

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:	
JUNEAU COUNTY	:	
and	:	
JUNEAU COUNTY COURTHOUSE	:	Case 31
EMPLOYEES, LOCAL 1312,	:	No. 27755 ME-1990
WCCME, AFSCME, AFL-CIO	:	Decision No. 18728-A
Involving Certain Employes of	:	
JUNEAU COUNTY	:	

Appearances:

- Ms. Shannon Bradbury, Corporation Counsel, Juneau County, Juneau County Courthouse, 220 East State Street, Manitowoc, WI 53948, appearing on behalf of the County.
- Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, WI 54656, appearing on behalf of the Union.

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

The County and Union noted above having separately filed the petitions described in Finding of Fact 4 below requesting the Wisconsin Employment Relations Commission to clarify the existing bargaining unit described in Finding of Fact 3, below; and the parties having agreed that the three petitions should be consolidated for hearing and that the hearing scheduled for February 13, 1985, should be postponed; and a hearing in the matter having been conducted on March 27, 1985, in Mauston, Juneau County, Wisconsin, by Examiner James W. Engmann, a member of the Commission's staff; and a stenographic record having been made of the hearing; and at hearing the County having moved to amend its petition by deleting the County Zoning Administrator from the list of positions it sought to have excluded on the basis that said position was currently vacant, and the Union having not objected to said motion to amend, the motion to amend having been granted; and a stenographic transcript having been received on June 11, 1985; and the parties having waived receipt of the transcript and the opportunity to file briefs; and the Commission having considered the evidence and the arguments of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Juneau County, herein referred to as the County, is a Municipal Employer and has its offices at the Juneau County Courthouse, 220 East State Street, Mauston, Wisconsin 53948.
2. That Juneau County Courthouse Employees, Local 1312, WCCME, AFSCME, AFL-CIO, herein referred to as the Union, is a labor organization with its offices at Route 1, Sparta, Wisconsin 54636.
3. That in Juneau County, Dec. No. 18728 (WERC, 7/81), the Union was certified as the collective bargaining representative of the unit consisting of all regular full-time and regular part-time employes of Juneau County in the Departments housed in the Juneau County Courthouse, excluding managerial, supervisory, confidential employes and elected officials.
4. That the County filed a unit clarification petition with Commission on November 28, 1985, wherein it sought to exclude the positions of Veterans' Service Officer, County Zoning Administrator, Director, Aging and Nutrition Department and Sanitary Landfill Site Manager from the collective bargaining unit; that the Union filed a Petition to Clarify Bargaining Unit of Municipal Employes with the Commission on February 4, 1985, wherein it sought to include the newly created

position of part-time sanitary landfill scale operator currently held by two employees; that the County filed a Petition to Clarify Bargaining Unit of Municipal Employees with the Commission on February 7, 1985, wherein it sought to exclude the position of part-time Home Health Aide currently held by two employees.

