

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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| In the Matter of the Petition of | : | |
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| MANITOWOC COUNTY HIGHWAY | : | Case CXLI |
| DEPARTMENT EMPLOYEES, LOCAL 986, | : | No. 30098 ME-2128 |
| WCCME, AFSCME, AFL-CIO | : | Decision No. 20847 |
| | : | |
| Involving Certain Employes of | : | |
| | : | |
| MANITOWOC COUNTY (HIGHWAY | : | |
| DEPARTMENT) | : | |
| | : | |

Appearances:

Mr. Richard E. Garrow, Corporation Counsel, Manitowoc County, P. O. Box 383, Manitowoc, Wisconsin, 54220, appearing on behalf of the County.
Mr. Michael Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P. O. Box 370, Manitowoc, Wisconsin 54220, appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

Manitowoc County having on July 14, 1982 requested the Wisconsin Employment Relations Commission to clarify an existing bargaining unit consisting of certain employes in said County's Highway Department and represented by Manitowoc County Highway Department Employees, Local 986, AFSCME, AFL-CIO, to determine whether the position of Purchasing Agent should be excluded from said unit; and hearing in the matter having been held on November 18, 1982, before Examiner Edmond J. Bielarczyk, Jr., a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared; and Manitowoc County having filed a brief on March 18, 1983, and the Union having filed a brief on May 18, 1983; and the Commission, having considered the evidence and arguments, being fully advised in the premises, makes and issues the following.

FINDINGS OF FACT

1. That Manitowoc County, hereinafter referred to as the County, is a municipal employer and has its offices at 1010 S. 8th Street, Manitowoc, Wisconsin; and, that the County amongst its various functions operates a Highway Department.

2. That Manitowoc County Highway Department Employees, Local 986, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization and has its offices located at P. O. Box 370, Manitowoc, Wisconsin.

3. That in the collective bargaining agreement between the County and the Union, which was in effect from January 1, 1981 through December 31, 1981, the County recognized the Union as exclusive bargaining representative for a unit described as:

. . .all employees of the Employer engaged in highway and bridge construction and maintenance work, shop and office employee, other employees in related activities of the Highway Department, except the employees in the positions of Engineer, State Highway Superintendent, Shop Superintendent and Office Manager, excluding temporary, supervisory, confidential and managerial employees.

4. That on July 14, 1982 the County filed a petition requesting the Wisconsin Employment Relations Commission to clarify said unit by determining whether the position of Purchasing Agent should be excluded from said unit described in paragraph 3; that the County established the position of Purchasing Agent in 1976; that since 1976 Milton Kassemmer has occupied the position of Purchasing Agent; and, that since 1976 the position of Purchasing Agent has been included in said bargaining unit.

5. That the County, contrary to the Union, contends that the occupant of the position of Purchasing Agent is a supervisory and managerial employe and should be excluded from said unit.

6. That the Purchasing Agent reports directly to the Highway Commissioner; that the Purchasing Agent has two employes subordinate to him; that the Purchasing Agent performs the following routine duties: (1) assigns duties to stockroom personnel, (2) maintains records of current inventory, inventory prices and purchases of materials and supplies, repair parts, gas and fuel, and tools, (3) determines the need of repair and parts necessary, (4) prepares and submits price inquiries and bid quotations for the best interests of the County, (5) checks prices, extensions, footings and discounts on all invoices, prepares statements for expense vouchers, (6) controls inventory of supplies in outlying shops, (7) maintains current records on all machinery, and (8) performs other duties as assigned; that on October 1, 1982, the County revised the Purchasing Agent's job description so that it specified the additional tasks and responsibilities of (1) directing and evaluating the work of stockroom personnel, and (2) effectively recommending the discipline, lay-off, rehire, suspension or discharge of employes; that notwithstanding those job description modifications, the evidence establishes that the Highway Commissioner has retained the effective authority to hire, lay-off, discipline, suspend and discharge employes and that the Purchasing Agent has not exercised independent judgment in the exercise or effective recommendation as to the exercise of those aspects of supervisory authority; that the Purchasing Agent assigns duties to the two Stock Clerks and assigns stockroom duties to additional personnel as he deems necessary; that since 1976 the Purchasing Agent has approved Stock Clerk vacation and sick leave as well as his own, and at the direction of the Highway Commissioner he is presently revising the Stock Clerk work schedules to provide for a twelve hour per day stockroom operation; that the Purchasing Agent has evaluated Stock Clerks during their probationary period; that the Purchasing Agent does not spend the substantial majority of his time performing supervisory duties, but rather spends at least 75% of his time on non-supervisory duties; that the Purchasing Agent is more appropriately characterized as a lead worker rather than a supervisor in charge of his subordinates; that the Purchasing Agent does not receive a wage differential relative to his subordinates that is indicative that he is being compensated for the exercise of supervisory responsibility; instead, the Purchasing Agent is compensated at \$8.07 and the Stock Clerks at \$7.81 per hour; that said differential is more indicative of the Purchasing Agent's responsibility for the supervision of the stockroom activity than for the supervision of the individuals employed in that operation; that the Purchasing Agent attends monthly meetings otherwise limited to non-bargaining unit supervisory/managerial personnel; and that on balance the Purchasing Agent does not possess supervisory authority in sufficient combination and degree to warrant the conclusion that his is a supervisory position properly excludable from the bargaining unit.

