

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
LOCAL 216-K, AFSCME, COUNCIL 40, :
AFL-CIO :
Involving Certain Employees of :
CITY OF ASHLAND :
(CITY HALL) :

Case 23
No. 35393 ME-38
Decision No. 18808-A

Appearances:

Wisconsin Council 40, AFSCME, AFL-CIO by Mr. James Ellington, Staff Representative, Route 1, Box 2, Brule, Wisconsin 54820, appearing on behalf of Local 216-K.
Clark & Clark, Attorneys at Law, P. O. Box 389, Ashland, Wisconsin 54806, by Mr. Scott W. Clark, appearing for the City of Ashland.

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

Local 216-K, AFSCME, Council 40, AFL-CIO, hereinafter referred to as the Union, having on July 23, 1985, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a bargaining unit of employees employed in the City Hall by the City of Ashland, hereinafter referred to as the City, by determining whether the position of Computer Accounts Specialist should be included in said unit; and a hearing on said petition having been conducted in Ashland, Wisconsin on October 15, 1985 by Daniel J. Nielsen, an examiner on the Commission's staff; and the parties having reserved the right to submit written arguments following the hearing; and the City having, on November 15, 1985 submitted a brief; and the briefing schedule having been terminated on December 15 without the submission of a Union brief; and the City having, on February 21, 1986 submitted additional exhibits for inclusion in the record of the hearing; and the Union having taken no position with respect to the admission of said exhibits; and the examiner having determined that the proposed exhibits should be admitted into the record; and the Commission having reviewed the record, and the arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That the City of Ashland, hereinafter referred to as the City, is a municipal employer with offices at Ashland City Hall, Ashland, Wisconsin 54806.

2. That Local 216-K, AFSCME, Council 40, AFL-CIO, hereinafter referred to as the Union, is a labor organization with offices at Route 1, Box 2, Brule, Wisconsin 54820.

3. That the Union is the certified exclusive bargaining representative of all regular full-time and regular part-time City Hall employees, excluding casual, supervisory, confidential and managerial employees, and employees of the police, fire, public works departments and municipal parking system. 1/

4. That the instant proceeding was initiated on July 23, 1985 by a petition filed by the Union, wherein it contended, contrary to the City, that the position of Computer Accounts Specialist, currently occupied by Bonnie Friske, is neither managerial nor supervisory in nature and therefore should be included in the bargaining unit.

5. That prior to July 1, 1985, the City of Ashland maintained an Accounting Department, headed by Eileen Boike, who held the position of Accounts Specialist;

1/ City of Ashland (City Hall), Dec. No. 18808 (WERC, 8/81).

that Boike was not included in the City Hall bargaining unit and was treated as a member of management; that Boike was assisted by a bookkeeper and an assistant bookkeeper; that the latter two positions were included in the bargaining unit; that the purpose of the Accounting Department was to provide accounting services for the City of Ashland.

6. That Boike retired in the early summer of 1985; that upon Boike's retirement, the City determined to redesignate her position as the Computer Accounts Specialist to reflect the increasing reliance on computers in the City's accounting operation; that the assistant's position was redesignated as Computer Accounts Technician; that Jane Smith, City Clerk/Personnel Director for the City, approached Friske prior to Boike's retirement and solicited her assistance in rewriting the job description for Boike's position to reflect the actual duties of the position as they then existed; that Friske rewrote the job description; that included in the updated job description were the following elements:

COMPUTER ACCOUNTS SPECIALIST

April, 1985

GENERAL STATEMENT

. . . Responsibilities are as follows: maintains the complete financial records of the City; computerizes, maintains, monitors and audits the City's financial records and accounts; reviews and approves claims for payment; prepares financial reports; and supervises accounting staff.

DEFINITION OF DUTIES

Below are examples of objectives and tasks required for this position. Related objectives and tasks are to be performed as required:

. . .

OBJECTIVE 15: Attends City Council meeting and various Committee meetings as required.

OBJECTIVE 16: Prepares annual Accounting Department Budget.

OBJECTIVE 17: Supervises and manages Accounting Department staff.

. . .

that the City posted the position as a department head vacancy; that Friske posted for the position; and that Friske was hired for the position of Computer Accounts Specialist effective July 1, 1985.

7. That the Computer Accounts Technician is Regina Crowley; that Crowley works in the Accounting Department three days per week during the month of April through November; that Crowley is employed in the Treasurer's office as a tax clerk during the months of December through March; that during those four months, Crowley is also expected to perform certain of her duties in the Accounting Department on a two or three day per week basis, depending upon her work load in the Treasurer's office; that Crowley applied for the Accounts Technician position by signing a posting for the position; that one other person applied for the position; that Crowley had formerly worked in the office as an assistant bookkeeper; that both applicants were interviewed by Eileen Boike, Jane Smith, Bonnie Friske, City Treasurer James Bay, and several members of the City Council; that Friske participated in the discussions following the interview and strongly recommended the hiring of Crowley; and that Crowley was thereafter hired for the position effective July 1, 1985.

