

In the Matter of the Petition  
WISCONSIN FEDERATION OF  
TEACHERS, AFT, AFL-CIO  
Involving Certain Employees of  
SCHOOL DISTRICT OF GILMAN

Case VII  
No. 30553 ME-2152  
Decision No. 20335-B

Mulcahy & Wherry, S.C., Attorneys at Law, 21 South Barstow, Eau Claire, Wisconsin 54702, by Mr. Michael J. Burke, appearing on behalf of the Employer.

Mr. Fred Skarich, Representative, Wisconsin Federation of Teachers, 6525 West Bluemound Road, Milwaukee, Wisconsin 53213, appearing on behalf of the Union.

The School District of Gilman filed the instant petition with the Wisconsin Employment Relations Commission, in which it requested that the Commission clarify an existing collective bargaining unit by excluding from it the positions of Head Cook and Head Custodian. The Commission appointed Christopher Honeyman as Examiner for purposes of conducting a hearing and issuing a decision pursuant to Sec. 227.09(3)(a), Stats. A hearing was held in Gilman, Wisconsin, on June 14, 1983; no transcript was made, both parties filed briefs, and the record was closed on June 29, 1983. The Examiner has considered the evidence and arguments of the parties and hereby issues the following Findings of Fact, Conclusions of Law and Order Clarifying Bargaining Unit.

1. Wisconsin Federation of Teachers, AFT, AFL-CIO, hereinafter referred to as the Union, is a labor organization and is the certified representative of the following appropriate collective bargaining unit: all regular full-time and regular part-time non-professional employees in the employ of the School District of Gilman, excluding professional, managerial, supervisory and confidential employees. The Union has its offices at 6525 West Bluemound Road, Milwaukee, Wisconsin.

3. The Union was certified as representative of the unit of employees described above on March 30, 1983; the election on which the certification was based was held on March 15, 1983, and by agreement of the parties the question of the voting eligibility of Head Cook Carol Swatzina and Head Custodian Willis Couillard was deferred till after certification, and their ballots challenged at the election.

5. Based on the above Findings of Fact, the Examiner makes the following

1. That the position of Head Cook is not a supervisory or managerial position within the meaning of Sec. 111.70, Stats.

2. That the position of Head Custodian is not a supervisory or managerial position within the meaning of Sec. 111.70, Stats.

Based on the above Findings of Fact and Conclusions of Law, the Examiner makes the following

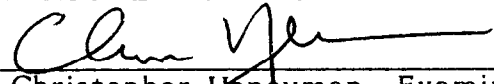
ORDER CLARIFYING BARGAINING UNIT 1/

That the positions of Head Cook and Head Custodian be, and hereby are, included within the existing collective bargaining unit, and that said unit's description be, and hereby is, amended to read: all regular full-time and regular part-time non-professional employees, including Head Cook and Head Custodian, in the employ of the School District of Gilman, excluding professional, managerial, supervisory and confidential employees.

Dated at Madison, Wisconsin this 25th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

  
Christopher Honeyman, Examiner

- 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.

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, CONCLUSIONS OF LAW AND  
ORDER CLARIFYING BARGAINING UNIT

During the recent election proceeding involving the same parties, the Employer took the position that the positions of Head Cook and Head Custodian are both supervisory and managerial in nature and should thus be excluded from the bargaining unit. The Union disagreed, but the parties agreed to defer the question till after the election. Ballots cast by the two individuals in question were challenged but were not determinative of the outcome of the election and were kept sealed.

In determining whether a position has managerial status, the Commission considers the degree to which the incumbent participates in the formulation, determination and implementation of management policy and possesses the authority to commit the Employer's resources. 2/

Section 111.70(101), Stats., defines the term "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, layoff, 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 merely of a routine or clerical nature, but requires the use of independent judgment.

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the position in question is supervisory, considers the following factors:

1. The authority to recommend effectively 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 skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or 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 judgment and discretion exercised in the supervision of employees. 3/

The Commission has also stated that "the WERC is not required to separately analyze whether a position is supervisory or managerial in order to determine whether the interests of the position are more aligned with management than with the bargaining unit. Thus, any supervisory authority possessed by the occupants

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2/ Milwaukee VTAE, 8736-B (6/79); Northwood School District, 20022 (10/82).