7. That the Purchasing Agent supervises purchases totalling \$764,878.97; but the Purchasing Agent does not have the authority either to establish an original purchasing budget or to reallocate funds from the allocations established in an original budget; that the Purchasing Agent does have discretion in determining which type of materials to stock, when and at what price to purchase same, and what quantity of materials shall be kept in inventory at any given time; he also has discretion in determining whether to seek bids for purchase, which bid to accept and whether or not to seek the Highway Commissioner's approval on any particular purchasing decision; that the Purchasing Agent operates under a self-imposed \$200 purchasing limit on tool purchase authorizations; but that the Purchasing Agent meets with the Highway Commissioner every two weeks to review all of the expenditures he has made for purchases, constituting an additional and significant check and limitation on the extent to which the Purchasing Agent can be said to be committing the resources of the County; and that, on balance, the Purchasing Agent is neither involved in committing the County's resources nor in the formulation or management of policy matters such as would warrant his exclusion from the bargaining unit as a managerial employe.

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

CONCLUSION OF LAW

That the occupant of the Position of Purchasing Agent is not a supervisory and managerial employe and therefore is a "municipal employe" within the meaning of Section 111.70(1)(b) of the Municipal Employment Relations Act.

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

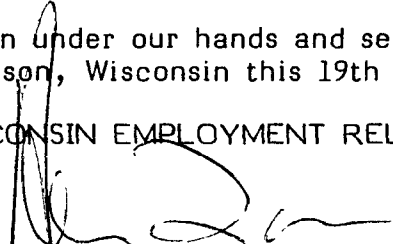
ORDER 1/

That the position of Purchasing Agent remain, and the same hereby is, included in the bargaining unit identified in Finding of Fact 3.

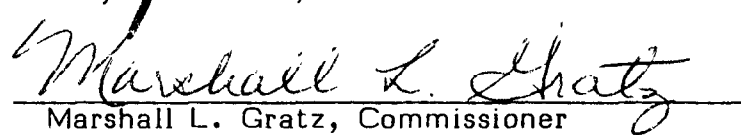
Given under our hands and seal at the City of
Madison, Wisconsin this 19th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

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- 1/ Pursuant to Sec. 227.11(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. 227.12(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

(Footnote 1 continued on Page 4)

(Footnote 1 continued)

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,
CONCLUSION OF LAW AND ORDER

The City filed the instant petition on July 14, 1982 alleging that the position of Purchasing Agent is a supervisory and managerial employee. The City filed its brief on the instant matter on March 18, 1983. The Union filed a brief on May 18, 1983, at which time the record was closed.