8. That James Bay is the City Treasurer of the City; that Bay is the head of the Financial Services Division of the City; that, at the time of the hearing in this matter, the Financial Services Division consisted of the Assessor's Department, the Treasurer's office, the Parking Utility and the Accounting Department; that the total number of employees within the Financial Services

Division at the time of the hearing, other than Bay, was five, including the Deputy Treasurer, the Assessor, the Parking Coordinator, Friske and Crowley; that Bay was responsible for supervising the Deputy Treasurer and the Department Heads within the Division, including Friske; that, on January 14, 1986, the Ashland City Council approved a revised table of organization removing the Assessor and Friske's office from Bay's supervision and placing them directly under the Mayor; that, under the new table of organization, Crowley will be supervised by members of the Treasurer's office only when working in that office during tax season; that Bay has not, as of the time of the hearing, evaluated Crowley, nor been involved in any personnel transaction involving Crowley.

9. That Crowley's work schedule was approved by Friske; that, at the time of the hearing, Crowley had not been evaluated as to her job performance; that Crowley had not submitted any vacation requests; that Crowley had submitted one sick leave request which was submitted to Friske; and that Crowley had not been disciplined for any reason.

10. That in the Fall of 1985, Friske prepared and submitted a departmental budget for calendar year 1986; that the budget consisted of eight line-items; that five of these line item requests were "0" or had been transferred to the City Hall budget; that the three line items remaining were:

miscellaneous expenses - \$50
administrative salary - \$20,223.60
salary-account technician - \$12,033.87

that \$50.00 for miscellaneous expenses was a carry-over figure from the previous year; that Friske may not expend any of the \$50 without prior approval of the Board of Estimates; that the figures for salaries were provided to Friske by Jane Smith; and that therefore Friske had no meaningful input to her Department's 1986 budget.

11. That Friske and Crowley perform essentially the same tasks in entering data and recording transactions; that Friske has a greater amount of experience in the field than Crowley; that Friske monitors the day-to-day job performance of Crowley; that Friske was paid \$13,800 per year when she held the bookkeeper's position; that Friske's non-probationary annual salary in 1986 is budgeted at \$20,223; that Crowley's budgeted annual salary for working 60% time for eight months and full-time for four months in 1986 is \$12,033.87; that Friske accumulates vacation time and compensatory time on the same basis as other department heads in the City; that this system differs from the manner in which bargaining unit employees, including Crowley, accumulate such time; and that Friske's higher rate of pay and differing benefits are due to her greater administrative and supervisory responsibilities, as well as her greater professional experience.

12. That Bonnie Friske possesses the authority to schedule, discipline, direct and assign work to Regina Crowley; that Friske performs the day-to-day tasks of supervision of Crowley; that Friske is the only person having the authority to directly supervise Crowley; that Friske receives a substantially higher rate of pay than Crowley for performing essentially the same work; that Friske is a working supervisor, who does not spend a substantial amount of her time supervising Crowley; and that Bonnie Friske is a supervisory employee.

13. That Bonnie Friske does not participate to a significant degree in the formulation, determination or implementation of public policy as Computer Accounts Specialist, but rather performs prescribed technical functions; and that Friske does not have the authority to commit the municipal employer's resources to a sufficient degree to be considered a managerial employee.

CONCLUSIONS OF LAW

1. That the position of Computer Accounts Specialist, currently occupied by Bonnie Friske, is supervisory within the meaning of Sec. 111.70(1)(o)1, Wis. Stats.

2. That the occupant of the position of Computer Accounts Specialist is not a municipal employee within the meaning of Sec. 111.70(1)(i), Wis. Stats.

ORDER 2/

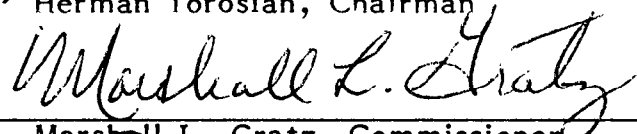
That the instant petition for clarification of the bargaining unit be, and the same hereby is, dismissed.

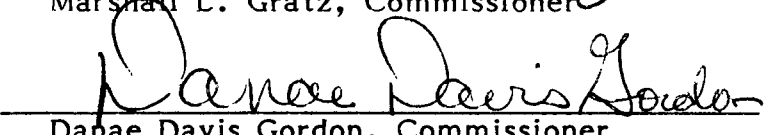
Given under our hands and seal at the City of
Madison, Wisconsin this 8th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 2/ 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 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.

CITY OF ASHLAND (CITY HALL)

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

MANAGERIAL STATUS OF COMPUTER ACCOUNTS SPECIALIST

The City maintains that Friske is a department head, required to submit an original budget to the Mayor and Board of Estimates, and as such must be considered a managerial employee. 3/ The record reflects, however, that the original budget consists primarily of salary figures for Friske and her assistant, and that those figures are provided to her by the Personnel office. The remaining items in the budget are carried over without change from year to year. While Friske has the authority to appear before the Board of Estimates to request expenditures for miscellaneous items of up to \$50 annually, she does not have authority to expend those already budgeted funds without prior approval. In short, Friske's preparation and administration of the budget appear to be ministerial functions involving little discretion on her part. The record does not, therefore, support the City's claim that Friske is a managerial employee.