3/ City of Milwaukee, 6960 (12/64); Northwood School District, supra.

of the position may be considered in conjunction with the managerial authority possessed by the occupants." 4/

#### HEAD COOK:

Head Cook Carol Swatzina was hired as a cook's helper in 1980, and became Head Cook in July, 1981. She works in the kitchen at the District's High School complex, along with three assistant cooks, one part-time kitchen helper and two students who wash dishes on a part-time basis. Three "servers," one of whom works at each outlying school, are also nominally under her authority, but she rarely visits those schools. Swatzina is paid \$5.10 per hour; other employees in the kitchen are paid from \$4.24 to \$4.60 per hour. Swatzina's contract indicates that her duties are to "prepare menus, take care of food inventory and ordering, general kitchen supervision and on-site satellite centers. Assist in all phases of kitchen operations." Most of Swatzina's time is spent preparing menus, ordering food or doing kitchen work similar to that done by the assistant cooks. She has authority to buy groceries, but not equipment, and cannot change the price of meals. There is no evidence that Swatzina has ever hired, transferred, suspended, laid off, recalled, promoted, discharged, rewarded or disciplined any other employee, or adjusted any grievances, or recommended such actions. Nor does she establish or change employees' hours. With respect to work assignment, District Administrator Robert Deetz testified that the kitchen is a "very cooperative environment" and that it "functions smoothly." It is apparent, however, that Swatzina is in charge and does assign employees' functions to some extent. Employees call her if they will be absent because of sickness, but forms subsequently filled out are sent to the District Administrator. Swatzina can choose, from a standing list, a call-in replacement for an absent employee, but she was not involved in the choice of names for the list. On one occasion when an employee was to be absent for eight weeks, Swatzina spread the available work in two-week equal amounts among the four persons on the list, but her decision was countermanded by Deetz, who directed her to give all of the work to one specified individual. She has evaluated employees in the kitchen on one occasion 5/, but there is no evidence that this had any effect on any such employee's pay rate. No employee in the kitchen punches a time card, and there is no difference in fringe benefits between Swatzina and other kitchen employees.

The budget for the Food Service Department was prepared by Deetz with Swatzina's assistance. Swatzina has attended meetings concerning food service, but has not attended any specifically management meetings. Swatzina testified without contradiction that during the 1982-83 school year the School Board and Deetz determined to cut the hours of certain kitchen employees but that she was not consulted concerning the proposed cut. Her own evaluation, like the Head Custodian's and the two school principals', is done by Deetz. Deetz does not evaluate directly any other employees of the District, except for the janitors at the outlying schools.

The Examiner concludes, based on all the evidence, that the balance of the Head Cook's functions does not warrant finding her to be either a supervisor or a manager within the Commission's prior decisions. Swatzina's authority extends in practice only to routine matters of work assignment; the record is devoid of any example of more dramatic exercise of supervisory authority, and most of her

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4/ Milwaukee Board of School Directors, 17089-C (7/82).

5/ This evaluation was carried out at Deetz's behest and occurred after the Union's election petition was filed. The Union argues that this request for evaluations was self-serving on the part of the Employer. The Union attacks job descriptions prepared for both positions involved here on the same basis; both are dated January 17, 1983, or three months after the Union petitioned for the election. The Examiner finds the inclusion of requirements that these employees "manage . . . shift scheduling, scheduling of vacations, assignment of overtime, authorization of sick leave . . . and discipline" among the lists of duties, to be unpersuasive, simply because the record contains no evidence that either the Head Cook or the Head Custodian has made any of these decisions either before or in the five-month period after the job descriptions were issued, until the date of the hearing.

working time is spent doing other work than supervising employees. The fact that she has evaluated other employees on one occasion is not entitled to great weight as it has not been shown that these evaluations resulted in any action by the Employer concerning any employee; and it is notable that such decisions as the temporary replacement for eight weeks of an absent employee could not apparently be made by Swatzina.

With respect to purchasing authority, the Commission has held that:

"The power to commit the employer's resources involves the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. By comparison the authority to make expenditures from certain accounts to achieve those program purposes is ministerial, even though some judgment and discretion are required in determining when such expenditures should be made. Thus, the authority to spend money from a certain account for a specified purpose is not a managerial power, even though managerial employees also have that authority." 6/

Swatzina does not prepare the budget, has no authority to purchase anything more than routine grocery supplies, and was not consulted when the District determined to cut staff in the kitchen area.

The facts concerning the Head Cook are similar in all material respects to the head cook in Northwood School District, cited above, in which the head cook was included within the bargaining unit. The facts herein, however, are distinguishable from those in the School District of Loyal 7/ decision cited by the Employer, as that head cook was found to have made effective recommendations for hiring of employees. The functions of the Head Cook in this matter therefore amount essentially to the supervision of the activity of preparation and serving of meals to students as opposed to the supervision of employees in a labor relations sense. Accordingly, the Examiner finds that the position of Head Cook is not a managerial or supervisory position within the meaning of Sec. 111.70(1)(o)(1), Stats.

#### HEAD CUSTODIAN:

Willis Couillard has been Head Custodian since approximately five years. He works from 7:00 a.m. to 3:30 p.m. at the High School complex. At the same building the District employs three half-time janitors, one full-time janitor and three to four students who are paid for ten hours per week of janitorial work. During the school year the only one of these who is employed entirely within Couillard's hours is one half-time employee; the others begin work at 1:00 p.m. for one, 2:00 p.m. for two others, and after school for the remainder. During summer there are also ten students employed for twenty-four hours per week, who are assigned their work by Couillard. At each outlying school, there is one janitor, with whom Couillard has little contact.

Most of Couillard's time is spent servicing boilers, the water supply, thermostats and doing other maintenance duties. He does little cleaning as such, and does check the main building for cleanliness, but spends little time in direct supervision of any other employee except during the summer. Like other janitors, Couillard punches a time card. His pay rate, \$5.96 per hour, is higher than the janitors' by some 45%. He can order items such as light bulbs, soap, waxes and other materials and also fuel oil, but in buying fuel oil the District's bookkeeper calls various suppliers for prices. He has no authority to purchase equipment, and the purchase of a vacuum cleaner, for example, had to be approved by the District Administrator. Couillard has never hired, transferred, suspended, laid off, recalled, promoted, discharged, rewarded or disciplined any other employee, or adjusted a grievance, or changed or established an employee's hours, or effectively recommended such an action. Like the Head Cook, his sole actions

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6/ Shawano County (Sheriff's Department), (15257) 8/77; School District of Augusta, (17944) 7/80.

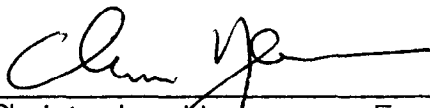
7/ Decision No. 18149 (10/80).

which could be called disciplinary consisted of "bawling out" one or two employees; this action was not recorded in the employee's personnel file. Employees do not ask his permission for a day off, and there is evidence that other janitors have gone directly to Deetz with such requests. Couillard has gone to meetings outside the District concerning such things as boiler operation, but has not been involved in any specifically management or supervisory meetings. Couillard was invited, or ordered, by Deetz to evaluate other employees, but declined to do so. Only one hire is noted in the record and on that occasion Couillard interviewed the applicants, but Deetz did so as well.

The Examiner finds that Couillard's supervisory authority is similar to that of the head custodian in School District of Loyal, supra, in that most of his time is spent doing bargaining unit work, he has little contact during the school year with other employees in his department, he does little work which can be described as supervisory, and such assignment of work as is shown in the record is of a routine nature such as is commonly exercised by a lead man rather than by a statutory supervisor. Even during the summer, when the number of student part-time hours rises sharply, there is no evidence in the record that Couillard's work assignment responsibilities become more than routine. The District has cited the Northwood School District 8/ head custodian as allegedly similar to Couillard, but the Examiner notes that in Northwood the head custodian was found to have effectively recommended the discipline and termination of an employee, had resolved complaints about working conditions, and was paid more than \$2.00 per hour higher than the next highest paid custodian. These factors are not present here. Couillard's purchasing authority, meanwhile, is limited to minor and routine items, and he does not establish the department's budget. The Examiner accordingly concludes that the position of Head Custodian is neither supervisory nor managerial within the meaning of the statute.

Dated at Madison, Wisconsin this 25th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By   
Christopher Honeyman, Examiner

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8/ supra. See also Winter Jt. School District, supra, McFarland School District, 17005-A (9/79), School District of Tomahawk, 16524 (8/78), in each of which a head custodian having essentially only powers of routine work assignment was included within the bargaining unit.