately three hours per week in the direction and assignment of work; and that Printz was paid pursuant to the collective bargaining agreement and spent the great majority of his time providing technical advice relative to soil and water conservation.

10. That Gaylord Olson has replaced Printz as County Conservationist and is also paid pursuant to the terms of the collective bargaining agreement; that the secretarial position within the department has been made full-time; and that the County has indicated that if the County Conservationist position is found to be supervisory it will be paid pursuant to the County's non-union pay plan which would result in Olson receiving approximately \$100-\$200 per year less than he earns now.

11. That the County Conservationist does not possess supervisory authority in sufficient combination and degree to render that position supervisory.

12. That the District Attorney's office consists of the District Attorney, one Assistant District Attorney (currently Michael McQuillan) and two clerical employes; that McQuillan has been employed by the County since January of 1981;

that although on one occasion approximately two years ago he met with the District Attorney (who also serves as Corporation Counsel), the Sheriff, and the Deputy Sheriff relative to a disciplinary matter, McQuillan has not otherwise been involved in labor negotiations, grievance and/or arbitration matters; that although McQuillan assigns work to the two clerical employes as their workloads permit, he has no role in hiring, transfer, discipline or discharge; that he is the highest-paid non-elected employe of the County; that the vast majority of his work time is spent providing legal services to the County, rather than in supervising the work of others; that McQuillan does not possess supervisory authority in sufficient combination and degree to render his position supervisory; and that McQuillan is not sufficiently exposed to or involved in confidential labor relations matters to render his position confidential.

13. That Kenlynn McCormick, a former union officer and steward testified that the Union initially agreed to exclude the Assistant District Attorney position from the bargaining unit based upon the County's contention that the position would handle labor relations matters, but that to her knowledge the incumbent has never handled labor relations matters, which work is handled by retained outside counsel.

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

CONCLUSIONS OF LAW

1. That the occupant of the County Conservationist position is not a supervisory or managerial employe within the meaning of Sec. 111.70(1)(o) or Sec. 111.70(1)(i), Stats., and is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. That the position of Assistant District Attorney is not supervisory or confidential within the meaning of Sec. 111.70(1)(o) or (i), Stats., and is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

3. That the purposes of Sec. 111.70(4)(d)2., Stats., will be best served in the circumstances of this case if the inclusion of the Assistant District Attorney position in the same unit with nonprofessional employes is conditioned on the incumbent Assistant District Attorney's voting in favor of such inclusion in a secret ballot election.

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

ORDER CLARIFYING BARGAINING UNIT/1

1. That the position of County Conservationist shall remain in the bargaining unit.

1/ Pursuant to Sec. 227.11(2), Stats., the Commission hereby notifies the parties that a petition for rehearing regarding the Order but not the Direction of Election herein 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.

(Footnote 1 Continued on Page 4.)

1/ (Continued)

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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

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.

2. That the position of Assistant District Attorney shall be included in the bargaining unit involved herein if, but only if, the incumbent votes by secret ballot in favor of inclusion of his professional position in the same unit with nonprofessional employes.

Upon the basis of the foregoing Findings of Fact, Conclusions of Law and Order, the Commission makes the following

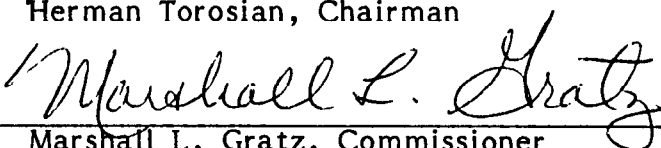
DIRECTION OF ELECTION

That an election by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Directive in the voting group consisting of all regular full-time and regular part-time professional employes of Jackson County employed at its courthouse, excluding supervisors, confidential employes, managerial employes and elected officials, who were employed by the County on October 23, 1986, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes favor being included in the same collective bargaining unit with nonprofessional employes.


Given under our hands and seal at the City of Madison, Wisconsin this 23rd day of October, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner

JACKSON COUNTY

MEMORANDUM ACCOMPANYING FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND ORDER
CLARIFYING BARGAINING UNIT
AND DIRECTION OF ELECTION

It is the view of the County, disputed by the Union, that the County Conservationist's role in budget formulation makes his position managerial within the meaning of the Act. The position's budget responsibilities have remained unchanged over an approximately 15-year period. When Printz held the position, he was stipulated as eligible to vote in the 1980 representation election which led to the original certification of the Union.

"Managerial employes" are expressly excluded from the definition of "municipal employe" set forth in Sec. 111.70(1)(i) of MERA, but the precise meaning of that term is not statutorily provided. Instead, the Commission has developed the parameters of those exclusions on a case-by-case basis with the following results. Managerial status does not require possession of either confidential information relating to labor relations or supervisory authority over subordinate employes. 2/ Managerial employes are those persons whose relationship to management imbues them with interests significantly at variance with those of other employes. 3/ Such a divergence of interests has been found where the employe involved participates ". . . in the formulation, determination and implementation of management policy" 4/; but to yield managerial status, such involvement with the municipal employer's policies must be ". . . at a relatively high level of responsibility" 5/ and to a ". . . significant degree." 6/ Managerial status may also - but need not necessarily - be related to a position's effective authority to commit the municipal employer's resources.

The Commission has interpreted the power "to commit the employer's resources" to mean the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 7/ However, preparation of a budget, per se, does not establish effective authority to commit the employer's resources. The Commission will not confer managerial status on an employe whose budget preparation duties primarily involve projecting the cost of implementing the policy decisions of another. 8/ Rather, to be considered managerial, an individual's budget preparation duties must involve authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations. Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employes to be utilized in providing services;

-
- 2/ City of New London, Dec. No. 12170 (WERC, 9/73).
- 3/ City of New London, supra; City of Milwaukee, Dec. No. 12035-A, (WERC, 6/73), aff'd Dane Co. Cir. Ct. No. 142-170 (7/74).
- 4/ City of Milwaukee, above.
- 5/ City of Milwaukee, Dec. No. 11917 (WERC, 7/73).
- 6/ See cases cited in Note 3 above.
- 7/ Manitowoc County (Highway Department), Dec. No. 20847 (WERC, 7/83); Shawano County (Sheriff's Department), Dec. No. 15257 (WERC, 3/77). See also, Eau Claire County et al. v. WERC et al., Dec. No. 84-298 (CA3, 12/84) wherein the Court of Appeals generally approved the Commission's interpretation of managerial employe but held that it could not be applied in such a way to render any of its elements ineffective as a basis for exclusion.
- 8/ See generally, Waupaca County, Dec. No. 20854-C (WERC, 9/85); Shawano County (Maple Lane Health Care Facility), Dec. No. 7197-A (WERC, 10/84); Kewaunee County (Highway Department), Dec. No. 21344 (WERC, 1/84); Iowa County, Dec. No. 16313-A (WERC, 4/83).

the kind and number of capital improvements to be made; and the systems by which the services will be provided, including use of outside contractors. 9/

The County Conservationist lacks the independent discretion to fall within the Commission's view of managerial status. In formulating the initial budget, salaries, over which the County Conservationist has no control, form the major component. Other items are minor in comparison and are based on prior years experience. From the record, it appears that the initial budget formulation is a relatively routine task. Once formulated, the budget goes to an elected committee which has, and does exercise, meaningful review over the proposed budget. From the record it appears that the meaningful managerial decisions are made by the Committee and by the County Board. Therefore, we have concluded that the County Conservationist's budget role lacks the requisite significant effect on the nature and direction of County operations and that his position is not managerial in nature.

