

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY AND	:	Case XL
MUNICIPAL EMPLOYEES, LOCAL 731,	:	No. 26344 ME-1854
AFSCME, AFL-CIO	:	Decision No. 18590
	:	
Involving Certain Employees of	:	
	:	
CITY OF MANITOWOC	:	
	:	

Appearances:

- Mr. Michael J. Wilson, Representative, AFSCME, Wisconsin Council of County and Municipal Employees, Local 731, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of the Petitioner.
- Mr. Patrick L. Willis, City Attorney, City of Manitowoc, City Hall, 817 Franklin Street, P.O. Box 765, Manitowoc, Wisconsin 54220, appearing on behalf of the City.

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

Wisconsin Council of County and Municipal Employees, Local 731, AFSCME, AFL-CIO, hereinafter referred to as the Union, on June 5, 1980 filed a petition requesting the Wisconsin Employment Relations Commission to clarify a collective bargaining unit comprised of certain employees employed by the City of Manitowoc. Hearing was held on October 24, 1980 before Hearing Examiner Timothy E. Hawks, a member of the Commission's staff, at which time the parties presented evidence, testimony and argument regarding their positions in the matter. A written stenographic transcript of the proceedings was prepared and sent to the parties and Examiner on October 29, 1980. The parties submitted post-hearing briefs which were simultaneously exchanged through the office of the Examiner on December 17, 1980. The Commission having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, Local 731, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization with its address at P.O. Box 370, Manitowoc, Wisconsin.
2. That the City of Manitowoc, hereinafter referred to as the City, is a municipal employer with its address at 817 Franklin Street, Manitowoc, Wisconsin.
3. That the Union is the certified exclusive bargaining representative of all regular full-time and all regular part-time office personnel and custodial employees of the City employed in City Hall and associated departments, including Sewage Plant, Cemetery and Park Department, Street Department, Police Department and Housing Authority, but excluding Department Heads, Supervisors, City Sanitarian, Confidential Secretary, Public Health Nurses, Sewage Plant Operators, Bridge Tender, hourly employees in Street and Cemetery and Parks Department

and all other employes; 1/ and that the City and the Union were at the time of the hearing herein parties to a collective bargaining agreement covering the wages, hours and conditions of employment of the employes in the bargaining unit, which agreement was effective from January 1, 1980 through January 31, 1981.

4. That in its petition initiating the instant proceeding, the Union seeks a determination as to whether Richard Quick, the incumbent of the position entitled Assistant to the Director of the Museum, operated by the City, and whether Patrick O'Donnell, occupying the position of Inspection Assistant, should or should not be included in the above-described bargaining unit; that during the course of the hearing the parties agreed that O'Donnell should be properly included in the bargaining unit; and that, however, the City, contrary to the Union, contends that Quick has sufficient supervisory responsibilities to exclude him from the bargaining unit.

5. That the Museum, known as the Rahr-West Museum and Civic Center, is primarily an art museum; that it also serves as a civic center, providing meeting rooms for the public; that the general policy and budgetary guidelines for the Museum are under the control of a citizen board of nine members, who are subordinate to the Common Council and Mayor; that the City, in the operation of the Museum, employs the following employes:

- 1 Director
- 1 Assistant to the Director
- 1 maintenance position
- 1 part-time attendant
- 3 part-time guards;

that the Director is primarily responsible for the administration of the Museum, and in that regard administers the exchange of art collections on loan, groups new collections, contacts potential donors, and is primarily responsible for the preparation of the Museum's budget request; that the Assistant to the Director is employed full time and is subordinate to the Director; that the position of the Assistant to the Director was created by the Common Council on February 18, 1980, and at the time the annual salary for the position was set at \$12,397; that Quick, prior to his appointment to the Assistant to the Director position, was employed by the City as a Clerk-Typist II and attendant at the Museum; that as the Assistant performs all the typing necessary for the operation of the facility, except typing which is done by volunteers; that Quick also serves as the Museum's receptionist, and in that regard greets visitors and responds to questions regarding the Museum and its functions, and he further conducts tours throughout the Museum, as well as scheduling the use of its meeting rooms; and that Quick spends approximately 90 percent of his time in such duties.

6. That, however, Quick is responsible for the supervision of the remaining employes employed at the Museum; that in said regard, as the Assistant, he has hired the three guards who are currently employed, after interviewing approximately 20 applicants; that he has effectively recommended the suspension of one guard; that Quick evaluates the work of the remaining employes, he schedules hours and assigns duties, and he has orally issued reprimands; and that the Assistant has been granted, but as yet has not exercised, the authority to recommend promotions, transfers and discharges of employes, as well as scheduling overtime when necessary.

1/ This bargaining unit was first described in our decision captioned City of Manitowoc (7667) 8/66 and was subsequently clarified twice (11069) 6/72 and (12403) 1/74.

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

CONCLUSIONS OF LAW

1. That the position of Inspection Assistant is neither confidential, supervisory or managerial within the meaning of the Municipal Employment Relations Act, and that therefore said position is occupied by a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the position of Assistant to the Director of the Rahr-West Museum and Civic Center, currently held by Richard Quick, is a "supervisory" position as defined within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act.