5. That the Director of the Aging and Nutrition Department is Marian Sobrockis; that Sobrockis reports to the Juneau County Board Committee on Aging (hereinafter the Committee); that in addition to the Director, the Department consists of seven nutrition site managers, one adult center coordinator, two van drivers, one account clerk, one clerical assistant, one part-time dietician, and two green thumbs workers; that each of the seven nutrition site managers is located at a different nutrition site in Juneau County; that these site managers are responsible for implementing the County's aging and nutrition program at the seven nutrition sites and in so doing oversee the preparation and distribution of food to older persons; that if a problem at a site occurs the site manager calls Sobrockis; that each site manager submits a monthly report to Sobrockis; that Sobrockis calls site managers at inventory and other times; that Sobrockis meets with each site manager approximately every two months; that the Adult Center Coordinator is responsible for arranging transportation for the older persons involved in the Center's program; that the two van drivers transport older persons to programs and meals to homebound persons; that the Account Clerk is responsible for bookkeeping; that the Clerical Assistant helps the Account Clerk and performs other clerical tasks; that the green thumb workers are low income persons over 55 years of age who work 20 hours per week under a federal program; that Sobrockis has authority to grant personal days off and to schedule and approve vacations for Department employees; that she keeps a folder on each employe which contains a job description and other papers such as correspondence; that she does not have authority to hire, discharge, suspend, transfer or promote employees; that Sobrockis has never disciplined an employe, however if an employe is not performing satisfactorily, Sobrockis informs the Committee; that on one occasion, approximately five years ago, the Committee and Sobrockis met with an employe to discuss that employe's performance; that as a result, the Committee issued a letter of reprimand, written and signed by the Committee, to that employe; that Sobrockis prepares performance reports of the Department's employees; that Sobrockis has never been presented with a grievance but if she were, she would work with the Committee in responding to it; that Sobrockis receives and processes applications for vacant positions in the department; that her role in this regard essentially amounts to placing ads in newspapers in accordance with the positions' job descriptions, sorting and reviewing applications and forwarding them to the Committee; that the Committee, after receiving the applications, ordinarily decides for itself which of the applicants will be interviewed, however, on one occasion, Sobrockis was asked to recommend which 6 of 40 appeared from their applications likely to do a good job, and after receiving all 40 applications, the Committee decided to interview just the 6 so identified by Sobrockis; that Sobrockis formulates interview questions for the Committee; that the Committee Chairperson conducts all interviews with Sobrockis and Committee members present but not actively participating in the interviews; that, following the interviews, the Committee decides whom to hire by a majority vote of the Committee members; that Sobrockis does not have a vote in those decisions, although she is sometimes asked for her views as to which candidate is best qualified and her preference, when so requested and expressed, is usually but not always followed by the Committee; and that Sobrockis is authorized to recommend upgrades and reclassifications of departmental employees to the Committee.

6. That Sobrockis oversees seven nutrition sites, the Adult Center and all of the County's programs for older persons; that although Sobrockis assigns duties and specific tasks to 12 people working under her, much of their work is routine and does not require specific day-to-day direction from her, especially with respect to the seven nutrition site managers who work independently in the field; that Sobrockis spends a substantial majority of her time working on problems of older persons, including persons who come to the Adult Center with difficulties related to aging and nutrition and others who are referred to the Department, by working with the State Department of Social Services and other agencies and groups; that approximately 90 percent of Sobrockis' time is spent in the performance of these duties and about 10 percent of her time is spent overseeing employees; that Sobrockis is paid at grade level 12 and the other employees are paid at between grade levels 3 and 7; that no one else directly supervises these employees on a day-to-day basis; that Sobrockis' duties have not changed since the certification of the collective bargaining unit; and that Sobrockis does not exercise supervisory responsibilities in sufficient combination and degree so as to make her a supervisory employe.

7. That the Advisory Board to the Committee on Aging establishes the budget for the Department of Aging and Nutrition; that Sobrockis and the department's bookkeeper provide the Advisory Board with information as to the number of people served by the department and related costs of providing meals and other aging and nutrition services and the amount of wages and other operational expenses; that Sobrockis does not establish the accounts in the budget, nor does she make programs or policy decisions for the Department; that the Committee formulates and determines the policies for the Department, which policies are primarily dictated by State and Federal guidelines; that although Sobrockis recommends programs to be offered, the discretion as to the programs to be offered and the amount of funding for each program is limited by grants received by the County for these programs; that the budget is approved by the Advisory Board, the Committee on Aging, the Finance Committee and the State; that Sobrockis has no authority to deviate from the budget once it is approved; that Sobrockis, under the supervision and direction of the Committee is responsible for implementing the Department's policies; and that Sobrockis as Director of the Department of Aging and Nutrition does not sufficiently participate in the formulation, determination or implementation of management policy and does not have authority to commit employer resources so as to make her a managerial employe.

