

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 JUNEAU COUNTY EMPLOYEES :
 LOCAL 1312, AFSCME, AFL-CIO : Case 31
 : No. 36839 ME-86
 Involving Certain Employes of : Decision No. 18728-B
 :
 JUNEAU COUNTY :
 :

Appearances:

Mr. Daniel R. Pfeifer and Mr. Laurence S. Rodenstein, Staff Representatives, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin, 53719, appearing on behalf of Juneau County Employees, Local 1312.

Mr. Kenneth E. Goerke, Corporation Counsel, Juneau County, Juneau County Courthouse, 220 East State Street, Mauston, Wisconsin, 53948, appearing on behalf of Juneau County.

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

Juneau County Employees, Local 1312, AFSCME, AFL-CIO having on April 16, 1986 and June 9, 1986, filed petitions requesting the Wisconsin Employment Relations Commission to clarify the existing bargaining unit consisting of employes of Juneau County by determining whether the positions of Clerical Assistant and Administrative Assistant 2 should be included in said unit; and hearing in the matter having been held in Mauston, Wisconsin on October 22, 1986 before Examiner Lionel L. Crowley, a member of the Commission's staff; and the briefing schedule having been completed on December 17, 1986; 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, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Juneau County Employees, Local 1312, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices located c/o Laurence S. Rodenstein, 5 Odana Court, Madison, Wisconsin, 53719.

2. That Juneau County, hereinafter 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.

3. That, in Dec. No. 18728 (WERC, 7/81), following an election conducted by it on July 13, 1981, the Wisconsin Employment Relations Commission, herein the Commission, on July 23, 1981, certified the Union as the exclusive bargaining representative of certain of the County's employes in a bargaining unit described as follows:

All regular full-time and regular part-time employes of Juneau County in the Departments housed in the Juneau County Courthouse, excluding professional, managerial, supervisory, confidential employes, and elected officials.

4. That on April 16, 1986, the Union filed a petition requesting the Commission to clarify the bargaining unit set forth in Finding of Fact 3, claiming that the position of Clerical Assistant should be included in said unit; and that the County and the Union stipulated at the hearing on the petition that the position of Clerical Assistant be included in the bargaining unit.

5. That on June 9, 1986, the Union filed a petition requesting the Commission to clarify the bargaining unit set forth in Finding of Fact 3, claiming that the position of Administrative Assistant 2 in the Department of Social Services, now excluded, should be included in the unit; and that the County claimed that the position should be excluded from said unit on the basis it is supervisory.

6. That prior to September 27, 1983, the Child Support Agency was assigned to the Juneau County District Attorney's office and consisted of two positions, a Child Support Investigator and an Assistant Child Support Investigator which positions were included in the unit set forth in Finding of Fact 3; that on September 27, 1983, the Child Support Agency was assigned to the Corporation Counsel's office and the position of Child Support Investigator was eliminated and later a Clerk-Typist was added; that on April 15, 1986, the County transferred the Child Support Agency from the office of Corporation Counsel to the Department of Social Services; that thereafter the Assistant Child Support Investigator was assigned to the Child Support unit and the Clerk-Typist was absorbed into the Department's clerical unit; that a new position, Administrative Assistant 2, was created to head the Child Support unit; and that Gail Hallinan filled this position in May 1986.

7. That the job description for the Administrative Assistant 2 lists the following as the position's responsibilities:

GENERAL STATEMENT OF DUTIES: Performs varied and responsible investigative and supervisory functions of considerable difficulty and responsibility in the Child Support Unit.

DISTINGUISHING FEATURES OF CLASS: The employee in this class serves as supervisor, and lead investigative worker, supervising subordinate employees in their functions of providing child support functions within the child support unit. This position requires efficient organization of work flow and development of child support goals and plans. Work performed is under the general supervision of the Social Services and Child Support Director.

EXAMPLES OF WORK (Illustrative only)

Supervises other child support staff;
Plans, assigns, and checks the flow of work;
Locates and determines absent parents' legal obligation for support of children;
Assesses and recommends parents' ability to support children;
Drafts complains (sic) and agreements on paternity and support;
Keeps abreast of changes in statutes, rules and regulations pertaining to Child Support
Maintains working relationships with other county agencies;
Monitors and assures compliance with agency contracts;
Makes recommendation to the Corporation Counsel on appropriate child support actions
Does related work as required;

8. That the Administrative Assistant 2 is responsible for directing the work of one full-time employe, the Assistant Child Support Investigator; that the Administrative Assistant 2 is assigned to pay grade 12 and the Assistant Child Support Investigator to pay grade 8; that when the Child Support Investigator was attached to the District Attorney's office it was assigned to pay grade 14 and the Assistant Child Support Investigator was assigned to pay grade 6; that Gail Hallinan has filled the position of Administrative Assistant 2 since its inception; that while Hallinan has been told she has authority to interview applicants and make recommendations to her supervisor, the Director of Social Services, Hallinan has not had the opportunity to do so; that Hallinan has been told that she may give verbal and written reprimands and make recommendations for suspensions and discharge but has not done so as of this time; that Hallinan has evaluated her employe informally but has not formally evaluated anyone; that Hallinan was told she can authorize overtime but has not done so; that there have been no promotions or layoffs in the Child Support Unit; that Hallinan does

approve vacation and sick leave requests; that Hallinan spends about 5 percent of her time in direct supervision of the Assistant Child Support Investigator and spends the other 95 percent on program responsibilities which include devising systems and procedures to ensure the case loads are in compliance with state regulations and to prioritize the work load; that these include a review system, a tickler system and a reporting system; that Hallinan did make a preliminary budget which was submitted to the Director of Social Services who discussed it with her and the Director completed the final budget; that Hallinan assesses training needs and if a cost is involved, it must be cleared with the Director of Social Services; that Hallinan is not involved in responding to any employee's grievance under the contractual grievance procedure; and that Hallinan does not possess and exercise supervisory authority in sufficient combination and degree to be deemed a supervisory employe.

