

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of :

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DANE COUNTY WISCONSIN MUNICIPAL : Case 9

EMPLOYEES, LOCAL 60, AFSCME, AFL-CIO : No. 45401 ME-485

: Decision No. 20841-E

Involving Certain Employes of :

:

CITY OF SUN PRAIRIE :

:

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME,
Melli, Walker, Pease and Ruhly, S.C., Attorneys at Law, by Mr. Thomas R.

AFL-CIO
Crone,

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

On February 26, 1991, Dane County Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO, hereinafter the Union, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a bargaining unit of municipal employes of the City of Sun Prairie by including the vehicle maintenance supervisor position. A hearing on the petition was held on June 5, 1991, in Sun Prairie, Wisconsin before Examiner Raleigh Jones, a member of the Commission's staff. The parties filed briefs in the matter by July 25, 1991, whereupon the record was closed. Being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Dane County Wisconsin Municipal Employees, Local 60, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization with offices located at 5 Odana Court, Madison, Wisconsin.

2. The City of Sun Prairie, hereinafter the City, is a municipal employer with offices at 124 Columbus Street, Sun Prairie, Wisconsin.

3. The Union has been the bargaining representative of certain City employes since 1983. In City of Sun Prairie, Dec. Nos. 20841-A and 21681-A (WERC, 8/83), the Commission certified the Union as the exclusive collective bargaining representative of

All regular full-time and regular part-time employes, including pages, of the City of Sun Prairie, excluding supervisory, confidential, professional and craft employes, law enforcement employes with the power of arrest, and employes of the Water and Light Department.

Included in this bargaining unit are employes in the City's Public Works Department.

4. On February 26, 1991, the Union filed a unit clarification petition with the Commission requesting that the vehicle maintenance supervisor position be included in the existing bargaining unit represented by the Union. The City opposes the inclusion on the basis that the position is supervisory.

5. The City's Public Works Department is physically located at the

Public Works Building. The Department operates in two major areas called divisions. The Operations Division is responsible for maintaining and repairing the public rights-of-way and also removing snow from City streets during the winter. The Vehicle Maintenance Division maintains all the motor vehicles and equipment owned, rented and operated by the City. There are six employes in the Public Works Department, three of which work in the Vehicle Maintenance Division. The vehicle maintenance employes work in the service bays located at the building. The immediate foreman in the Public Works Department is Mike Kopic. Kopic is a bargaining unit employe and reports to Larry Herman, the Superintendent of Parks and Public Works. Herman, in turn, reports to Dave Kaul, Director of Public Works and Robert Holling, Director of Parks and Recreation. Kaul is the first step employer representative for any grievances filed by Department of Public Works employes. Herman's office is in the Public Works Building. Prior to 1991, all three of the vehicle maintenance employes reported to Herman, who was considered their supervisor. Herman made daily assignments to the three vehicle maintenance employes (mechanic Paul Kunz, mechanic Dan Kalscheur and automotive service worker Craig Campton), approved time off requests and reviewed time cards.

6. In 1989, the City retained an outside consultant to evaluate the operations in the Public Works Department, inter alia. The consultant's report, prepared by David M. Griffith and Associates, Ltd., was received in November, 1990. That report recommended the creation of a new position in the Vehicle Maintenance Division who would be responsible for management of the garage and parts room and would supervise the vehicle maintenance employes. The City adopted this recommendation and created the new position of vehicle maintenance supervisor. This new position was created, in part, because Herman was not present at the garage for much of the work day and thus could not deal with all the vehicle maintenance matters that arose during the day. The appointment of a vehicle maintenance supervisor and the realignment of job duties from Herman to the new position was designed to change that situation.

7. The current vehicle maintenance supervisor, Paul Kunz, was hired as a mechanic in March, 1990. A month after Kunz was hired, the other mechanic left and Kunz assumed a leadership role in the Vehicle Maintenance Division. On his own motion, Kunz established a vehicle maintenance and repair program. Additionally, he reviewed the qualifications of applicants for the vacant mechanic position and sat in on the interviews of applicants with Herman to ask technical questions. Afterwards, he and Herman authored a memo to Director of Public Works Kaul recommending the hiring of Dan Kalscheur, who was hired as a mechanic in June, 1990. In November, 1990, Kunz was the only vehicle maintenance employe to be sent to a two-day training program dealing with equipment management. Kunz applied for and was selected as the vehicle maintenance supervisor in March, 1991. Upon being promoted, Kunz's mechanic position was eliminated. The top (48 months) hourly wage for the supervisor's position is \$13.16 while the top (48 month) rate for the mechanic position is \$11.84.