8. That the Veterans' Service Officer is Ted L. Duckworth; that as the Veterans' Service Officer, Duckworth reports to the Juneau County Board Veterans' Service Committee; that in addition to Duckworth, the Veterans' Service Office consists of two employes: a Secretary 2 and a Clerk-Typist 2; that these two employes have been in their present positions for 23 and 14 years respectively; that no employes have been hired in the Veterans' Service Office since Duckworth became the Officer 13 years ago; that Duckworth has authority to issue written reprimands and did reprimand an employe five years ago; that Duckworth does not have authority to suspend or discharge an employe; that no employe has ever presented him with a grievance; that if presented with a grievance, he has some authority to resolve the grievance; that the two employes work with little direct supervision by Duckworth; that most of the time he forwards work to them and they know how to do it; that if he wants something done specifically, he brings it to the employe directly; that Duckworth does not evaluate the two employes; that Duckworth has authority to grant personal days and to approve vacations; that Duckworth is paid at a grade level 15 and the two employes are paid at grade levels 6 and 4, respectively; that Duckworth's duties include advising and otherwise assisting veterans in obtaining benefits, such as housing and economic assistance loans, medical and study grants, job training and placement, and alcohol and drug abuse treatment; that he transports veterans to VA hospitals; that he prepares an annual report for the Veterans' Service Office which is submitted to the State and County; and that Duckworth as Veterans' Service Officer does not exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe.

9. That Duckworth establishes budgets for the Veterans' Service Office, the care of veterans' graves and the Veterans' Service Commission; that Duckworth determines what accounts his budgets will have and how much money to request be allocated by the County to each account; that the Veterans' Service Office budget was \$76,568 in 1984 and \$67,722 in 1985; that the major difference between the two years was the purchase of an automobile in 1984; that the amount budgeted for salary and fringe benefits was \$54,703 in 1984 and \$57,587 in 1985; that the amount of \$9,655 in 1984 and \$10,135 in 1985 was for telephone, postage, supplies, printing, auto maintenance and travel expenses; that the budget for care of veterans' graves was \$4,600 in both 1984 and 1985; that the budget for the Veterans' Service Commission was \$2,500 in 1984 and \$1,550 in 1985; that Duckworth takes these budgets to the Juneau County Board Veterans' Service Committee for approval after which he takes them to the Finance Committee for approval; that Duckworth has authority to spend up to \$500 before seeking approval of the Committee; that he needs approval of the Finance Committee to transfer money from one budget or classification to another; that many of the policies under which the Veterans' Service Office operates are set by the State; that other policies of the Office are established in meetings between Duckworth and the Veterans' Service Committee; and that Duckworth does participate in a significant manner in the formulation, determination and implementation of management policy, and does have sufficient authority to allocate the employer's resources so as to be found a managerial employe.

10. That the Manager of the Sanitary Landfill Site is Gerald Steiner; that Steiner has been the Manager for six years; that Steiner reports to the Juneau County Board Solid Waste and Recycling Committee; that the other employes at the

landfill site are two equipment operators, two part-time scale operators, and one part-time secretary; that Steiner is paid at grade level 13, the equipment operators are paid at grade level 9 and the part-time scale operators are currently ungraded and paid minimum wage; that Steiner generally does not participate in the hiring process; that in the case of the most recently hired equipment operator, however, Steiner did recommend a person for that position and that person was hired by the Committee; that Steiner had no input into the hiring of the most senior equipment operator or in the recent hiring of the part-time scale operators; that the Committee, not Steiner, recommends upgrades and reclassifications of landfill site employes; that Steiner has authority to issue oral and written reprimands; that Steiner does not have authority to suspend or discharge employes, rather the Committee exercises such authority; that employes have brought grievances to him; that Steiner has authority to resolve grievances pursuant to the first step of the contractual grievance procedure; that Steiner does not formally evaluate the other employes at the landfill site; that on occasion the Committee has asked him how the employes are performing and he has told the Committee; that Steiner spends approximately 15 percent of his time assigning work and directing employes in their work; that Steiner has authority to grant personal days and approve vacations; that Steiner spends approximately 60 percent of his time doing the same work as the other employes; that no one else has direct day-to-day supervisory authority over these employes although the equipment operators may tell scale operators how to read the scales; that approximately 25 percent of Steiner's time is spent on activities such as attending meetings of other sanitary landfill site managers, conferring with the State Department of Natural Resources, and consulting with the contractor about construction of the new landfill site; that Steiner's duties involving supervision have not changed since the unit was certified; and that Steiner does not exercise supervisory responsibilities in sufficient combination and degree as to make him a supervisory employe.

