

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :  
CITY OF GREEN BAY : Case CXVIII  
Involving Certain Employees of : No. 30774 ME-2165  
CITY OF GREEN BAY : Decision No. 20220-A  
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Appearances:

Glenn Tarkowski, Business Representative, Drivers, Warehouse and Dairy Employees, Local No. 75, IBT, 1546 Main Street, Green Bay, Wisconsin 54302 for the Union.

Mark A. Warpinski, Assistant City Attorney, Room 300, City Hall, 100 North Jefferson Street, Green Bay, Wisconsin 54301 for the City.

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

The City of Green Bay having filed a petition on December 7, 1982, requesting the Wisconsin Employment Relations Commission to clarify an existing collective bargaining unit of its employees, represented by Drivers, Warehouse and Dairy Employees, Local No. 75, IBT, by determining whether the position of Traffic Signs and Marking Foreman should be excluded from said bargaining unit; and a hearing on said petition having been conducted in Green Bay, Wisconsin on March 1, 1983 by Douglas V. Knudson, an examiner duly appointed by the Commission to conduct said hearing and issue a final decision in accordance with the provisions of Section 227.09(3)(a), Stats.; and the record having been closed after oral arguments were presented at the hearing; and a transcript of the proceeding having been received on April 4, 1983; and the undersigned, having considered the evidence and arguments of the parties, makes and issues the following

FINDINGS OF FACT

1. That the City of Green Bay, hereinafter referred to as the City, is a municipal employer with offices at City Hall, 100 North Jefferson Street, Green Bay, Wisconsin.

2. That Drivers, Warehouse and Dairy Employees, Local No. 75, IBT, hereinafter referred to as the Union, is a labor organization with offices at 1546 Main Street, Green Bay, Wisconsin.

3. That the City and the Union are parties to a collective bargaining agreement covering all employees employed by the City of Green Bay in its Public Works Department in the Street, Sanitation and Sewer Divisions, excluding shop foremen, street foremen, supervisor of sewer maintenance, office and clerical employees and executives.

4. That the City initiated the instant proceeding by filing a petition on December 7, 1982 wherein the City contends, contrary to the Union, that the position of Traffic Signs and Marking Foreman, currently occupied by Al Malcore, is supervisory in nature, and therefore, should be excluded from the bargaining unit represented by the Union.

5. That Malcore reports to the Traffic Engineer who is responsible also for the operations of the Parking Utility and the Electrical Division; that the three divisions employ approximately fifty (50) employees; that, in addition to Malcore, there are seven (7) regular employees assigned to the Traffic Sign and Marking Division and approximately three seasonal employees are assigned to said Division during the summer months; that Malcore has been the working foreman for two years, before which time he was employed for twelve years as an operator in the Painting Division; that Malcore spends approximately twenty-five percent (25%) of his time performing physical duties similar to those performed by the other Division

employees; that Malcore spends approximately seventy-five percent (75%) of his time performing other activities such as assigning daily duties to the other Division employees and overseeing their work, preparing reports on the Division's activities, estimating repair costs for signs damaged in accidents for insurance purposes, maintaining inventory and employee work records, and, attending meetings; including those attended by other Division and Department Heads which positions are excluded from the bargaining unit; that Malcore meets daily with the Traffic Engineer to receive work assignments for the Division, after which Malcore sets the priorities for the work to be done and assigns the work to the other Division employees; that the Traffic Engineer makes field inspections of the Division's work approximately once a month; that no regular employees in the Division have been either hired, terminated, or disciplined during the time Malcore has been a foreman; and that on one occasion a seasonal employee was transferred from the Division following Malcore's complaints about the employee's performance to the Director of the Department of Public Works and the Traffic Engineer.

6. That Malcore's activities in directing the other employees of the Division are of a routine nature and that he functions primarily as an experienced lead worker; and that Malcore does not possess supervisory duties and responsibilities in sufficient combination and degree to be found a supervisor.

On the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

#### CONCLUSION OF LAW

That since the position of Traffic Signs and Marking Foreman is not supervisory in nature, the occupant of said position is a municipal employee within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

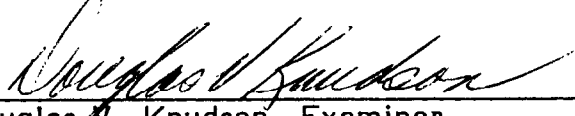
#### ORDER CLARIFYING BARGAINING UNIT 1/

That the position of Traffic Signs and Marking Foreman is included in the bargaining unit set forth in Findings of Fact No. 3 above.

Dated at Madison, Wisconsin this 9th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Douglas N. Knudson, Examiner

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- 1/ Pursuant to Sec. 227.11(2), Stats., the Examiner hereby notifies the parties that a petition for rehearing may be filed with the Examiner 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.

(Continued on Page Three)

1/ (Continued)

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.

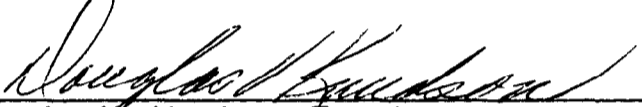
(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a 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.

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

Although Malcore directs and oversees the daily activities of the other Division employees, such functions primarily consist of the coordination and supervision of activities. Malcore's paperwork is of a relatively routine nature. As of the hearing, there had been no hiring, disciplining or terminating of any regular employees in the Division during the time Malcore has been a foreman. A seasonal employee was transferred once as a result of Malcore's complaints about the employee and Malcore does attend meetings of the supervisory non-bargaining unit staff of the Department of Public Works. However, in light of Malcore's other duties, such examples are insufficient to warrant a conclusion that the position is supervisory. Rather, it is found that Malcore functions as a skilled and responsible lead worker rather than as a supervisor.

Dated at Madison, Wisconsin this 9th day of May, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Douglas W. Knudson, Examiner