

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

CITY OF ONALASKA

Case VII
No. 30815 ME-2169
Decision No. 20509

Mr. Danny L. Iverson, Business Representative, Service Employees International Union, AFL-CIO, Local 150, 6427 West Capitol Drive, Milwaukee, Wisconsin 53216, appearing on behalf of the Petitioner.

Mr. Ray A. Sundet, City Attorney, Onalaska, Wisconsin 54650, appearing on behalf of the City.

Service Employees International Union, AFL-CIO, Local 150, having, on December 14, 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 employees in the employ of the City of Onalaska; and hearing in the matter having been conducted on February 8, 1983, at Onalaska, Wisconsin, before Examiner Jane B. Buffett; and a transcript having been received on February 18, 1983; and the parties having filed no post-hearing briefs; and the Commission, having considered the evidence and being fully advised in the premises, hereby makes and issues the following

5. That the City contends, contrary to the Union, that the following positions be excluded:

<u>Position</u>	<u>Incumbent</u>	<u>Basis for Exclusion</u>
Assistant Recreation and Parks Director	Jeffery Hayes	Supervisory and Managerial
Working Foreman - Utility Department	Richard Grandall	Supervisory
Street Department Foreman	Arnold Borger	Supervisory
Laborer - Recreation and Parks Department	Jerry Adams	Casual
Custodian - City Hall	Earl Johnson	Casual
Custodian - City Hall	Rose Hagen	Casual

6. That, at the hearing, the parties stipulated to the exclusion of the following employees:

<u>Incumbent</u>	<u>Basis of Exclusion</u>
Doris Nelson	Irregular Employee
Claire Daniels	Confidential Employee
Russell Peterson	Supervisory Employee

7. That Jeffery Hayes has been Assistant Director of the Parks and Recreation Department since April, 1980; that the Department employs between forty to fifty part-time employees annually to conduct its recreation programs; that Hayes, together with the Director of the Recreation and Parks Department, interviews job applicants in an informal interview in which both the Director and Hayes ask questions; that Hayes and the Director jointly agree upon the applicant to receive the job offer; and that Hayes does not recall an incident of disagreeing with the Director's choice of applicant; that without consulting anyone else, Hayes can authorize overtime work based on his own judgment of Department needs and budget allowances; that Hayes approves vacation schedules and changes in such schedules; that on two separate occasions Hayes issued verbal reprimands which he followed by placing a letter in the employee's personnel file; that two employees had their probationary period extended as the result of discussions between Hayes and the Director and as the result of incident reports filed by Hayes as well as the Director; and that Hayes exercises supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employee.

8. That given Finding of Fact 7, the Commission finds it unnecessary to make findings concerning whether Hayes formulates, determines and implements management policy and possesses authority to commit the City's resources to such a degree as would make him a managerial employee.

9. That Richard Grandall is the Working Foreman - Utility Department; that Grandall neither hires nor has any input into the hiring of the employees who work under him; that Grandall does not formally evaluate the performance of any Utility Department employees; that on some occasions he sits in on disciplinary interviews with the Water Superintendent and that during such interviews he reports the problem to the Superintendent who then conducts the interview and makes the final disposition of the problem; and that the last incident of such an interview was roughly two years ago; that Grandall does not schedule vacations, although occasionally employees mention vacation requests to him and he passes on those requests to the Water Superintendent who schedules the vacations; that in the absence of the Water Superintendent, Grandall can authorize overtime work for an emergency such as a broken water main, but that Grandall cannot authorize overtime work for non-emergency work; that in the case of a nighttime emergency, the Police may directly notify the employee on call and do not have to notify Grandall; and that Grandall does not exercise supervisory responsibility in sufficient combination and degree so as to make him a supervisory employee.