11. That when Steiner became Manager, he wrote some rules regarding the running of the landfill which the Committee approved and which continue in effect; that he is involved in the preparation of three budgets although his specific involvement is unclear from the record; that two of the budgets involved shifting operations from one landfill site to another; that the budget for the Site #1 Closure was \$22,800 in 1984 and \$20,300 in 1985; that the budget for Site #2 Construction and Development was \$487,405 in 1984 and \$198,976 in 1985; that the major difference in this budget for the two years is in engineering fees and construction costs; that Steiner exercises little authority in regard to these two budgets as these costs have been determined by various contracts entered into by the County for the closing of one landfill site and the building and opening of a second landfill site; that the Solid Waste Management budget covers the day-to-day operation of the sanitary landfill site; that said budget was \$155,091 in 1984, of which \$54,011 was for salaries and fringe benefits and the remainder was for telephone, utilities, fuel, equipment repair and capital equipment; that Steiner requested \$183,014 in 1985, of which \$60,834 was for salaries and fringe benefits and the remainder for those items listed above with the major difference being a \$11,000 increase in capital equipment; that said budget request would have to be approved by the Solid Waste and Recycling Committee, after which it would have to be approved by the Finance Committee; that Steiner needs Committee approval to make individual purchases over \$25; that he has purchased various small items which totaled \$100 without seeking the approval of the Committee; and that Steiner does not participate in a significant manner in the formulation, determination or implementation of managerial policy, and does not have sufficient authority to allocate the employer's resources so as to be found a managerial employe.

12. That the agreement between the County and the Union contains the following articles:

2.00

RECOGNITION

The Employer recognizes the Union as the exclusive collective bargaining representative for all regular full-time and regular part-time employees of the Juneau County Courthouse, but excluding: the Administrative Assistant II (Soc. Serv.); County Maintenance Supervisor; Nutrition Site Managers; Personnel Director/Insurance Administrator; Housing Authority Director; Secretary to the District Attorney; and Soil and Water Technician; and excluding all other supervisory, confidential, managerial and professional employees.

17.00 Proration of Benefits

For the purposes of insurance, sick leave, holidays, vacations and other fringe benefits, part-time employees who are scheduled to work less than one-half (1/2) time shall not receive benefits. Part-time employees who are scheduled to work one-half (1/2) time or greater, but less than full-time, shall receive fifty percent (50%) of the level of benefits provided to full-time employees under this contract.

13. That the County received new scales at the landfill site on or about January 1, 1985; that the County created two part-time Landfill Scale Operator positions to operate said scales; that two people were hired part-time to fill those positions; that in a typical two-week period, employe Arthur Stack will work four hours each Monday, Wednesday and Friday the first week and eight hours Saturday the second week; that in the same two week period, employe Thomas Blackstone works eight hours Saturday the first week and four hours each Monday, Wednesday, and Friday the second week; that this schedule has been adhered to since the creation of the part-time scale operators positions and it is a regular on-going schedule; and that the occupants of the two part-time Landfill Scale Operator positions are regular part-time employes.

14. That the two Home Health Aides are Dorothy Boyer and Kathy DeVoe; that as Home Health Aides they take blood pressure, pulse and respirations and give baths to people who are ill but at home; that they work out of the Juneau County Courthouse and report to the Director of Nursing Services, Janet Fait, and to their head nurse, Ronda Peterson, one of whom assigns them patients and informs them as to the patient's needs, the time when, and the place where the service will be provided; that the number of patients, the number of visits per patient and the amount of time each visit takes varies from week to week; that Dorothy Boyer has been employed for two and one-half years as a Home Health Aide; that during that time she has worked not less than ten hours nor more than twenty hours per week; that Kathy DeVoe has been employed as a Home Health Aide since January 2, 1985; that she has worked at least nine hours each week and as many as 16 hours in one week since she was hired; that each Home Health Aide signed an individual employment contract stating her specific duties, her obligation to provide her own transportation and the reimbursement rate for miles driven; that they are paid by checks drawn on the County's account; that the specific source of funds for these services are not tax dollars but third party payments, such as medicare, medicaid, veterans benefits and insurance; that the County's Health Department controls when, where and how Home Health Aides perform their duties; that prior to the hiring of Dorothy Boyer two and one-half years ago, the position of Home Health Aide was a full-time position occupied by Nancy McCullough; that at the time of the election, this position was included in the bargaining unit and the part-time positions are currently included in the unit; that the occupants of the two part-time Home Health Aide positions work with sufficient frequency and regularity so as to be considered regular part-time employes; and that the occupants of the two part-time Home Health aide positions share a community of interest with other employes of the bargaining unit.

