

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
WISCONSIN COUNCIL OF COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	
AFSCME, AFL-CIO	:	Case VI
	:	No. 31881 ME-2240
Involving Certain Employes of	:	Decision No. 20843-A
	:	
CITY OF LANCASTER	:	
	:	

Appearances:

- Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Petitioner.
- Mr. Ivars Kalnins, City Attorney, 118 West Cherry Street, Lancaster, WI 53813, appearing on behalf of the City.

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

Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO having, on July 8, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of certain employes in the employ of the City of Lancaster, presently represented by Petitioner, by determining whether the position of Parks/Golf Course Supervisor should be excluded from the unit on the basis that the position is supervisory; and the Commission having, on July 14, 1983, appointed Lionel L. Crowley, a member of its staff, to act as Examiner to conduct a hearing and issue a final decision as provided in Section 227.09(3)(a), Wis. Stats.; and a hearing on said petition having been held in Lancaster, Wisconsin on August 24, 1983; and the parties having completed the filing of briefs by October 13, 1983; and the undersigned, having considered the evidence and arguments of the parties, and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Wisconsin Council of County and Municipal Employees, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices at 5 Odana Court, Madison, Wisconsin 53719.
2. That the City of Lancaster, hereinafter referred to as the City, is a municipal employer and has its offices at City Hall, Lancaster, Wisconsin 53813.
3. That following an election conducted by it on May 15, 1981, the Wisconsin Employment Relations Commission, herein the Commission, on May 27, 1981, certified the Union as the exclusive collective bargaining representative of certain of the City's employes in a bargaining unit described as follows:

All regular full-time and regular part-time employes employed by the City of Lancaster in the city crew, parks, sewage plant, and cemetery departments, excluding guards, supervisors, confidential employes, managerial employes, executive employes and all other employes. 1/
4. That the instant proceeding was initiated on July 8, 1983, by a petition filed by the Union, wherein it contended that the position of Parks/Golf Course Supervisor should be included in the bargaining unit; and that the City argues that the position is supervisory in nature and therefore should be excluded from the unit.

1/ City of Lancaster, (18603) 5/27/81.

5. That the Parks/Golf Course Supervisor position, presently occupied by Greg Vorwald, reports to the City Engineer/Director of Public Works and is responsible for directing the work of three full-time employees: namely, a greenskeeper, sexton and park helper; that Vorwald also assigns and directs the work of seasonal employees during the period of June 1 to mid-August; that Vorwald has not hired or effectively recommended the hiring of either a full-time or seasonal employee nor does he possess the authority to do so; that Vorwald has not fired or disciplined or effectively recommended the same for any employee; that he has not laid off any employee, although the park helper has been laid off on occasion; that Vorwald does not formally evaluate the full-time employees and does not approve employees' requests for vacation and sick leave; that he does not respond to employee grievances; that Vorwald has not assigned employees overtime; that generally the sexton and greenskeeper perform tasks with little or no direction and Vorwald works directly with the park helper performing work of a similar nature; that when seasonal employees are hired, Vorwald spends about one-fourth of his time directing and supervising their work; that on occasion, Vorwald is responsible for directing and supervising the work of Huber law and CAP workers, but he has no responsibility for their placement with the City; that Vorwald has the authority to reassign the sexton, greenskeeper and park helper to perform duties where the situation requires such reassignment; that, since May 9, 1983, Vorwald has been paid a salary and is not compensated for overtime and prior to that date he was paid an hourly rate; and that Vorwald does not exercise supervisory responsibilities in sufficient combination and degree as to make him a supervisory employee.

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

CONCLUSION OF LAW

1. That the position of Parks/Golf Course Supervisor, presently occupied by Greg Vorwald, is not a supervisory position within the meaning of Section 111.70(1)(o)1 of the Municipal Employment Relations Act, and that therefore said position is occupied by a municipal employee within the meaning of Section 111.70(1)(b) of the Act.

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

ORDER CLARIFYING BARGAINING UNIT 2/

1. That the position of Parks/Golf Course Supervisor be, and the same hereby is, included in the bargaining unit described in Finding of Fact No. 3.

Dated at Madison, Wisconsin this 21st day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

2/ 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)

2/ (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.