10. That Arnold Borger is the Street Department Foreman; that Borger spends roughly half of his time in work similar to that done by the four full-time employees subordinate to him, and that he spends roughly half of his time directing the activities of those employees; that Borger does not hire employees, although he passes on to the Street Commissioner some of the names of the people who ask for jobs; that, based on his own personal and informal knowledge, he withholds the

names of those applicants he does not consider fit for the job; that the Street Commissioner does not hire all the people whose names Borger passes to him; that Borger does not formally evaluate employees; that Borger occasionally verbally admonishes employees for inadequate performance; that Borger occasionally reports employee problems to the Street Commissioner who then conducts a disciplinary interview of the employee with Borger present; that the most recent disciplinary interview resulting in a personnel file entry occurred roughly two and one-half years ago and that the decision to make that entry came from the Street Commissioner; that Borger schedules vacations according to seniority and workload; that Borger does not have authority to authorize overtime or to adjust employee complaints about working conditions; that in the absence of the Street Commissioner, which occasionally runs as long as three weeks, Borger runs the Street Department but is able to confer with the City Clerk or the City Engineer when any questions arise; that Borger does not possess supervisory responsibilities in sufficient combination or degree so as to make him a supervisory employee.

11. That Jerry Adams is a Laborer in the Parks and Recreation Department; that Adams does not work the same hours every week, but rather, is called for work by the Director or Assistant Director of the Parks and Recreation Department; that Adams has some flexibility as to when he will complete the assigned work, but it is understood that the work assigned to him is reserved to him and he is obliged to do it; that Adams has worked during each of the twenty-six pay periods of 1982; that his hours at work varied from 26 to 93 hours during a two-week pay period; and that during eleven of those twenty-six pay periods he worked at least 80 hours; that Adams works with sufficient consistency at work that is reserved for him so as to give him a reasonable expectation of continued employment and to make him a regular part-time employee.

12. That Earl Johnson is a Custodian at the City Hall; that he works Monday through Friday opening up the City Hall at roughly 6:45 a.m. and closing it at roughly 5:00 p.m., excepting those evenings when there are night meetings and he closes the City Hall after those meetings; that he raises and lowers the flag, performs very minor cleaning chores, and performs some lawn maintenance; that he notifies the City Clerk in advance when he will be absent, which historically has been roughly three times a year for periods of two days to two weeks; that he is paid at a base rate calculated on 20 hours a pay period and during twenty-three of the twenty-six 1982 pay periods he was paid for additional hours; and that Johnson works with sufficient consistency at work that is reserved to him so as to give him a reasonable expectation of continued employment and to make him a regular part-time employee.

13. That Rose Hagen is a Custodian who performs cleaning duties at the City Hall five days a week; that she has some flexibility as to her hours, but that the job must be done on a daily basis; that Hagen historically has been absent roughly three or four times a year, in which cases she has given advance notice to Johnson who performs the minimum requirements of her job in her absence; that the number of hours she works is nearly constant with the exception of such special assignments as stripping and waxing floors; that she worked 58 hours a pay period in nineteen of the twenty-six pay periods of 1982, whereas in the other pay periods she worked from 41 to 63 hours; that Hagen works with sufficient consistency at work that is reserved for her so as to give her a reasonable expectation of continued employment and to make her a regular part-time employee.

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

CONCLUSIONS OF LAW

1. That a question concerning representation exists within the following collective bargaining unit deemed appropriate within the meaning of Sec. 111.70(4)(d)2.a. of the Municipal Employment Relations Act:

All regular full-time and regular part-time employees of the City of Onalaska, excluding confidential, professional, supervisory and managerial employees, elected officials, and all officers with the power of arrest.

2. That the occupant of the position of Assistant Director of the Parks and Recreation Department is a supervisory employee and, therefore, not a municipal

employee within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act, and is appropriately excluded from the collective bargaining unit described above.

3. That the occupants of the position of Working Foreman - Utility Department and Street Department Foreman are not supervisory employees within the meaning of Sec. 111.70(1)(o)1. of the Municipal Employment Relations Act and, therefore, said occupants are municipal employees within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act, and are appropriately included in the collective bargaining unit described above.

4. That the positions of Laborer - Recreation and Parks Department, currently held by Jerry Adams, Custodian - City Hall, currently held by Earl Johnson, and Custodian - City Hall, currently held by Rose Hagen, are occupied by regular part-time municipal employees within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act, and therefore said positions are included in the 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 direction in the collective bargaining unit consisting of all regular full-time and regular part-time employees of the City of Onalaska, excluding confidential, professional, supervisory and managerial employees, elected officials, and all officers with the power of arrest who were employed by the City of Onalaska on April 7, 1983, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of said employees voting desire to be represented by the Service Employees International Union, Local 150, AFL-CIO, for the purpose of collective bargaining with the City of Onalaska on wages, hours and conditions of employment.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

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

The Union requests the Commission to direct an election among employees of the City to determine whether said employees, currently unrepresented, desire to be represented by the Union for purposes of collective bargaining. The parties have agreed upon the description of the appropriate unit as set forth in the Findings of Fact. However, the City asserts, contrary to the Union, that the following positions are not municipal employees: Assistant Recreation and Parks Director, Working Foreman - Utility, Street Department Foreman, Laborer - Recreation and Parks Department, and two Custodians in the City Hall. Prior to the hearing, the City had contended that the position of Police Secretary, currently held by Ruth Kirschner, be excluded as confidential. However, during the course of the hearing the parties stipulated to the inclusion of said position.

ASSISTANT PARKS AND RECREATION DIRECTOR

The City contends the position of Assistant Parks and Recreation Director is both supervisory and managerial based on the powers of the Assistant Director to schedule, interview, supervise and discipline employees and to develop and implement policy. The Union contends that this position, as well as the others asserted by the City to be supervisory, are not supervisory inasmuch as these employees spend the bulk of their time doing bargaining unit work rather than supervising.

As to the determination of supervisory status, Sec. 111.70(1)(o)1. 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 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.

Hayes' participation in hiring employees, evaluating employee performance, disciplining employees and authorizing vacations and overtime work meet these criteria of a supervisory employee. Given this conclusion, the Commission need not resolve the issue as to managerial status.

WORKING FOREMAN - UTILITY

The City contends the position of Working Foreman - Utility currently held by Grandall is supervisory because he has the right to discipline employees and direct the work force. The record shows, however, that although Grandall has some input into evaluation of employees, his participation is limited to irregular reporting of employee problems. While he is present at disciplinary interviews conducted by the Water Superintendent, it is the Water Superintendent who alone decides upon the disciplinary action, if any, to be taken. Grandall's ability to authorize overtime is limited to emergency situations requiring prompt action. In sum, Grandall is primarily responsible for the work activities of employees with minimal supervisory responsibilities.

STREET DEPARTMENT FOREMAN

The City contends that Street Department Foreman Borger is a supervisor because he has the authority to discipline employees and because he runs the Department in the absence of the Street Commissioner. However, Borger's discipline is restricted to occasionally admonishing employees and occasionally responding to the Street Commissioner's questions regarding new employees. Borger does not have any input into decisions regarding formal personnel actions such as entries into personnel files. As to the claim that Borger runs the Department in the absence of the Street Commissioner, in actuality the Street Commissioner is

rarely absent and if Borger has operational questions during those absences, he refers to either the City Engineer or the City Clerk for direction. Borger clearly functions as a lead worker rather than a supervisor.

CUSTODIANS - CITY HALL AND LABORER - PARKS AND RECREATION DEPARTMENT

The City contends that the custodial position held by Johnson is not a regular part-time position but rather a casual inasmuch as Johnson is a 75 year old who merely unlocks the door and puts up the flag. His hours vary from day to day and he has no exact time at which to do the work. The City makes a similar contention concerning the custodial job held by Hagen, asserting that she has irregular hours and has no set time at which she must come to do the work. Finally, for Adams the City simply contends that his irregular hours make him a casual employee. The Union responds by claiming that these three employees are regular part-timers by virtue of the fact that they have worked scheduled amounts of hours every week.

The record supports the City's claim that the number of hours worked by these employees fluctuates and that there is flexibility as to when they must come to work. However, the Commission has long held that the number of hours do not determine whether an employee is a regular part-time or a casual employee. 1/ Likewise, flexibility as to working time does not automatically determine that an employee is a casual employee. Thus, the facts that Johnson may sometimes have to come back in the evening to close up the City Hall after a meeting or that Hagen can do the cleaning anytime that suits her purposes as long as it is done each day, or that Adams does not have to always do the work as soon as he is called there, do not, standing alone, make these casual employees. The record shows that all three employees worked substantial amounts during each of the twenty-six pay periods of 1982. Furthermore, they all had work that was set aside for them to perform exclusively and was done by someone else only on the infrequent occasions when they were absent from their work. Based on these facts, these employees have a reasonable expectation of continued employment and are found to be regular part-time employees.

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

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By

Gary L. Covelli
Gary L. Covelli, Commissioner

Marshall L. Gratz
Marshall L. Gratz, Commissioner

1/ School District of Ashland (18085) 10/80.