

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:
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WISCONSIN COUNCIL OF COUNTY	:
AND MUNICIPAL EMPLOYEES,	:
AFSCME, AFL-CIO	:
	:
Involving Certain Employes of	:
	:
SHEBOYGAN COUNTY HANDICAPPED	:
CHILDREN'S EDUCATION BOARD	:
	:
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Case IV  
No. 29938 ME-2121  
Decision No. 20217

Appearances:

Ms. Helen M. Isferding, District Representative, Wisconsin Council of County and Municipal Employees, 3323 North 29th Street, Sheboygan, Wisconsin appearing on behalf of the Petitioner.

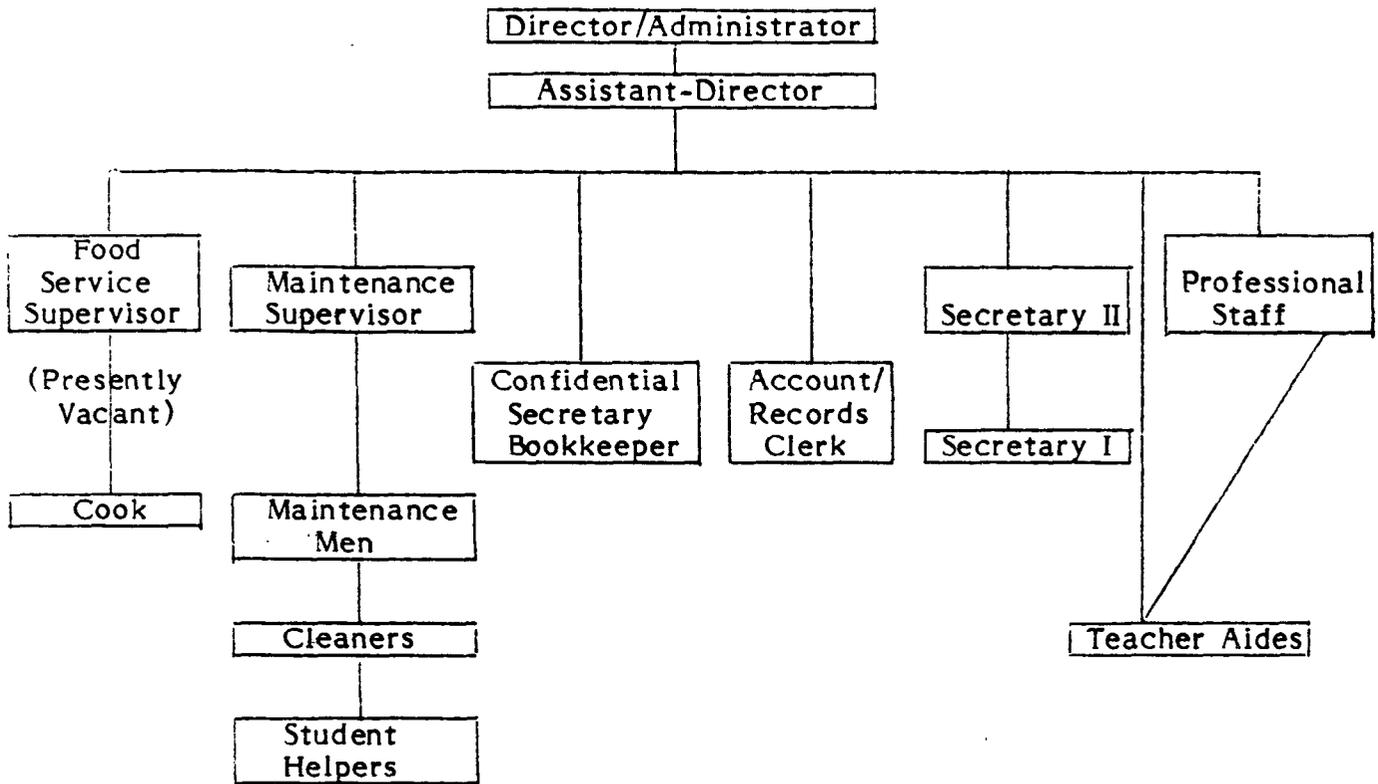
Mr. Alexander Hopp, Corporation Counsel, Sheboygan County Courthouse, 615 North 6th Street, Sheboygan, Wisconsin appearing on behalf of the Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DIRECTION OF ELECTION

