

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

No. 18808

5. That Hecimovich functions as secretary to the Mayor and City Clerk; that Hecimovich is responsible for typing literally all negotiating proposals for possible use by the City, and is responsible for typing all grievance responses and recommendations; that Hecimovich is responsible for typing personnel committee meeting minutes; and that Hecimovich has access to personnel files.

6. That Cylund reports to the Community Development Director and is responsible for an assistant, Robert Miller; that Cylund and Miller perform essentially the same duties, such as inspection of rehabilitation housing projects and public works projects funded under HUD, and under state grants for the City, writing specifications for such jobs, taking bids from contractors and performing inspections as the jobs progress; that Cylund assisted the Director in interviewing candidates for the assistant position and jointly recommended the hiring of Miller; that the Director approves Miller's overtime and time sheet; and it is the Director who approves all project bids; that Cylund is paid about \$2200 a year more than Miller; that Cylund and Miller together set up a schedule of work to be performed.

7. That Johnston works as an engineering technician and is responsible for maintaining files, maps, record books and surveys for 2/3 of his time; that the remaining 1/3 of his time is spent supervising the maintenance of City Hall, Vaughn Library and the Youth Center Building; that Johnston is responsible for two permanent employees, and additional WIN and CEP employees as special projects arise; that Johnston was responsible for as many as ten (10) WIN and CEP employees in the past; that Johnston does not perform maintenance duties, but is responsible for scheduling their performance; that he assists in the preparation of the budget as related to supplies and equipment; that Johnston did interview and recommend the hiring of the permanent employees who report to him; and that Johnston evaluates these employees, signs their time sheets and grants them time off.

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

CONCLUSIONS OF LAW

1. That 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 constitute an appropriate collective bargaining unit within the meaning of Section 111.70(4)(d) of the Municipal Employment Relations Act (MERA).

2. That Carol Larson, occupying the position of Deputy City Clerk, is neither a confidential employee, nor a supervisor, within the meaning of Sec. 111.70(1)(o)1 of MERA, and therefore the occupant of said position is a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA; and that Janet Cylund, occupying the position of Chief Community Development Inspector, is neither a supervisor, nor a managerial employee, but a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA; and therefore the occupants of said two positions are included in the collective bargaining unit noted above, and are therefore eligible to vote in any election directed herein.

3. That Pat Hecimovich, occupying the position of Secretary performs sufficient confidential duties so as not to constitute a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA; and that John Johnston, occupying the position of Engineering Technician/Building Superintendent, is a supervisor within the meaning of Sec. 111.70(1)(o)1 of MERA, and not a municipal employee within the meaning of Sec. 111.70(1)(b) of MERA, and therefore said individuals are not included in the collective bargaining unit involved herein.

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

DIRECTION OF ELECTION

That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within sixty (60) days from the date of this directive among all regular full time and regular part time City Hall employees, excluding casual, confidential, supervisory and managerial employees and employees of the police, fire and public works departments and municipal parking system employees, who were employed by the City of Ashland on July 8, 1981, except such employees as may prior to the election quit their employment or be discharged for cause, for the purposes of determining whether a majority of such employees desire to be represented for the purpose of collective bargaining by Wisconsin Council of County and Municipal Employees, AFSCME, Council 40 on matters relating to wages, hours and conditions of employment.

Given under our hands and seal at the
City of Madison, Wisconsin this 8th
day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSIONS OF LAW AND DIRECTION OF ELECTION

The Union seeks a representation election of City Hall employees employed by the City. During the course of the hearing, the parties agreed on positions to be included in the unit, with the exception of four positions. The City, contrary to the Union, contends that the Secretary to the Mayor, and the Deputy City Clerk are confidential and/or supervisory, and the Engineering Technician/Building Superintendent and Chief Community Development Inspector are supervisory and/or managerial employees.

The Commission has consistently held that in order for an employee to be considered a confidential employee, and thereby excluded from the bargaining unit, such an employee must have access to, have knowledge of, or participate in confidential matters relating to labor relations. In order for information to be confidential for such purpose it must be the type of information that deals with (1) the employer's strategy or position in collective bargaining, contract administration, litigation, or other similar matters pertaining to labor relations between the bargaining representative and the employer; and (2) is not available to the bargaining representative or its agents. 1/ The Commission has also held that a de minimus exposure to confidential labor relations materials is insufficient grounds for excluding an employee from a bargaining unit. 2/

The Secretary is the Mayor's and City Clerk's Secretary and types practically all the City's bargaining proposals and recommendations for bargaining proposals. In addition, she types all grievance recommendations and responses. The Secretary is the only City employee who performs these duties. The Secretary has sufficient access to confidential matters concerning labor relations to justify the exclusion of her position from the bargaining unit.

The Deputy City Clerk has costed the City's salary and fringe benefit proposals and has access to personnel files. This constitutes a de minimus exposure to confidential labor relations matters and the mere access to personnel files is insufficient indicia of confidential status. 3/ Therefore, the Commission concludes that the Deputy City Clerk is not confidential.

Section 111.70(1)(b) of MERA defines the term "supervisory" 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 judgement.

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/ Wisconsin Heights School District (17182) 8/79; CESA No. 4 (14177-A) 7/80.

2/ Ibid.

3/ School District of Loyol, (18149) 10/80; CESA No. 4, supra.

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 skill 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;
7. The amount of independent judgement exercised in the supervision of employees. 4/

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 employee to be a supervisor. 5/

The Commission is satisfied that the Deputy City Clerk spends the vast majority of her time performing payroll work and does not supervise any employees. In light of the above factor, the position is not supervisory. Since the position is neither supervisory nor confidential, the Commission finds that the position is an employee position and is included in the bargaining unit, and that the occupant thereof is eligible to participate in the representation vote.

The Commission is satisfied that the Engineering Technician/Building Superintendent does not perform custodial duties, but directs employees in the performance of these duties. In addition, his recommendations for hiring have been effective, his control of time sheets, time off and overtime, and the ordering of supplies, indicate a day to day control over custodian operations; therefore, we conclude the position of Engineering Technician/Building Superintendent is supervisory, and is excluded from the bargaining unit.

The Commission is satisfied that the position of Chief Community Development Inspector does not exercise sufficient managerial or supervisory duties to warrant a finding that the position is supervisory or managerial. The record establishes that the Chief Inspector oversees an assistant; however, the relationship is that of co-worker, rather than supervisor. Both perform the same duties, with the Chief Inspector providing training to the assistant. Any reports of sick leave and overtime are approved by the Director. Although the salary of this position is higher than the assistant, the differential is not attributable to the supervision of employees, but the City's grant of a \$2200 per year increase to the incumbent was to upgrade the position to the level of the assistant building inspector, a bargaining unit position.

In determining whether a position has managerial status, the Commission considers the degree to which individuals participate in the formulation, determination and implementation of management policy

4/ Village of Pewaukee, (17771-A) 4/81; Fond du Lac County, (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; Wood County, (10345-A).

5/ Village of Pewaukee, supra; Wood County, supra.

and possess the authority to commit the employer's resource.^{6/} The record reveals that this position has no authority to commit the City's resources as all expenditures up to \$6500 require approval by the Director and any expenditures greater than this amount require Community Development Committee approval. We find that the position of Chief Community Development Inspector is not supervisory nor managerial, and therefore is included in the bargaining unit.

Dated at Madison, Wisconsin this 8th day of July, 1981.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Chairman

Morris Slavney
Morris Slavney, Commissioner

Herman Torosian
Herman Torosian, Commissioner

^{6/} Milwaukee Area Vocational, Technical and Adult Education Board,
(8736-B, 16507-A) 6/79.