

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of  
LOCAL 2717, AFSCME, AFL-CIO  
Involving Certain Employes of  
JACKSON COUNTY

Case 21  
No. 50722 ME-697  
Decision No. 17828-G

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Box 333, Sparta, WI 54656, appearing on behalf of the Union.

Mr. James Michael DeGracie, Corporation Counsel, Jackson County, Jackson County Courthouse, 307 Main Street, Black River Falls, WI 54615, appearing on behalf of the County.

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

On March 21, 1994, Local 2717, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission seeking to clarify an existing collective bargaining unit to include a new position called Accountant/Office Manager in the Jackson County Highway Department. By agreement of the parties, the petition was held in abeyance pending ultimately unsuccessful settlement efforts. A hearing was held in the matter before Hearing Examiner Karen J. Mawhinney, a member of the Commission's staff, on August 15, 1996, in Black River Falls, Wisconsin. Both the Union and the County waived oral arguments and written briefs, and the transcript of the hearing was received by October 21, 1996.

Having considered the matter and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Local 2717, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at Route 1, Box 333, Sparta, Wisconsin.
2. Jackson County, herein the County or the Employer, is a municipal employer with offices at 307 Main Street, Black River Falls, Wisconsin.

3. The parties have a dispute over a new position in the Highway Department. The position was created in 1994, and the incumbent is Dean Ginther, who started working for the County in that position in April of 1994. The County has never included this position in the collective bargaining unit represented by the Union because it contends that the position is supervisory and/or managerial in nature. The Union believes that the position is appropriately placed in the bargaining unit of courthouse employees. The parties' current collective bargaining agreement contains the following recognition clause:

The Employer hereby recognizes the Union as the exclusive collective bargaining agent for all regular full-time and regular part-time County Courthouse employees, excluding elected offices, supervisory, managerial, confidential, seasonal, temporary, casual and all other employees of the County.

4. The job description for the position is as follows:

Position Title: Accountant/Office Manager

Supervisor: Highway Commissioner

Classification: Full Time; Administrative; Salaried

Pay Grade: \$18,595 to \$24,793 commensurate with ability/experience.

Worksite: Jackson County Courthouse

Basic Function: Under the direction of the County Highway Commissioner, the Accountant/Office Manager is responsible for planning and coordinating the office activities and work projects; supervises the clerical and accounting functions of the department; maintains the department's financial accounts and records in accordance with the Uniform Cost Accounting procedures mandated by the Wisconsin Department of Transportation. The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

#### MONTHLY DUTIES AND RESPONSIBILITIES

Check out all invoices of purchases of prior month

Prepare vouchers for payment

Check out Gas, Diesel Fuel, and Oil used prior month

Prepare Journal Voucher charging Shop Materials issued for Equipment Maintenance

Prepare Journal Voucher charging Supervision, Overhead, Records and Small Tools

Prepare Motor Fuel Tax Reports and Payments

Deposit checks with the County Treasurer along with accounts to be credited

Record receipts from Treasurer and Post

Post all Vouchers and Journal Vouchers for the month

Prepare Insurance Premiums Payments

Prepare Administrative Payroll for payment and Post

Prepare Employee Share of Retirement payment and Post

Prepare Journal Voucher charging Sales and Post

Prepare Journal Voucher charging materials used on Projects

Post to All Controls from Voucher Register, Receipt Register, and General Journal

Trial Month Balance (Done with Account Clerk)

After Trial Balance, prepare Fund Balance and Post to Fund Balance Book

Prepare Schedule of Journal Vouchers to go to the County Clerk

Reconcile Current Accounts with County Clerk - quarterly

Reconcile Fund Balance Accounts with County Clerk - quarterly

Calculate Gas, Diesel Fuel, and Oil Prices

#### SEASONAL DUTIES AND RESPONSIBILITIES

Calculate Hot Mix Production Costs - weekly

Record Bituminous/Hot Mix and/or Cold Mix Purchases

Keep records of Individual Construction and improvement projects (Paving, Sealcoating, Shouldering, etc.)

Request Advances from Municipalities when Funds for projects are required

Calculate estimates of Projects for following year projects

#### YEAR END DUTIES AND RESPONSIBILITIES

Update Equipment Inventory, (Purchases, Sales, Trades, or Junks of Equipment)

Calculate Depreciation on all Equipment, Buildings, and Land Improvements

Assist Commissioner's and Committee's Annual Reports

### OTHER ROUTINE RESPONSIBILITIES

Manage and plan, assign, and regulate the work flow to the clerical staff

- Prepare all Highway Related Resolutions for County Board Action
  - Co-Aid Local Bridge Petitions
  - Local Road Placement on Co-Aid Perspective System
  - Other Resolutions as Directed
- Prepare Gas Tax Refund Claim Reports
- Handle Employee Insurance Inquiries and Enrollments
- Take care of all required correspondence of Highway Office
- Recorder at all Highway Committee Bid Openings
- Prepare Vouchers for Town Expenses on Co-Aid Bridge Projects
- Order Adequate Office Supplies
- Answer all Inquiries of Operation from Municipalities and General Public
- Train, Direct, and Evaluate Subordinate Office Staff
- Project weekly Budget/Project Balances for Staff and Committee