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having on June 18, 1982, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employes in the employ of Sheboygan County Handicapped Children's Education Board; and hearing in the matter having been conducted on October 18, 1982 at Sheboygan, Wisconsin before Examiner Andrew M. Roberts; and a transcript having been received on November 2, 1982; and the parties having stipulated to waive the filing of post-hearing briefs; and the Commission, having considered the evidence and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 2323 North 29th Street, Sheboygan, Wisconsin.
2. That the Sheboygan County Handicapped Children's Education Board, hereinafter referred to as the Employer, is a municipal employer with offices at Sheboygan County Courthouse, 615 North 6th Street, Sheboygan, Wisconsin; and that the Employer maintains an educational program for handicapped individuals residing in Sheboygan County, and in said regard operates a school known as the Lightfoot School; and that the Employer's "organization" is charted as follows:



3. That in the instant proceeding the Union seeks an election among the non-professional employees of the Employer to determine whether said employees desire to be represented by the Union for purposes of collective bargaining with the Employer; that in its petition the Union described the claimed appropriate bargaining unit of said non-professional employees as consisting of "all employees of Sheboygan County in its Lightfoot School, excluding elected officials, department heads, supervisory, managerial, executive and confidential employees, and employees in other bargaining units"; that at the present there exists only one "other bargaining unit," namely consisting of professional teacher employees in the employ of the Employer, which unit is presently represented, for the purposes of collective bargaining, by the Lightfoot Federation of Teachers, Local 3554, WFT, AFL-CIO.

4. That during the course of the hearing herein the parties agreed that employees occupying the following classifications are properly included in the non-professional employee bargaining unit:

<u>Classification</u>	<u>Number of Positions</u>
Account/Records Clerk	1
Cleaners	3
Cook	1
Maintenance Men	2
Secretary II	1
Secretary I	1
Teacher Aides	14

5. That also during the course of the hearing the parties stipulated that the occupants of the positions of Director/Administrator, Assistant Director, Psychologist, Social Worker, and Student Helpers are properly excluded from the desired unit; and that however, the Employer, contrary to the Union would exclude, from the unit, the Maintenance Supervisor as a supervisory employe, and the Confidential Secretary Bookkeeper as a confidential employe.

6. That John Brill has occupied the position of Maintenance Supervisor for approximately two and one-half years; that the Maintenance Supervisor reports to both the Director/Administrator and the Assistant Director; that the Maintenance Supervisor directs the activities of three Cleaners, one Maintenance Man, and three Student Helpers; who work on a temporary basis when deemed necessary by the Maintenance Supervisor; that the Cook works in the Maintenance Department under Brill's direction when she has no cooking duties to perform; that there is a

second Maintenance Man position which is currently vacant and which the Employer does not plan to fill at this time; that the Maintenance Supervisor has effectively recommended which applicants should be hired as Student Helpers; and that, although no permanent Cleaning or Maintenance employes have been hired since Brill has held the position of Maintenance Supervisor, it is planned that when vacancies occur he will interview applicants for such positions, along with the Director/Administrator, and will participate in determining which applicant will be hired.