In determining a position's supervisory status under Section 111.70(1)(o), the Commission considers 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 other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his 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 spends a substantial majority of his time supervising employes; and
7. the amount of independent judgement exercised in the supervision of employes. 2/

Not all of these factors need be present when the Commission determines a position's supervisory status, but if a sufficient number of these factors are present the Commission will find the position to be supervisory. 3/

As noted in the Findings, the Highway Commissioner purported to delegate to the Purchasing Agent the authority to effectively recommend discipline, layoff, rehire, suspension and discharge of employes; however, it is nonetheless clear in the record that the Highway Commissioner has retained in himself the authority to recommend discipline, layoff, rehire, suspension and discipline of employes to the Highway Committee of the County Board. The Purchasing Agent has never imposed formal discipline, although he has given directions as to how the work of the Stock Clerks is to be performed and has allocated work assignments in the stock room between the Clerks and himself and occasionally among additional employes when they were needed to meet the needs of the operation. The number of subordinates to the Purchasing Agent is generally limited to the two Stock Clerks. The Highway Commissioner, while not in a position to observe their day to day conduct, is nonetheless in a position to effectively control the discipline, layoff, rehire, suspension and discipline functions over the Stock Clerks. The level of pay of the Purchasing Agent as compared with that of the Stock Clerks does not appear to involve a differential based on the Purchasing Agent's supervision of employes but rather for his broader range of duties and responsibilities in supervising the inventorying and stock room activities. The Purchasing Agent does not spend a substantial majority of his time supervising employes, but rather spends at least 75% of his time on non-supervisory activities. And while the Purchasing Agent is called upon to exercise independent judgment in deciding when to call for additional employes from other areas to help in the stock room, in approving vacations and sick leave for stock room personnel including himself, and in reorganizing the Stock Clerk's work schedules at the direction of the Highway Commissioner, on balance, the Commission is persuaded that the Purchasing Agent does not exercise supervisory authority in sufficient combination and degree to warrant exclusion from the unit as a supervisor.

2/ Sheboygan Co. Handicapped Children's Educ. Board (20217) 1/7/83.

3/ Id.

In determining whether a position is managerial, and thus excluded from the definition of the term "municipal employe" contained in Section 111.70(1)(b) of the Municipal Employment Relations Act, the Commission has stated:

Managerial Employes . . . have been excluded from MERA coverage on the basis that their relationship to management imbues them with interest significantly at variance with those of other employes . . . (M)anagerial employes participate in the formulation, determination and implementation of management policy . . . In addition, managerial status may be related to a position's effective authority to commit the Employer's resources. 4/

Specifically regarding the effective authority to commit the Employer's resources, the Commission has stated:

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. 5/

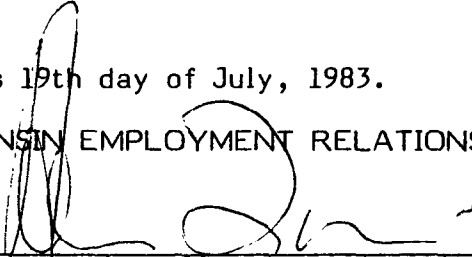
This power must not be "ministerial", such as "the authority to spend money from a certain account for a specific purpose. . . ." 6/

As noted in the Findings, the Purchasing Agent does exercise discretion as to when, how, how often and what materials will be purchased to meet the County's needs as previously budgeted. He has also enjoyed a degree of flexibility in establishing purchasing/inventory procedures and authorization limits, having decided for himself, for example, that tool purchases over \$200.00 will require the Highway Commissioner's prior approval. We have nevertheless found that the Purchasing Agent is neither sufficiently formulating nor managing County policy nor sufficiently responsible for committing the County's funds to warrant his exclusion from the unit as a managerial employe. In that regard, we find it particularly significant that the Highway Commissioner meets with the Purchasing Agent every two weeks and reviews each of the expenditure vouchers previously approved by the Purchasing Agent; and that the Purchasing Agent does not establish an original budget for purchases, but rather is responsible only for allocating funds for the various program purposes in accordance with the allocations pre-established in the original budget.


Based on all the above, the Commission has determined that the position of Purchasing Agent should remain included in the the bargaining unit described in Finding of Fact 3.

Dated at Madison, Wisconsin this 19th day of July, 1983.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

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Gary L. Covelli, Commissioner

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Marshall L. Gratz, Commissioner

4/ City of Cudahy (Fire Department), Decision No. 18502 (3/81) at 8; see Milwaukee v. WERC, 71 Wis. 2d 709, 717 (1976).

5/ Shawano County Sheriff's Department 15257 (3/77) at 3.

6/ Id.