### KNOWLEDGE, SKILLS AND ABILITIES

Knowledge and understanding of general and State GAP accounting procedures

Knowledge and ability to supervise clerical staff

Knowledge and ability to use computer hardware and software

Knowledge and ability to prepare and monitor budgets, payrolls, and fiscal records

Knowledge of Accounting, Math, Insurance, Typing, and English

Knowledge of heavy equipment in Highway Department operations

### EDUCATION AND EXPERIENCE

High School degree with courses in Math, English and Accounting

Two years at Post High School education in Accounting

Two years work experience in road construction/maintenance desired

Supervisory Experience desired

Valid Wisconsin Drivers license

5. The Highway Department has a total of 41 employees. The head of the Department is the Highway Commissioner, Michael Hemp. There are three unrepresented employees who assist Hemp in running the Department -- the Patrol Superintendent, Robert Gabriel, the Crew Foreman, Donald Olson, and the Accountant/Office Manager. There are two Account Clerks in the Highway Department office working with the Accountant/Office Manager -- Avis Hoff and Joanne Capper. Both of them have been there for many years. Prior to the creation of Ginther's position, the Account Clerks were supervised by the Highway Commissioner.

6. Ginther independently directs the day-to-day operations of the Highway Department's office, which includes billings, invoices, equipment purchases, etc. He oversees the work of Account Clerks Hoff and Capper, determines their work assignments, and provides any necessary training. While their daily hours of work are set by the collective bargaining agreement, they make requests to Ginther for vacation, sick leave or personal time off. Ginther has the authority to give final approval for such requests and he may authorize overtime without approval from anyone else.

7. Ginther has the independent authority to impose verbal and written reprimands and suspensions, although he has had no occasion to invoke any discipline. He does not have the independent authority to discharge an employee. Ginther has not been involved in hiring any regular full-time or regular part-time employees in the Department. Thus, when a Parts Clerk/Timekeeper was hired, Ginther was not involved in that hiring process and the person hired does not report to him. Based upon the recommendation of the County Clerk, he has hired a limited term employe for a data entry project.

8. Ginther's salary is approximately \$2,000 higher than the annualized wage rate of the two Account Clerks. His level of compensation partially reflects his supervisory duties. He receives compensatory time for overtime hours. He spends about 30 percent of his time supervising the Account Clerks.

9. Ginther has not had an occasion to adjust grievances, but he would be the first step in the grievance procedure under the labor agreement. He attends departmental meetings which are held by the Commissioner and include the Patrol Superintendent, Crew Foreman, as well as the Union president and other positions that are included in the bargaining unit.

10. Ginther independently evaluates Hoff and Capper on an annual basis. He discusses the evaluations with the employes before discussing them with Commissioner Hemp. Hemp evaluates Superintendent Gabriel, Foreman Olson and Ginther.

11. The occupant of the position of Accountant/Office Manager possesses supervisory responsibilities in sufficient combination and degree so as to be deemed a supervisory employe.

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

CONCLUSION OF LAW

The occupant of the position of Accountant/Office Manager in the Highway Department 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 1/

---

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

(Continued on following page)

The position of Accountant/Office Manager in the Highway Department of Jackson County shall continue to be excluded from the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 19th day of November, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner



---

1/ (Continued)

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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. 227.57 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.

JACKSON COUNTY

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

BACKGROUND

Jackson County created the position of Accountant/Office Manager in the Highway Department in 1994. The Union seeks to include this position in the collective bargaining unit that encompasses all courthouse employees, and the County opposes such inclusion on the basis that the position is supervisory and/or managerial in nature.

DISCUSSION

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, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively 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.

The Commission considers the following factors in determining whether a position is supervisory in nature:

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 persons exercising greater, similar or less authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her 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 or she spends a substantial majority of his or her time supervising employees; and

7. The amount of independent judgment exercised in the supervision of employees. 2/

Although Ginther only has two employes to supervise, he has sufficient supervisory authority to be excluded from the bargaining unit because of his authority to discipline and evaluate employees, respond to grievances, and direct and assign work to those employees.

Ginther has the independent authority to issue oral and written reprimands and suspensions and to evaluate the work of the Account Clerks. While he has had no occasion to discipline employees, he has been in this position for only two years and his two employees are long-term employees who know and do their jobs well, according to Ginther's evaluations.

If those employees were to file a grievance, he would be expected to handle the first step of the grievance procedure on behalf of management.

It is also clear that Ginther has substantial independent authority to direct the work of the Account Clerks, as evidenced by his authority to authorize overtime and grant or deny leave requests.

Given the foregoing, we exclude the position at issue based upon supervisory status. It is therefore unnecessary to address the issue of whether Ginther is also a managerial employee.

Dated at Madison, Wisconsin, this 19th day of November, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/  
James R. Meier, Chairperson

A. Henry Hempe /s/  
A. Henry Hempe, Commissioner

---

2/ City of Milwaukee, Dec. No. 6960-J (WERC, 5/89).