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

ORDER CLARIFYING BARGAINING UNIT

That the position of Assistant to the Director of the Rahr-West Museum and Civic Center is excluded from, and the position of Inspection Assistant is included in, the collective bargaining unit consisting of all regular full-time and all regular part-time office personnel and custodial employes of the City of Manitowoc employed in City Hall and associated departments, including Sewage Plant, Cemetery and Park Department, Street Department, Police Department and Housing Authority, but excluding Department Heads, Supervisors, City Sanitarians, Confidential Secretary, Public Health Nurses, Sewage Plant Operators, Bridge Tender, hourly employes in Street and Cemetery and Parks Department and all other employes currently represented by Wisconsin Council of County and Municipal Employees, Local 731, AFSCME, AFL-CIO.

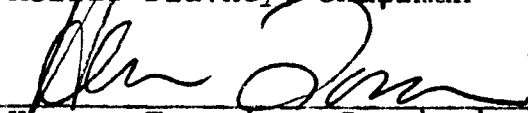
Given under our hands and seal at the City of Madison, Wisconsin this 10th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By



Morris Slavney, Chairman



Herman Torosian, Commissioner



Gary L. Covelli, Commissioner

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

The Union's petition requests that two positions be included within the bargaining unit it now represents. The City agreed at the time of the hearing that one of these, the Inspection Assistant, was a municipal employe, and properly included. The Union also asserts that Mr. Richard Quick, Assistant to the Director of the Rahr-West Museum and Civic Center, is a municipal employe properly included within the bargaining unit. In support of this position the Union argues: (1) that the overwhelming portion of Quick's work day involves performing clerical or administrative tasks which are not supervisory; (2) that Quick supervises an activity and not employes; and (3) that his salary is equal to or lower than that of many workers it represents and is not commensurate with that of a supervisor. The City asserts to the contrary that the position occupied by Quick is vested with sufficient authority to be supervisory.

Section 111.70(1)(b) MERA excludes supervisors from the definition of "municipal employe". Section 111.70(1)(o)1 MERA defines "supervisor" as follows:

As to other than municipal and county firefighters, 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 employes, 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.

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers 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 skill 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.
7. The amount of independent judgment and discretion exercised in the supervision of employes. 2/

2/ Manitowoc County (18351) 1/81, citing Fond du Lac County (10579-A) 1/72.

Quick has been employed by the City and has worked in the Rahr-West Civic Center for eight years. He has served as a Clerk-Typist II, and a museum attendant prior to February of 1980. At that time the Common Council of the City of Manitowoc created a new position and ascribed supervisory authority to it, thereby delegating some of the authority previously held by the Museum Director. Quick was promoted to this new position. Prior to this time Quick was deemed an employe and was included within the bargaining unit represented by the Union. The City has not negotiated with the Union regarding Quick's wages, hours and conditions of employment since the promotion. As a result of the City's action, the Museum now has (according to the City) two full-time supervisors, one full-time and one part-time employe currently represented by the Union, and three temporary part-time employes not currently represented by the Union. In short, there are two full-time supervisors for one full-time and four part-time employes. In addition, Quick continues to perform many, if not all, of those duties he performed prior to his promotion. In light of these circumstances particularly close scrutiny of the actual exercise of Quick's supervisory responsibility is in order.

Close scrutiny bears out our conclusion that Quick actually possesses such indicia of supervisory responsibility to exclude him from the bargaining unit.

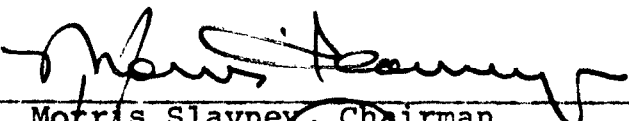
Quick has hired three employes. Those individuals are regularly assigned even though they work on a part-time basis. Additionally, Quick effectively recommended to the Director the suspension of one of these employes. He has performed informal evaluations of them. Quick has assigned work to the attendant and maintenance person. He has scheduled those weekend hours that the attendant is to report. He has directed the maintenance person to ready those rooms which Quick himself schedules for public use. His failure to perform directed work resulted in an oral reprimand administered by Quick.

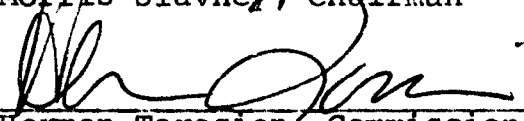
The actual exercise of these supervisory duties together with a clear grant from both the Museum Director and the City's Common Council of more extensive supervisory authority is sufficient in both quality and degree to outweigh the concerns brought forward by the Union. For the reasons set out above we conclude that the Assistant to the Director of the Rahr-West Museum and Civic Center is a supervisor and properly excluded from the bargaining unit represented by the Union.

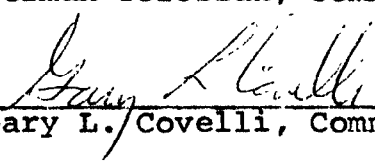
Dated at Madison, Wisconsin this 10th day of April, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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