CONCLUSIONS OF LAW

1. That the occupants of the positions Director of the Aging and Nutrition Department and Landfill Site Manager are neither supervisors nor managerial employes and therefore are municipal employes within the meaning of Section 111.70(1)(i), Stats.

2. That the occupant of the position of Veterans' Service Officer is not a supervisor within the meaning of Section 111.70(1)(o), Stats., but is a managerial employe, and therefore is not a municipal employe within the meaning of Section 111.70(1)(i), Stats.

3. That the occupants of the position of Landfill Scale Operator are municipal employes within the meaning of Section 111.70(1)(i), Stats., and are regular part-time employes of the County.

4. That the occupants of the position of Home Health Aide are municipal employes within the meaning of Section 111.70(1)(i), Stats., who share a community of interest with employes allocated to the collective bargaining unit described in Finding of Fact 3 above.

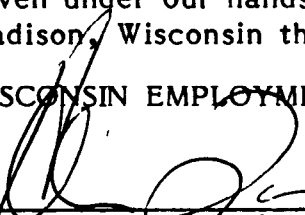
ORDER CLARIFYING BARGAINING UNIT 1/

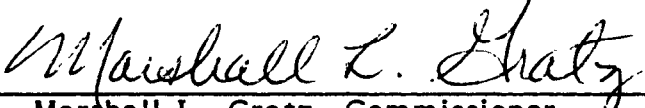
1. That the positions of Director of the Aging and Nutrition Department, Landfill Site Manager, and Home Health Aide shall continue to be included in the collective bargaining unit set forth in Finding of Fact 3 above.
2. That the position of Veterans' Service Officer is hereby excluded from said bargaining unit.
3. That the position of Landfill Scale Operator is hereby included in said bargaining unit.

Given under our hands and seal at the City of
Madison, Wisconsin this 3rd day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 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 (Footnote 1 Continued on Page 7)

1/ Continued

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.

JUNEAU COUNTY

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

INTRODUCTION

The questions before the Commission are whether the Director of the Aging and Nutrition Department, the Veterans' Affairs Officer and the Landfill Site Manager are supervisors; whether said employes are managers; whether the Landfill Scale Operators are regular part-time employes; and whether the Home Health Aides share a community of interest with employes in the bargaining unit described in Finding of Fact 3.

POSITIONS OF THE PARTIES

The County:

As to the alleged supervisory/managerial employes, the County argues that these employes are department managers with the power to commit the funds of their departments in the budget planning process. In addition, the County argues that these employes effectively recommend the hiring, firing, discharge and discipline of the employes under their control, that they are the persons to whom grievances are brought and that they are paid at a considerably higher rate than the people they supervise.

The County argues that the Landfill Scale Operators are not regular part-time employes in that they work less than twenty hours a week and their schedule and number of hours changes week to week. In addition, the contract distinguishes between employes who work less than 20 hours per week and those that work 20 or more hours a week, with those working less than 20 excluded from coverage under the contract. Finally, as these positions were created essentially for retired persons who wish to work a minimum number of hours, inclusion in the unit would not garner these persons any benefits, such as insurances, under the contract but would cause them to pay union dues.

As for the Home Health Aides, the County argues that they do not have a community of interest with the other members of the unit in that their schedules are flexible from week to week, their work is of a different type and is performed out of the office and in the home of the ill person, and their salary comes from funds separate from the County.

The Union:

As to the alleged supervisory/managerial employes, the Union argues that these employes are not supervisors because they have limited or no authority to hire, discipline and discharge employes, they are mainly supervising an activity and not employes, and they are paid to perform the duties for which they were hired and not for supervisory duties. The Union also argues that these employes are not managerial employes in that they have limited input into budgeting and spending outside the budget once approved.

The Union argues that the Landfill Scale Operators are new positions which the Union seeks to unconditionally include as regular part-time employes, that they are regular employes in that they work a regular schedule every week, and that there is no minimum number of hours under the collective bargaining agreement or Commission ruling that an employe must work to be considered a regular employe.

Regarding the Home Health Aides, the Union argues there is a substantial community of interest in that they are part of a department with other unit members all of whom are supervised by a common supervisor; that they work out of the nursing office in the Courthouse; and that they are currently unit members.

The Union also argues that the source of funding is irrelevant; that the key factor is that they are County employees and that removing these two employees from the unit would constitute undue fragmentation.

DISCUSSION

I. Director of Aging and Nutrition Department

The County asserts that the Director of the Aging and Nutrition Department is a supervisor. The Commission considers the following factors in determining if 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 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. 2/

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 employee to be a supervisor. 3/

While the Director is involved in the hiring process, much of her role in that process is of a clerical nature in that she places the ad and collects and forwards the applications to the Committee. This is not a case in which the alleged supervisor interviews the candidates, selects one and forwards the recommendation to the Committee. Rather, it is the Committee that decides which applicants to interview, interviews the candidates, and votes on which to hire. The Director is present during the interviews but does not vote on whom to hire. Once, when there was a large number of applications, the Director was called upon to suggest a list of the six best qualified based on a review of the applications, and the Committee chose in that instance to interview just those the Director suggested, though the Committee had all of the applications available to it in so deciding. The Director is sometimes but not always asked for her opinion as to which of the applicants appears best qualified. When so requested and given, the Director's opinion in that regard is usually but not always effective in persuading the Committee to hire the candidate deemed by the Director to be most qualified. Given the foregoing limitations on the extent of the effectiveness of the Director's recommendations in the hiring process, it would be an exaggeration to characterize her authority as including the authority to effectively recommend whom to hire.

2/ City of Kiel (Police Department), Dec. No. 11370-A (WERC, 3/83); Milwaukee County (Sheriff's Department), Dec. No. 22519 (WERC, 4/85).

3/ School District of Tomahawk, Dec. No. 22495 (WERC, 3/85), Dodge County, Dec. No. 17558-C (WERC, 2/81).

The Director's authority in the area of discipline and discharge is even more limited: to reporting facts to the Committee. The only discipline that has occurred in this Department was a letter of reprimand, which was authorized and signed not by the Director but by the Committee and while she does make performance evaluations, it is not clear that those evaluations are significant factors in promotions, transfers and/or disciplinary actions. She possesses little authority in the area of employe grievances. In sum, the Committee's retention of a wide range of supervisory authority over the Aging Department employes substantially reduces the extent to which the Director exercises independent judgement in supervisory matters.

On a day-to-day basis, the substantial majority of the Director's time is spent dealing with the problems of the County's elderly on a hands-on basis. She is more aptly described as in charge of programming for the elderly than in charge of the Department's employes. While there is a substantial number of subordinates in the Department, most of them appear to do their jobs with a minimum amount of direction from the Director and a majority of the Department, the nutrition site managers, do not have face-to-face contact with the Director for extended periods of time. The Director does appear to be paid substantially more than the other employes in the Department, but not because of supervisory duties. Rather, the pay differential appears attributable to her expertise in services for the aging as a hands-on service provider, as a program coordinator, and as a resource person/advisor to County Committees on the subject.

For the foregoing reasons we have concluded that the Director's position does not involve supervisory authority in sufficient combination and degree as to warrant exclusion as a supervisor.

The County also asserts that the Director is a managerial employe. In determining if a position is managerial in nature the Commission considers the following factors: the employe's participation in the formulation, determination and implementation of management policy; and the employe's possession of effective authority to commit the employer's resources. 4/ The Commission will determine that a position is managerial if the employe participates in a significant manner in the formulation, determination or implementation of management policy. 5/ The Commission will also determine a position is managerial if the employe has authority to establish an original budget or to allocate funds for differing purposes from such a budget, provided the authority to allocate funds is not merely ministerial. 6/

While Sobrockis participates in the preparation of the budget, her input into the process appears to be that of putting it together in physical form and forwarding it to various boards and committees. But it is the Advisory Board and the County Board Committee on Aging that determines what actually goes into the budget. Once set, the Director has little if any authority to deviate from the budget. It is also the County Board Committee on Aging that formulates and determines the policy of the Department and sees that the policy is carried out. Thus the Director does not have sufficient authority in the area of policy or finance to be found a managerial employe.

