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WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY
Branch 6

CUDAHY TECHNICAL & HEALTH
SERVICES ASSOCIATION,

Petitioner,

vs.

Case No. 601-155

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION,

Decision No. 19507-B

Respondent.

DECISION

Cudahy Technical & Health Services Association (Association Petitioner, appeals an order of the Wisconsin Employment Relations Commission (Commission), the Respondent, dated March 31, 1982, excluding the Chief Building Inspector for the City of Cudahy (Chief Inspector) from the bargaining unit of the Association on the grounds that the Chief Inspector is a supervisor within the meaning of Section 111.70(1)(o), Wis. Stats.

The Association contends that the finding of the Commission is unsupported by evidence and constitutes mere conclusions requiring the reviewing Court either to reverse the Commission or vacate the order and remand the case for further proceedings.

The Commission contends that there is substantial evidence in the record to support the findings that the Chief Inspector is a supervisor.

Section 111.70(1)(o), Wisconsin Statutes, defines supervisor as follows:

"As to other than municipal and county firefighters, any individual who has authority in the interest of the municipal employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment."

The record before the Commission also includes Ordinance 837 of the City of Cudahy, which describes the Chief Inspector's powers and duties as follows:

"1.18 Chief Inspector (1) The Chief Inspector shall be the superintendent of all the inspectors of the City and shall be appointed pursuant to Civil Service procedures, which appointment shall be subject to confirmation by the Council. He shall also perform the duties of one of the other inspection departments.

"(2) He shall receive such compensation and expense allowance as the Council shall prescribe.

"Powers and Duties. The Chief Inspector shall have, among others, the following powers and duties: He shall have direct administrative and technical charge of the inspection departments; act as technical inspection consultant to all departments of the City; shall serve as an advisor to the Council on inspection matters

and shall exercise administrative control over all of the ordinary requisitions for supplies, payrolls, vouchers and other routine documents and preparing the work program and budget estimates for the Inspection Department. Subject to the direction of the Council, he shall be responsible for the administration of all inspection programs."

Based on four days of hearings before a Hearing Examiner of the Commission during which testimony was received from the Chief Inspector, mayor, members of the department and other City employes, the Commission made the following Conclusion of Law:

"4. That the individuals in the employ of the City of Cudahy occupying the position of Public Health Nurse II, City Assessor, and Chief Inspector/Building Inspector are supervisors within the meaning of Section 111.70 (1) (b) of the Municipal Employment Relations Act."

This finding excludes them from membership in a labor organization under 111.70(1) (j) based on the definition of a "municipal employe" contained in Subsection (b) of the same section.

The Commission must have evidence upon which to base its findings sufficient to make such findings reasonable. The Commission's findings are conclusive on an appeal, as long as they are supported by credible and substantial evidence. For evidence to be credible, it must be evidentiary in nature and not conclusions of law. Credible evidence cannot rest upon conjecture, speculation or conclusions.

In this case, such evidence bearing on the seven criteria established in City Firefighters Union v. Madison, 48 Wis(2d) 262, is determinative of the issue. It is the duty of the Commission to weigh credibility of the witnesses, but it is the function of the Court on review to determine whether the evidence deemed credible by the Commission and rationally considered is sufficient to arrive at the conclusion that the Chief Inspector falls in the supervisory class.

The Findings of Fact of the Commission recite that the City contends the Chief Inspector is a "managerial/supervisory employe;" that he is charged with the direct administration of the Inspection Department and acts as the inspection consultant to all City departments, serving as an advisor to the City Council and exercising administrative control over all requisitions for supplies, payrolls, vouchers and other routine documents, as well as with respect to budget estimates relating to the department; that Otto (Chief Inspector) receives approximately \$300 per month more than is received by the full-time Plumbing Inspector.

The record before the Examiner upon which the findings were based permitted the specific finding that the Inspector played a significant role in the hiring of a part-time secretary and participated as an interviewer of an applicant for Plumbing Inspector, about whom the Inspector said he was acceptable. The applicant in question was hired.

Two occasions of participation in hiring by the City of Cudahy is not an impressive demonstration of a supervisory role. The Chief Inspector testified his role in that regard was not unique and other Inspectors could have performed the same function. The record further shows that the Chief Inspector and the Electrical Inspector agreed on the upper range of salary for the part-time secretary. Again, one occasion of control over salary is not impressive to establish supervisory control.

The record shows that the Chief Inspector received, according to a wage scale ordinance, \$100 per month more than the Electrical Inspector and \$300 per month more than the Plumbing Inspector. These differences in salary levels are indicators of rank but the amount of difference is rather nominal.

The role of the Inspector is more extensive according to the record for the reason that he is charged with coordinating the activities of the department, which were disorganized until his position was created. However, each inspector has a high degree of autonomy and they all assist in the development of rules for the department.

The Chief Inspector has other unique responsibilities, including orders to condemn both commercial and residential buildings and the issuance of various permits. The Chief Inspector testified that his personal supervisor was the mayor of the City of Cudahy in the absence of the Common Council. The Chief Inspector testified

that he had specific duties that are unique to him involving greater authority and judgment than other Inspectors.

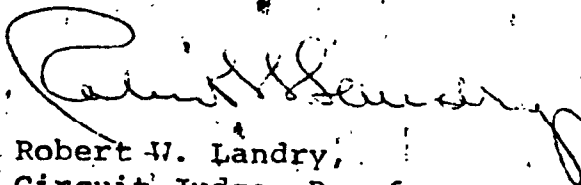
An analysis of the job description contained in Ordinance 887 makes it clear that his powers and duties are substantial and unique. This litany of powers and duties is not a standard job description -- it describes functions which can be construed as supervisory.

The record shows that there is support for the conclusion of the Commission that the job of Chief Inspector is supervisory based in part on actual practice and function but is strongly supported on the basis of the powers and duties imposed upon the office by ordinance.

Petition is denied.

Dated at MILWAUKEE, WISCONSIN, this 28th day of October, 1933.

BY THE COURT:



Robert W. Landry,
Circuit Judge, Br. 6