7. That the Maintenance Supervisor independently assigns employes particular tasks, such as cleaning floors and windows and repairing machinery; that the Maintenance Supervisor directs the activities of employes that he supervises, in addition to performing repair or cleaning work himself; that the Maintenance Supervisor has administered verbal warnings to employes on approximately four occasions; that, as of the date of the hearing, the Maintenance Supervisor has not had occasion to administer more severe discipline, though he would have the authority to effectively make recommendations to the Director/Administrator with regard to such discipline; that the Maintenance Supervisor has changed the work schedules of employes he directs, has granted time-off to employes who request it and schedules employes' vacations, and has approved overtime for employes; that the Maintenance Supervisor has ordered the Cook not to report for work in the Maintenance Department when there is an insufficient amount of maintenance work; that the Maintenance Supervisor has the authority to resolve complaints, or problems, of employes assigned to him, and has done so on two previous occasions; that the Maintenance Supervisor prepares a proposed annual budget for his department and purchases materials for his department within the confines of the approved budget; that the Maintenance Supervisor currently receives \$8.16 per hour and is on Pay Level 17 of the 1982 salary schedule; that the Maintenance Man position is on Pay Level 13 and the individual who holds that position currently receives \$7.07 per hour; that the Cleaners are on Pay Level 8 of the salary schedule and that the individuals who hold those positions currently receive between \$5.57 and \$5.84 per hour; and that the Student Helpers are not on the pay schedule but receive \$3.35 per hour.

8. That Sharon Mohs currently holds the Confidential Secretary Bookkeeper position and has held that job for four years; that the Confidential Secretary Bookkeeper performs a variety of clerical tasks, which include typing individual teacher contracts, salary schedules, and the personnel report for the Department of Public Instruction for the State of Wisconsin; and, that the Confidential Secretary Bookkeeper reports directly to the Director/Administrator.

9. That in the last round of negotiations for a successor collective bargaining agreement between the Employer and the Lightfoot Federation of Teachers, Local 3354, WFT, AFL-CIO, the Confidential Secretary Bookkeeper typed various proposals for the Employer's use during the negotiations; that prior to said negotiations such clerical work had been part of the service provided by the consultant who represented the Employer in contract negotiations; that in the preparation of the annual budget the Confidential Secretary Bookkeeper makes recommendations to the Director/Administrator with regard to anticipated costs of instructional material and equipment and estimated teachers' wage costs based upon where the teachers are placed on the salary schedule; that when the Director/Administrator considers various options to exercise with regard to layoffs, the Confidential Secretary Bookkeeper types relevant correspondence which is considered by the Employer's Education Board before any final decisions on employe layoffs have been made; and, that the Confidential Secretary Bookkeeper is the only employe performing the above-described duties relating to labor relations, and further, is the only clerical position which the Employer seeks to have excluded from the proposed bargaining unit.

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

#### CONCLUSIONS OF LAW

1. That the individual occupying the position of Maintenance Supervisor in the employ of the Sheboygan County Handicapped Children's Education Board possesses and exercises such authority and duties, in sufficient combination and degree, so as to constitute said occupant a "supervisor" within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act, and not an "employe" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

2. That the individual occupying the position of Confidential Secretary Bookkeeper in the employ of the Sheboygan County Handicapped Children's Education Board, as a result of having access to and having knowledge of, and of participating in confidential matters and information relating to collective bargaining and labor relations, is not an "employee" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act.

3. That all regular full-time and regular part-time non-professional employes in the employ of the Sheboygan County Handicapped Children's Education Board, excluding temporary and professional employes, elected officials, executive, managerial, supervisory and confidential employes, constitute an appropriate collective bargaining unit within the meaning of Sec. 111.70(4)(d)2.a of the Municipal Employment Relations Act.

4. That a question of representation within the meaning of Sec. 111.70(4)(d)3 of the Municipal Employment Relations Act presently exists among the employes of the Sheboygan County Handicapped Children's Education Board in the appropriate collective bargaining unit described above.

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

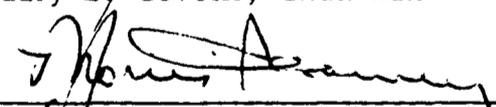
DIRECTION OF ELECTION

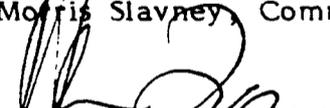
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission, within forty-five (45) days from the date of this directive in the collective bargaining unit consisting of all regular full-time and regular part-time non-professional employes in the employ of the Sheboygan County Handicapped Children's Education Board, excluding temporary and professional employes, elected officials, executive, managerial, supervisory and confidential employes, who were employed by the Sheboygan County Handicapped Children's Education Board on January 7, 1983, except such employes as may prior to election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employes voting desire to be represented by the Wisconsin Council of County and Municipal Employes, AFSCME, AFL-CIO, for the purpose of collective bargaining with Sheboygan County Handicapped Children's Education Board, on wages, hours and conditions of employment.