II. Veterans' Service Officer

The County asserts that the Veterans' Service Officer is a supervisory employe. As no employe has been hired or fired in this office for over 13 years, it is difficult to determine the Officer's authority in this area. While he did send a letter of reprimand 5 years ago, he does not evaluate employes nor does he have authority to suspend or discharge an employe. Indeed, the Officer spends little time supervising the two secretaries, both of whom require little

4/ City of Jefferson, Dec. No. 10344-A (WERC, 3/85); Kewaunee County (Highway Department), Dec. No. 21344 (WERC, 1/84).

5/ City of Jefferson, supra; Village of Brown Deer, Dec. No. 19342 (WERC, 1/82).

6/ City of Jefferson, supra; Kewaunee County (Highway Dept.), supra.

direction. Thus, the Officer spends the vast majority of his time performing non-supervisory duties of his position as Veterans' Affairs Officer. On balance, we believe the Officer does not exercise supervisory authority in sufficient combination and degree so as to be found a supervisor.

The County also asserts that the Officer is a managerial employe. We agree. Our review of the record satisfies us that the Officer participates significantly in the formulation, determination and implementation of the policies of his office. While the Veterans' Service Committee becomes involved in developing certain formal policies, the record satisfies us that the Officer enjoys substantial deference in such matters from the Committee. The same appears to us to be the case regarding his role in formulating the three budgets for his office which he presents to the Veterans' Service Committee and then to the Finance Committee. The record also reveals that the Officer has authority to spend \$500 without approval of the County Board, though the precise nature of this authority is not clear. From the foregoing we have concluded that the Officer participates in policy matters to a significant degree and has sufficient authority to commit the County's resources. He is therefore found to be a managerial employe.

III. Landfill Site Manager

Again the County alleges that the Landfill Site Manager is both a supervisory and managerial employe. We conclude that basically he serves as a lead worker and not a supervisor in that he spends a good percentage of his time doing the same work as the other employes of the landfill site, with the rest of his time spent supervising the activities of the landfill site. He has very little input in hiring decisions made and limited authority to discipline, nor does he formally evaluate the employes. On balance we believe he does not have supervisory authority in sufficient combination and degree to warrant exclusion as a supervisor.

With respect to managerial status, the record evidence persuades us that Steiner exercises little discretion and authority in preparing and determining the various budgets involved. The majority of the amounts allocated in two budgets are attributable to the costs of shifting operations from one landfill site to another and said costs are primarily determined by construction and engineering contracts entered into by the County. The operational budget's primary allocation is for employe salaries and fringe benefits. Steiner's discretion in spending outside the budget is limited to \$25 absent some prior approval. While Steiner did establish work rules five years ago, he does not appear to exercise independent judgment and discretion as regards establishing management policy. We therefore conclude that Steiner does not participate in the formulation, determination or implementation of management policy and does not have authority to allocate the County's resources so as to be found a managerial employe.

IV. Landfill Scale Operators

Basically the County argues that the Landfill Scale Operators are not regular part-time employes but rather are casual employes because they work less than 20 hours per week and their schedules are not the same two weeks in a row. The Commission has held that the number of hours worked does not determine whether an employe is a regular part-time or a casual employe. 7/ Likewise, flexibility as to working time does not automatically determine that an employe is a casual employe. 8/ In determining whether or not employes are regular part-time, the Commission is primarily concerned with regularity of employment. 9/

In this case the record is clear that each employe works eight or twelve hours a week alternately so that together the two employes work 20 hours per week and each employe works 20 hours in a two-week period. The County is correct that

7/ Manitowoc County, Dec. No. 8152-F (WERC, 6/83).

8/ City of Onalaska, Dec. No. 20509 (WERC, 4/83).