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

CONCLUSION OF LAW

That the occupant of the Administrative Assistant 2 position is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

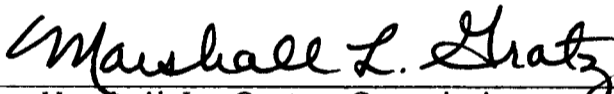
ORDER CLARIFYING BARGAINING UNIT 1/

That the positions of Clerical Assistant and Administrative Assistant 2 be, and the same hereby are, included in the bargaining unit described in Finding of Fact 3 above.

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of January, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

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

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

(Footnote 1 continued on Page 4.)

(Footnote 1 continued from Page 3.)

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.

JUNEAU COUNTY

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

The Union seeks to include the Administrative Assistant 2 position in the bargaining unit and the County opposes inclusion on the basis that the position is supervisory in nature. The Union contends that the work performed by the Administrative Assistant 2 is essentially non-supervisory and historically bargaining unit work. It submits that under the criteria established by the Commission, the position is essentially a lead worker without substantive supervisory duties who performs duties consistent with the former bargaining unit position of Child Support Investigator and thus should be included in the unit.

The County argues that the position does satisfy the criteria for a supervisory position. It submits that the incumbent has authority to recommend hiring, promotion, transfer and discharge of employees but has no track record due to the lack of need to act in the short time in the position. It asserts that she does direct and assign work and while there is only one employee under her supervision, the Department's structure dictates supervisory status for the position; the County concludes that the position involves a wide range of discretion and independent judgment and meets a sufficient number of the criteria to qualify as a supervisory position excluded from the unit.

DISCUSSION

Section 111.70(1)(o)1 of MERA 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 to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has on numerous occasions, listed the following factors as those to be considered in the determination of an individual's supervisory status:

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/her skill or for his/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/she spends a substantial majority of his/her time supervising employees;

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

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employe to be a supervisor. 3/ Even though an employe may spend a majority of his/her time doing non-supervisory duties, the Commission has determined that he/she is supervisory where sufficient responsibilities and authority of a supervisor are present. 4/

A review of the record indicates that the duties and responsibilities of the Administrative Assistant 2, currently occupied by Gail Hallinan, do not include the necessary factors in such combination and degree to warrant the conclusion that the position is supervisory. The evidence establishes that on a day to day basis, Hallinan spends the vast majority of her time, approximately 95 percent, creating and implementing procedures for the Child Support program. Hallinan's supervisory authority is limited to one employe, the Assistant Child Support Investigator, and the record indicates that very little time is spent supervising that employe on a daily basis. The record shows that Hallinan has some authority for hiring and discipline but the evidence indicates that she has not exercised this authority. Hallinan is not involved in grievance processing and has not authorized any overtime for the Assistant Child Support Investigator. Although Hallinan is at range 12 and the one employe assigned to her is at range 8, the prior comparable positions in the District Attorney's office were at ranges 14 and 6, respectively. The rate of pay appears to be based on program responsibilities as opposed to supervisory responsibilities. Hallinan does approve vacation and sick leave requests but this function does not appear to be more than ministerial.

We conclude that Hallinan is supervising an activity rather than supervising employes in the labor relations sense in that the function is that of a lead person. We conclude that, on balance, Hallinan does not possess sufficient supervisory authority in such combination and degree so as to warrant a finding that her position is supervisory within the meaning of Sec. 111.70(1)(o)1, Stats.

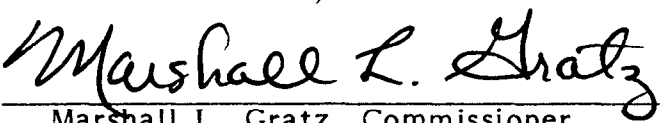
Therefore, the position of Administrative Assistant 2 is appropriately included in the bargaining unit.


Dated at Madison, Wisconsin this 22nd day of January, 1987.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

2/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); Augusta School District, Dec. No. 17944 (WERC, 7/80); Cornell School District, Dec. No. 17982 (WERC, 8/80); Eau Claire County, Dec. No. 17488-A (WERC, 3/81); Milwaukee County (Sheriff's Department), Dec. No. 22519 (WERC, 4/85); Juneau County, Dec. No. 18728-A (WERC, 1/86); City of Mauston, Dec. No. 21424-B (McLaughlin, 10/86).

3/ Lodi Jt. School District, Dec. No. 16667 (WERC, 11/78); City of Lake Geneva, Dec. No. 18507 (WERC, 3/81); Eau Claire County, Dec. No. 17488-A (WERC, 3/81); Waushara County (Health Department), Dec. No. 21422 (WERC, 2/84); School District of Tomahawk, Dec. No. 22495 (WERC, 3/85); Kewaunee County, Dec. 11090-C (WERC, 2/86).

4/ City of Madison (Public Library), Dec. No. 19906 (WERC, 9/82); School District of Montello, Dec. No. 17829-B (2/82).