With regard to his alleged supervisory authority, the record reveals that in this one instance where the County Conservationist had an opportunity to participate in a hiring decision he was afforded no voting participation in that group action. Whether or not he influenced the votes of others is speculative at best. He did direct and assign work. With respect to the clerical employe his assignment of work appears to be incidental to the performance of his job. It also constitutes a relatively minor dimension of his job. Whether that component of the job will increase because the clerical position is full-time remains to be seen. Since Olson is now County Conservationist there is no separate Resource Planner. The record is silent as to whether a new Resource Planner will be hired and whether that individual would be a County employe.

Under any circumstance there would be very few employes supervised and they (or s/he) would be supervised by someone whose primary concern is performing the conservation duties of the job. To date, the County has not paid any sort of supervisory premium and has no intention of doing so should it prevail in this proceeding. The only indicator of supervisory status is the assignment of work which the Commission regards in this case as minor, routine, and incidental to the performance of the job. Under our established decisional criteria 10/ we therefore conclude the County Conservationist position is not supervisory.

9/ See generally, Forest County, Dec. No. 17528-B (WERC, 6/85); City of Jefferson, Dec. No. 10344-A (WERC, 3/85); Town of Pewaukee, Dec. No. 20759 (WERC, 6/83); Milwaukee Board of School Directors, Dec. No. 17009-C (WERC, 7/82); Manitowoc Public School District, Dec. No. 18128 (WERC, 10/80); Milwaukee Area Board of Vocational, Technical and Adult Education District No. 9, Dec. No. 8736-B, 16507-A (WERC, 6/79); Village of Germantown, Dec. No. 12315-B (WERC, 4/77); City of Wausau, Dec. No. 14807 (WERC, 7/76).

10/ In determining whether a position is supervisory, the Commission gives consideration to the following factors:

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 skills 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; and

(Footnote 10 Continued on Page 8)

Nothing in the record supports the County's claim that the Assistant District Attorney should be excluded from the unit. He participated in what may have been one confidential labor relations discussion two years ago. The Commission regards this as de minimis. Moreover, in light of the ongoing availability of outside counsel and the availability of the District Attorney (Corporation Counsel) for labor relations matters, designating the Assistant as confidential would be unwarranted.

The Assistant District Attorney is paid more than anyone else in the non-union pay plan, including the various Department Heads. It would appear that this is based more on his occupation and skill rather than upon the exercise of any supervision. He does assign work but does no more than any professional who needs his work product typed. Hence, we have concluded that McQuillan is not a supervisor.

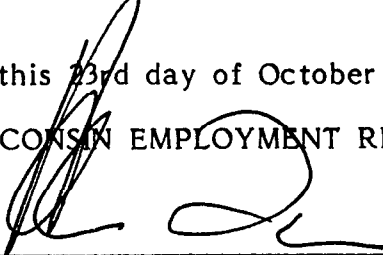
The Commission concludes that neither the County Conservationist nor the Assistant District Attorney exercise sufficient supervisory, confidential, and/or managerial authority to warrant their exclusion from the bargaining unit.

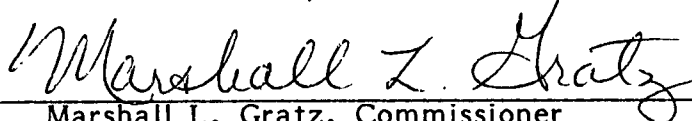
We have conditioned the Assistant District Attorney's inclusion in the unit on the results of a secret ballot self-determination vote by him on whether his obviously professional position should be included in the same unit with nonprofessional employees. We do so because, although there was a previous approval of including nursing professionals in a combined unit with non-professionals, the legal professional position incumbent was not treated as eligible to vote in that self-determination election. In our view, the purposes of Sec. 111.70(4)(d)2, Stats., will be best served by granting McQuillan--the only courthouse professional municipal employe--an opportunity for self-determination as noted above.

Dated at Madison, Wisconsin this 23rd day of October, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

10/ (Continued)

7. The amount of independent judgment exercised in the supervision of employees.

Not all of these factors need to be present in any given case, but a sufficient combination of said factors must be present for the Commission to find an employe to be a supervisor.