Given under our hands and seal at the City of  
Madison, Wisconsin this 7th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Gary L. Covelli, Chairman

  
Morris Slavney, Commissioner

  
Herman Torosian, Commissioner

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

In this proceeding the Union requests the Commission to direct an election among employes of the Employer in a bargaining unit consisting of the otherwise eligible non-professional employes to determine whether said employes desire to be represented by the Union for the purposes of collective bargaining on wages, hours and conditions of employment. While the parties, during the course of the hearing before the Examiner agreed to the description of the unit, we have revised said description to more accurately reflect the composition of the appropriate unit, as well as the exclusions from said unit.

While the parties agreed as to the unit placement of a majority of the employe classifications, they are in issue as to whether the occupants of the position of Maintenance Supervisor and the position of Confidential Secretary Bookkeeper should be excluded or included in the unit, claiming that the occupant of the former position is a supervisory employe, and that the occupant of the latter position is a confidential employe.

MAINTENANCE SUPERVISOR

Sec. 111.70(1)(o) of MERA defines the term "supervisor" as follows:

. . . 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 employes, 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 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. The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employes;
7. The amount of independent judgement exercised in the supervision of employes. 1/

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1/ Fond du Lac County, (10579-A) 1/72; St. Croix County (Health Care Center), (14518) 4/76; Kenosha County (Bookside Care Center), (19435) 3/82.

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. 2/

The duties and responsibilities of the Maintenance Supervisory, as set forth in the Findings of Fact, satisfy the Commission that the occupant of said position is a supervisor, and therefore is excluded from the eligibles in the bargaining unit involved herein.

CONFIDENTIAL SECRETARY BOOKKEEPER

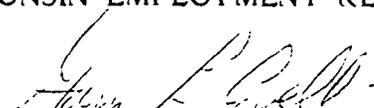
The Commission has also consistently held that in order for an employe to be considered a confidential employe, and thereby excluded from the bargaining unit, such an employe must have access to, have knowledge of, or participate in confidential matters relating to labor relations. 3/ In order for information to be confidential for such purpose it must be the type of information that: (1) deals with the Employer strategy or position in collective bargaining, contract administration, litigation, or, other similar matters pertaining to labor relations between a bargaining representative and the Employer; and, (2) is not available to the bargaining representative or its agents.

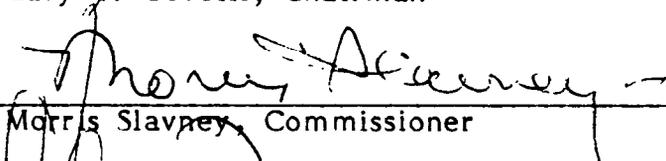
On the basis of the duties and responsibilities of the incumbent of the position of Confidential Secretary Bookkeeper, as set forth in the Findings of Fact, and especially since the Employer has not assigned any confidential duties and responsibilities to any other employe, 4/ we have determined that the occupant of said position is also excluded from the bargaining unit involved herein.

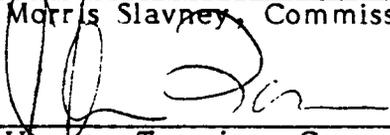
Dated at Madison, Wisconsin this 7th day of January, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
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Gary L. Covelli, Chairman

  
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Morris Slavney, Commissioner

  
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Herman Torosian, Commissioner

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2/ City of Lake Geneva (Police Department), (18057) 3/81.

3/ Wisconsin Heights School District, (17182) 8/79.

4/ Village of Brown Deer, (8915) 2/69; City of Kaukauna (Utility Commission), (17149-A, B) 2/80.