8. As vehicle maintenance supervisor, Kunz spends approximately 15 hours per week performing hands-on vehicle maintenance work similar to that performed by the other two vehicle maintenance employes (i.e. diagnosing mechanical defects and making the required repairs). The balance of Kunz's time is spent making plans for future mechanical work (i.e. implementing the on-going vehicle maintenance program), recording vehicle maintenance information, maintaining the inventory of parts and supplies, generating reports and performing other related functions. Kunz is responsible for ensuring that all City vehicles and equipment are properly maintained in a timely manner. He coordinates all vehicle and equipment maintenance needs for the various City departments (police, wastewater treatment, parks and streets)

and establishes a daily schedule for emergency and routine work to be completed. All requests for vehicle maintenance come to Kunz from the various departments. He establishes daily priorities for the work to be performed. He then assigns those specific job tasks to either the mechanic (Kalscheur), the automotive service worker (Campton) or himself. Kunz is free to decide who does each assignment based upon his assessment of what the job requires, the employee's qualifications and the priority assigned to the job. Kunz also oversees all the mechanical work performed in the garage to ensure it is properly done. He does this by inspecting the work in progress done by Kalscheur and Campton as well as their completed work. Kunz is responsible for determining what work will be done in-house and what work will be contracted out. If Kunz is absent, Kalscheur would make the decision to contract out work. If a repair project costs over \$300, Kunz secures three written bids and makes a recommendation to Kaul concerning same. If a project costs under \$300, Kunz secures three verbal bids and makes the decision himself. He selects vendors and contractors based upon considerations of price, quality and turnaround time and is free to pick and choose between different vendors and contractors. The other two vehicle maintenance employees also are empowered to make purchases under \$300. Kunz is responsible for passing on the acceptability of work done on a contract basis. On at least one occasion he has required a contractor to correct work he considered unsatisfactory. Vendors are instructed to deal with Kunz on matters involving the garage. Kunz makes recommendations to Herman for vehicle purchases and what supplies, equipment, tools and parts are needed for the Vehicle Maintenance Division.

9. Kunz meets weekly with his supervisor, Herman, to discuss the operations of the garage. The other vehicle maintenance employees do not participate in these meetings. Since Kunz became vehicle maintenance supervisor, Herman no longer meets with the vehicle maintenance personnel except for Kunz. Although Herman may spend up to one-half of his day in the garage, he now has little, if any, daily contact with the vehicle maintenance employees other than Kunz. City supervisors meet bi-weekly for staff meetings. Kunz does not attend these meetings while Herman does. Kunz is responsible for training employees as to the proper operation of equipment owned or operated by the City. He also is responsible for enforcing safety rules and standards within the garage, not only for the vehicle maintenance employees but for all personnel entering the shop. For example, he has admonished employees for not using safety glasses or other protective equipment and has counseled them on the proper use of same. Additionally, he has counseled employees on how to use a hoist correctly.

10. Kunz is responsible for reviewing/approving employee time sheets. He assigns and approves overtime for all vehicle maintenance employees (including himself) within the constraints of the overtime budget. He approves time off, and, on one occasion, denied such a request. Although there have not been any hirings of vehicle maintenance employees since Kunz became vehicle maintenance supervisor, Kunz's role in future hires will be equivalent to his role when Kalscheur was hired. The City currently does not evaluate employees except probationary employees. As there are no probationary employees in vehicle maintenance, Kunz has not formally evaluated anyone. Recently, though, he attended a training session on developing formal evaluation procedures. Kunz is empowered to independently issue written warnings but has never done so. He has issued verbal warnings on two occasions. In the first instance, he admonished Kalscheur for poor driving skills while Kalscheur was driving a marked police squad car. In the second instance, Kunz admonished Kalscheur and Campton to quit taking long work breaks.

11. Kunz does not possess and exercise supervisory responsibilities in sufficient combination and degree so as to make him a supervisory employe.

Based on the foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The occupant of the vehicle maintenance supervisor position is not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Based on the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The position of vehicle maintenance supervisor is hereby included in the bargaining unit set forth in Finding of Fact 3 above.

Given under our hands and seal at the City of
Madison, Wisconsin this 11th day of December,
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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

(Footnote 1/ continues on page 6.)
(Footnote 1/ continues from page 5.)

be held. Unless a rehearing is requested under s. 227.49, 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.

227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

CITY OF SUN PRAIRIE

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

BACKGROUND

The Union seeks to include the vehicle maintenance supervisor position in the collective bargaining unit represented by the Union. The City opposes the inclusion on the basis that the employee occupying the position is supervisory.

POSITIONS OF THE PARTIES

The Union's position is that Kunz is not a supervisory employe. With regard to his alleged supervisory status, the Union initially notes that Kunz spends half of his time performing mechanic duties similar to the work performed by the other two employes in the garage. In the Union's view, Kunz spends the remainder of his time performing non-supervisory and non-managerial tasks. It submits that Kunz could not spend a substantial amount of time supervising employes since there are only two employes allegedly being supervised. It therefore characterizes Kunz as the lead mechanic who supervises the repair work done in the garage. Next, according to the Union, since becoming vehicle maintenance supervisor, Kunz has not hired, promoted, transferred, elevated, or meaningfully disciplined employes. It acknowledges that prior to his promotion Kunz participated in the hiring of mechanic Kalscheur, but it characterizes Kunz's role in that process as only advisory in nature. Finally, the Union notes that the City conducts supervisory meetings twice a month and Kunz does not attend those meetings.

The City's position is that Kunz is a supervisory employe. According to the City, although the vehicle maintenance supervisor performs some mechanic tasks, his main responsibility is to supervise the daily operations of the other employes at the garage (i.e., the mechanic and the automotive service worker). The City notes that Kunz assigns them work and ensures that they perform it correctly. It also points out that Kunz is the only direct supervisor available at the garage most of the day. The City claims that Kunz has issued verbal reprimands for such offenses as imprudent operation of a vehicle and for extending work breaks beyond the allowed time. With regard to evaluations, the City acknowledges that Kunz has not yet formally evaluated any employes, but it asserts that Kunz will be responsible for doing evaluations of any employe coming off probation. With regard to hiring, the City acknowledges that since Kunz became vehicle maintenance supervisor, no one has been hired into the Vehicle Maintenance Division. It points out that prior to his appointment, though, Kunz participated in the interviewing of candidates for a mechanic position and jointly authored a memo recommending the hiring of Kalscheur, who was in fact hired. According to the City, Kunz would have no less involvement in any new hires in the Vehicle Maintenance Division in the future. The City also notes that Kunz is responsible for enforcing safety rules within the garage and training of other City employes. Finally, the City points out that Kunz approves time off requests and assigns overtime. It therefore contends that the position should be excluded from the bargaining unit.

DISCUSSION

Section 111.70(1)(o)1, Stats., defines the term "supervisor" as follows:

...Any individual who has authority, in the interest of the municipal employer, to hire, transfer, suspend, or lay off, recall, promote, discharge, assign, reward or

discipline other employes, or to adjust their grievances or effectively 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.

When applying this statutory definition, we have considered the following factors:

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 persons exercising greater, similar or less authority over the same employes;

4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skills or for his or her 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 or she spends a substantial majority of his or her time supervising employes; and

7. The amount of independent judgment exercised in the supervision of employes. 2/

Not all of the above factors need to be present for a position to be found supervisory. Rather, in each case, the inquiry is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employe occupying the position is supervisory. 3/

Kunz spends about 40% of his time doing actual hands-on mechanic work that is similar to the work performed by the other two employes at the garage. He spends the remainder of his time overseeing the operation of the garage on a day-to-day basis and ensuring that all City vehicles and equipment are properly maintained. He independently decides what repair work is done, when it is performed, who performs the work, and ensures that it is performed correctly.

With regard to evaluations, it is noted that the vehicle maintenance supervisor's job description provides that the incumbent evaluates employe job performance. However, at present the City does not evaluate employes except probationary employes and there are no probationary employes currently working in vehicle maintenance. As a result, Kunz currently has no role in evaluating

2/ Portage County, Dec. No. 6478-D (WERC, 1/90); Town of Conover, Dec. No. 24371-A (WERC, 7/87).

3/ Kewaunee County, Dec. No. 11096-C (WERC, 2/86).

employees and has not evaluated anyone. The City nevertheless asserts that Kunz will be responsible for doing evaluations of future employees coming off probation. Since there is no basis in the record evidence to conclude otherwise, we assume that the City's assertion will eventually come to pass.

With regard to hiring, we note that there have not been any hirings in vehicle maintenance since Kunz became vehicle maintenance supervisor and none are anticipated. Nevertheless, when there is a hiring, it is anticipated that Kunz's involvement in same will be no less than it was when he was a mechanic.

While a mechanic, Kunz participated in interviews with various candidates and jointly authored a memo (with Herman) recommending the hiring of a specific person.

Kunz is responsible for enforcing safety rules at the garage and training other City employees to operate new equipment. He also approves time-off requests, reviews time cards, and assigns overtime within the constraints of the overtime budget. In addition, the pay range for the supervisor position is approximately 10% higher than the range for a mechanic position.

The foregoing demonstrates that Kunz possesses and/or exercises some indices of supervisory status. He has issued verbal warnings, reviewed time cards and approved overtime and time off. Kunz will have at least the same level of involvement in future hiring as he exercised as a unit mechanic and will be empowered in the future to do evaluations of employees. His pay level also reflects that he is being compensated for more than his mechanical skills.

However, in this case, these factors are simply not enough to make him a supervisor.

We conclude that Kunz is functioning as a leadworker. He is primarily supervising/coordinating the vehicle maintenance function and the day-to-day garage activities rather than supervising employees.

In this regard, we are strongly influenced by the small number of employees Kunz directs (2) and the existing layers of authority within the Public Works Department. Kunz's immediate supervisor is Herman, the Superintendent of Public Works. Herman's immediate supervisor is Kaul, Director of Public Works, who would be the individual actually issuing suspensions or making termination decisions. Kaul also is the first step management representative in the contractual grievance procedure. Thus, within a small Public Works department (14-15 individuals total) there are presently two layers of management authority above Kunz.

We also find it significant that Kunz continues to perform a substantial amount of mechanic work with the remainder of his time being primarily occupied with the administrative activity of the Vehicle Maintenance Division rather than active supervision of employees.

We therefore find that, although Kunz is a skilled and effective leadworker, on balance, he does not possess sufficient supervisory authority in such combination and degree to make him a supervisor.

Dated at Madison, Wisconsin this 11th day of December, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

Herman Torosian /s/
Herman Torosian, Commissioner

William K. Strycker /s/
William K. Strycker, Commissioner