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.

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

In its petition, the Union contends that the position of Parks/Golf Course Supervisor is an "employee" within the meaning of the Municipal Employment Relations Act (MERA). The Union argues that the evidence establishes that the incumbent of this position does not possess sufficient authority or responsibility to meet the statutory definition of a supervisor, and therefore, should be included in the bargaining unit. The City contends that the position occupied by Greg Vorwald meets the Commission's criteria for a supervisor in such combination and degree that the position must be excluded from the bargaining unit because of supervisory status.

DISCUSSION

Section 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, or lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or to effectively recommend such action if in connection with the foregoing the exercise of such is not of the merely routine or clerical nature, but requires the use of independent judgment.

In its interpretation of the above definition, the Commission has, on numerous occasions, listed the following factors as those to be considered in the determination of an individuals' supervisory status:

1. The authority to effectively recommend 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 skill or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees;
6. The amount of independent judgment exercised in the supervision of employees. 3/

The Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case the Commission will find an employe to be a supervisor. 4/ Even though an employe may spend a majority of his/her time doing non-supervisory duties, the Commission has

3/ City of Milwaukee, (6960) 12/64; Augusta School District, (17944) 7/80; Cornell School District, (17982) 8/80; Eau Claire County, (17488-A) 3/81.

4/ Lodi Jt. School District, (16667) 11/78; City of Lake Geneva, (18507) 3/81; Eau Claire County, (17488-A) 3/81.

determined that he/she is supervisory where sufficient responsibilities and authority of a supervisor are present. 5/

A review of the record establishes that the position of Parks/Golf Course Supervisor, occupied by Greg Vorwald, has no authority to hire or fire employes. The City's Personnel Committee does all the hiring and Vorwald does not interview prospective employes and has not made recommendations as to their hire. 6/ The Personnel Committee is responsible for discharging employes and Vorwald has not fired or disciplined or recommended same with respect to any employe of the City, and Vorwald's action has been limited to one adverse comment about one seasonal employe. 7/ Vorwald has no authority to lay off employes and has not formally evaluated the permanent employes or seasonal employes although he has sent evaluations to non-City agencies with respect to temporary help assigned to the City. 8/ Vorwald has not assigned employes overtime and does not approve requests for time off for vacation, sick leave, or leave of absence requests. 9/ He has no authority to adjust grievances and initial grievances go to Vorwald's supervisor. 10/ Vorwald does have authority to assign work to employes under his direction as well as the CAP and Huber law workers and to direct them to perform in one area as opposed to another. 11/ The amount of time spent by Vorwald actually directing employes except for the initial training of seasonal employes, CAP and Huber law workers is minimal and the vast majority of his time is spent performing physical work similar to the employes under his direction. 12/ While there is a difference in the method and amount of pay for Vorwald, this is not significant enough to be a determining factor. 13/ Vorwald's authority to direct employes is over the day-to-day work of the Parks, Cemetery and Golf Course and in this regard, he supervises an activity rather than employes, and hence, he is functioning, at best, as a leadman or working foreman. 14/ Therefore, it must be concluded that on balance there is insufficient indicia of supervisory authority in such combination and degree to warrant a conclusion that Vorwald is a supervisor, and accordingly, the position is included in the unit.

Dated at Madison, Wisconsin this 21st day of October, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley
Lionel L. Crowley, Examiner

-
- 5/ City of Madison (Public Library), (19906) 9/82; School District of Montello, (17829-B) 2/82.
- 6/ Tr. 7, 20 and 27.
- 7/ Tr. 11, 27 and 36.
- 8/ Tr. 13, 14, 87, Ex-10.
- 9/ Tr. 12 and 15
- 10/ Tr. 16.
- 11/ Tr. 8, 60 and 80.
- 12/ Tr. 9, 10, 22, 23, 24, 31, 60 and 80.
- 13/ Tr. 10, Village of Pewaukee (Dept. of Public Works), (17771-A) 4/81.
- 14/ City of Onalaska, (20509) 4/83; Village of Montello, (18463-A) 5/81; Marathon County (CETA), (18226, 18227) 11/80; City of Richland Center, (17950) 7/80.