SUPERVISORY STATUS OF THE COMPUTER ACCOUNTS SPECIALIST

Irrespective of her status as a managerial employee, the City maintains that Friske is plainly a supervisor as to the Computer Accounts Technician. 4/ The

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- 3/ In determining managerial status, the Commission considers the following: whether the employee participates in the formulation, determination and implementation of public policy, and whether the employee has the effective authority to commit the employer's resources by establishing an original budget or allocating funds for purposes different from such an original budget. Nicolet College and Technical Institute, Dec. No. 23366 (WERC 3/86); Juneau County, Dec. No. 18728-A (WERC, 1/86); Milwaukee VTAE District, Dec. No. 16483 (WERC, 8/78).
- 4/ In determining whether a position is supervisory in nature, the Commission has consistently considered the following factors:
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 skills or for his/her supervision of employees;
 5. Whether the supervisor is 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 judgement exercised in the supervision of employees.

Nicolet, supra; Dane County, Dec. No. 21397-B (WERC, 7/85); Waukesha County Technical Institute, Dec. No. 19751 (WERC, 6/82).

Union asserts that James Bay, the City Treasurer is actually the technician's supervisor.

While Friske's job description plainly designates her as the supervisor of the technician, there is little concrete evidence either way in the record. The petition in this matter was filed only three weeks after the reorganization of the bookkeeping department, and the hearing was conducted some eleven weeks later. During that time, the technician was not the subject of many of the personnel transactions which are part and parcel of "supervisory work" (approval of vacation, performance evaluations, imposition of discipline, etc.). The technician was interviewed for her position by a committee, including both Bay and Friske, which unanimously selected her for the job. Although Friske strongly recommended she be hired, it cannot be said that she had the authority to hire, or effectively recommend such action, from the record.

Although the relatively short period between the reorganization of the Computer Accounts department and the hearing in this matter yields little opportunity for supervision to have been exercised over Crowley, it does appear that what supervision there has been has come from Friske. Friske set Crowley's work schedule, supervises her day-to-day performance, and approved her lone request for sick leave. Additionally, contrary to the Union's argument, it does not appear that Bay has any particular involvement in supervising Crowley and there is nothing in the record to suggest that he will do so in the future. In fact, the revised table of organization adopted by the City Council clearly removes the Computer Accounts office from Bay's supervision.

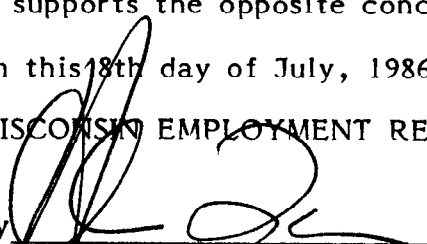
Particularly significant in our determination that Friske is a supervisory employe are two factors. First, the job description for her position plainly assigns to her supervisory responsibility for technician. Despite her protests that she has no such responsibilities and that her predecessor Boike had no such responsibilities over her, it is undisputed in the record that she prepared the revised job description for the City Clerk to use in posting the position. Given the speculative testimony at the hearing regarding their expectations of the Specialist's functions, this fact would seem as indicative as any of the expectations of all parties as to the supervisory role of that position. Second, and more important, is the fact that Friske receives a much higher rate of pay than Crowley for performing essentially the same tasks, save only the ministerial budget function, a once a year exercise which cannot explain the disparity in pay. Neither can the difference be traced to Friske's greater experience, since she brought the same level of experience to the job on June 30, 1985 at a rate of \$13,800 as she did on July 1, 1985 for an annual salary (after probation) of \$19078.

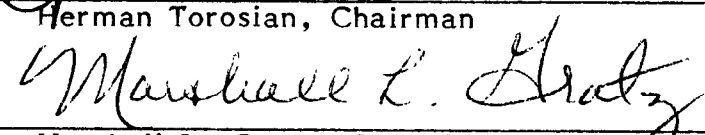
The Commission is not unmindful of the fact that Friske's supervisory role is rather vaguely defined as of the hearing, and if there were any other individual having a meaningful supervisory relationship vis-a-vis Crowley, Friske might well have been found to be non-supervisory. Should it develop over time that Bay, rather than Friske, is the primary supervisor of the technician, the Union is free to establish that fact in a subsequent proceeding. The reliable evidence available at this time, however, supports the opposite conclusion.

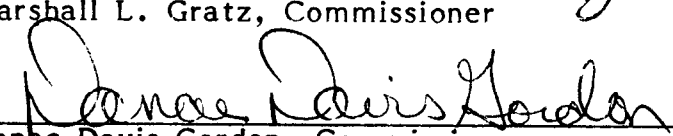
Dated at Madison, Wisconsin this 18th day of July, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner