

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 :  
 EMPLOYEES, LOCAL 60, AFSCME, AFL-CIO : Case 9  
 : No. 45401 ME-485  
 Involving Certain Employes of : Decision No. 20841-F  
 :  
 CITY OF SUN PRAIRIE :  
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Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719-1169, appearing on behalf of the Union.  
Melli, Walker, Pease & Ruhly, S.C., Attorneys at Law, by Mr. Thomas R. Crone, P.O. Box 1664, Madison, Wisconsin 53701-1664, appearing on behalf of the City.

ORDER DENYING PETITION FOR REHEARING

On December 11, 1991, the Wisconsin Employment Relations Commission issued Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit with Accompanying Memorandum in the above-entitled matter wherein it was concluded that the occupant of the vehicle maintenance supervisor position was not a supervisory employe within the meaning of Sec. 111.70(1)(o)1, Stats.; and the City of Sun Prairie having on January 2, 1992, filed a Petition for Rehearing pursuant to Sec. 227.49, Stats., wherein it asserted that the Commission had erred by failing to find the position in dispute to be supervisory; and Local 60, AFSCME, AFL-CIO having on January 17, 1992, filed a statement in opposition to Petition for Rehearing; and the Commission having considered the matter and being satisfied that its decision does not contain any material errors of law or fact;

NOW, THEREFORE, it is

ORDERED 1/

That the Petition for Rehearing is denied.

Given under our hands and seal at the City of

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1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties 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.

227.53 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 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. 227.49, 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,  
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Madison, Wisconsin this 31st day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner

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1/ continued

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  
ORDER DENYING PETITION FOR REHEARING

In its Petition for Rehearing, the City argues:

1. The Commission placed too much emphasis on the supervisor-subordinate ratio.
2. The Commission wrongfully concluded that other meaningful supervision of vehicle maintenance employes existed.
3. The Commission failed to give any weight to the undisputed evidence that the vehicle maintenance supervisor possesses the same authority as the park supervisor, an admitted supervisor.
4. The Commission erred by failing to conclude that the vehicle maintenance supervisor's interests were more clearly aligned with management than with the bargaining unit.

We have reviewed our decision and concluded that it is correct. Although the supervisory status of the vehicle maintenance supervisor presents a close question, we remain satisfied that we have appropriately applied the criteria we utilize when determining supervisory status.

Contrary to the City's assertion in its Petition for Rehearing, we did not place primary or exclusive emphasis on the supervisor-subordinate ratio. As our decision clearly indicates, we were also strongly influenced by the two existing layers of management authority within a small public works department as well as the reality that the employe in question performs a significant amount of administrative/mechanic work as opposed to actively supervising the two employes. In our view, it was also noteworthy that significant disciplinary decisions as well as management responses to grievances are made by the two existing levels of management authority, not by the vehicle maintenance supervisor.

In response to the City argument regarding the equivalent status of the park supervisor, we would note that the supervisory status of the park supervisor position was not litigated in this case and thus we have no evidence relating to the status of that position before us. Therefore, although the park supervisor position is presently excluded from the bargaining unit and, at least in the City's view, has status equivalent to that of the vehicle maintenance supervisor, we have no basis upon the record before us for coming to any conclusion regarding the equivalence of these two positions.

In summary, we acknowledge that through the creation of the vehicle maintenance supervisor position, the City has improved the organization and direction of the vehicle maintenance operation. However, we remain satisfied that the improvement sought by the City has been accomplished through the efforts of a skilled and effective leadworker and not by a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats.

Dated at Madison, Wisconsin this 31st day of January, 1992.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By \_\_\_\_\_  
A. Henry Hempe, Chairperson

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Herman Torosian, Commissioner

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William K. Strycker, Commissioner