9/ Manitowoc County (Sheriff's Department), Dec. No. 18351-A (WERC, 3/83).

the employees' hours change week to week, but their hours are repeated in two week cycles, which cycles are pre-arranged and regular. These are not on-call employees who can refuse work at will; instead they have worked a regular schedule of a two week cycle since January and have a reasonable expectation of continuing to work according to that schedule.

The County argues, however, that part-time employees are not covered by the collective bargaining agreement. In support of its position, the County points to Article 17.00, Proration of Benefits, in the current agreement which states that "employees who are scheduled to work less than one-half (1/2) time shall not receive benefits." The fact that the contract does not grant benefits to the above-noted group of employees does not mean said employees are not (or cannot be) part of the bargaining unit. Article 2.00, Recognition, parallels the description for which the Union is the certified representative, including, among others, all regular full-time and regular part-time employees, not just that subset of regular part-time employees who are scheduled to work one-half time or more. The question before the Commission is not whether these employees receive benefits or whether they are scheduled to work one-half time or more, but whether their employment is sufficiently frequent and regular to warrant their inclusion as regular part-time employees. As noted above, we have found that it is.

Whether, as the County argues, these employees are retired people who do not wish to work one-half time or more or whether these employees do not wish to pay union dues since they will not receive insurance-type benefits is not germane to the question of whether they should be included in the unit. In our view they belong in the unit. Our order herein does not mean that the collective bargaining agreement automatically applies to newly included employees; that matter is left for the parties to negotiate.

V. Home Health Aides

In determining whether employees in a unit share a community of interest with other employees in that unit, the Commission considers the duties and skills of the employees involved, the similarity of wages, hours and conditions of this employment, the commonality of their supervisors and workplace, the bargaining history of the parties and the effect excluding said employees will have on fragmentation of bargaining units. 10/ Not all the criteria considered by the Commission in establishing appropriate collective bargaining units necessarily derive the same weight, and in some cases one or more criterion may predominate. 11/

The County argues that because the Home Health Aides' hours are flexible and dependent on patient needs, because they work with patients in the patients' homes instead of doing office work in the Courthouse, and because their salary comes from third party payments, the Home Health Aides do not share a community of interest with the other employees in the bargaining unit.

While there is flexibility in the hours the aides work, the work is mainly performed during the hours worked by a majority of the employees in the unit. Even though their work takes place in patients' homes, their base of operations remains the Courthouse where they are notified of their assignments, write and turn in their reports, and receive their pay checks. The fact that their salaries may be funded from another unit of government or insurance companies does not provide a basis for their exclusion from the bargaining unit. 12/ They have historically been included in the instant unit. Their wages, hours and conditions of employment have been negotiated for by the current collective bargaining representative. Their supervisors supervise other members of the bargaining unit. And their exclusion would unduly fragment the bargaining unit.

10/ Mid-State V.T.A.E Dist. No. 14, Dec. No. 14526-A (WERC, 5/85).

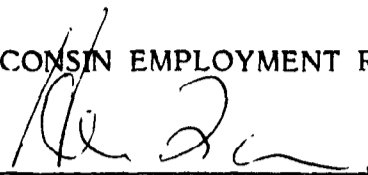
11/ Green County (Human Services Dept.), Dec. No. 21453, (WERC, 2/84).

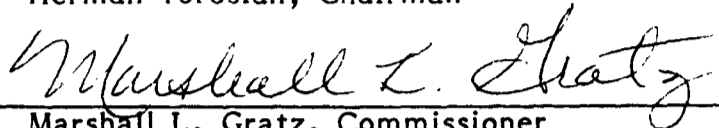
12/ Madison VTAE Dist., Dec. No. 8382-A (WERC, 1/80).

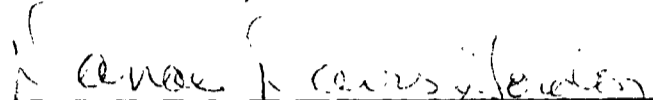
For these reasons we conclude that the Home Health Aides have a community of interest with the bargaining unit and are appropriately included in said bargaining unit.

Dated at Madison, Wisconsin this 3rd day of January, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By 
Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner