

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of  
**WAUSAU CITY HALL EMPLOYEES UNION  
LOCAL 1287(CH), AFSCME, AFL-CIO**

Involving Certain Employees of

**CITY OF WAUSAU**

Case 115  
No. 66459  
ME(u/c)-1201

**Decision No. 20916-J**

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**Appearances:**

**John Spiegelhoff**, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1105 East 9<sup>th</sup> Street, Merrill, Wisconsin 54452, appearing on behalf of Wausau City Hall Employees Union Local 1287 (CH), AFSCME, AFL-CIO.

**Jeffrey T. Jones**, Ruder, Ware & Michler. LLSC, 500 Third Street, Suite 700, P.O. Box 8050, Wausau, Wisconsin 54402-8050, appearing on behalf of the City of Wausau.

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND ORDER CLARIFYING BARGAINING UNIT**

On November 10, 2006, the Wausau City Hall Employees Union Local 1287(CH), AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission, seeking to include two Residential Appraiser positions and one Commercial/Residential Appraiser position into a non-professional employee bargaining unit of City of Wausau employees that Local 1287 (CH) represents for the purposes of collective bargaining. The City opposes the petition asserting that: (1) the incumbents in the positions are professional employees who cannot be included in a non-professional employee unit by means of unit clarification; (2), even if the employees are not professional employees, they are not appropriately included in the Local 1287 (CH) bargaining unit because they lack a community of interest with the employees in said unit; and (3), the Commercial/Residential Appraiser is a supervisor and/or a managerial employee who therefore cannot be included in the bargaining unit.

No. 20916-J

A hearing on the petition was held in Wausau, Wisconsin, on February 14, 2007, before Commission Examiner Steve Morrison. A transcript of the hearing was received by the Commission on March 23, 2007. The parties thereafter filed written arguments with the Commission, the last of which was received on May 9, 2007.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

### **FINDINGS OF FACT**

1. The Wausau City Hall Employees Union Local 1287(CH), AFSCME, AFL-CIO, hereafter the Union, is a labor organization that serves as the exclusive collective bargaining representative of employees in a bargaining unit described in the 2005-2006 bargaining agreement between the Union and the City of Wausau as:

. . . all regular full-time and regular part-time employees of the City of Wausau employed in the City Hall and related buildings as described pursuant to W.E.R.C. Decision No. 20916, Case XXVII, No. 30999, ME-2175 but excluding department heads, supervisory, managerial, confidential, seasonal/temporary employees and all other City employees currently represented.

2. The City of Wausau, hereafter the City, is a municipal employer providing services to the citizens of the City through its employees.

3. The City's Assessment Department, hereafter the Department, is generally responsible for creating an assessment roll of all taxable real and personal property in the City.

4. Nanette Giese is the City Assessor. Giese is the head of the Department and is generally responsible for ensuring its compliance with the reporting requirements and other assessment procedures set forth in Chapter 70 of the Wisconsin Statutes. Giese also performs appraisals of commercial properties within the City.

5. In addition to Giese, the Department consists of five employees: one Commercial/Residential Appraiser, two Property Appraisers, one Property Appraisal Technician, and one Office Technician. The two Technicians are included in the bargaining unit described in Finding of Fact 1. The top wage rates for the Department positions are as follows:

City Assessor- \$78,196 as of 7/1/07  
Commercial/ Residential Appraiser- \$56, 256 as of 7/1/07  
Property Appraiser- \$46,852 as of 7/1/07  
Property Appraiser Technician- \$37,876 as of 12/31/06  
Office Technician- \$34,715 as of 12/31/06.

6. The Department Office Technician provides clerical and technical support to the Department appraisal staff.

7. The Department Property Appraisal Technician provides complex technical support to the Department appraisal staff.

8. The general purpose of the Property Appraiser position is to inspect property and gather information to determine properties' assessable valuation for the City. The City's Property Appraisers generally perform appraisals on non-commercial properties.

9. The following are the essential duties and responsibilities associated with the Property Appraiser position:

- Conducts real estate and field interviews and inspections to gather information regarding the size, type, quality, methods and materials used in building construction. Verifies property legal descriptions.
- Appraises individual properties using cost, income, and market approaches.
- Makes market value appraisals of real estate using field, market, land computations, and other information. Researches and verifies new sales and prepares neighborhood comparison sheets. Analyzes real estate ads.
- Reviews and verifies property changes from building permit specification. Re-values changed properties.
- Conducts statistical and special studies. Compares neighborhood values.
- Develops residential land values for new City sub-divisions, unplatted and annexed land.
- Prepares various property and real estate records. Updates information from building permits for data collection cards. Enters updated information into computer. Enters field work changes and updated business information into computer. Conducts investigations to arrive at current construction costs and values.
- Analyzes blue prints and prepares sketches.
- Provides information and assistance to the general public and others regarding property and real estate assessments and assessment procedures.

- Testifies before Board of Review and provides other assistance as required. Assists as a technical consultant or expert witness in case of appeals of equalized values.
- Attends quarterly education meetings and other continuing education seminars and classroom instruction to become familiarized with the latest appraisal techniques, law changes, and department policies.
- Trains/cross-trains and performs tasks as directed by management to assist other areas when collaborative efforts are needed to operate more efficiently to meet statutory requirements.

10. The Property Appraisal position requires the following language and interpersonal abilities:

- Ability to analyze and categorize data and information in order to determine the relationship of the data with reference to established criteria/standards. Ability to compare, count, differentiate, measure and/or sort data, as well as assemble, copy and record and transcribe data and information. Ability to classify, compute and tabulate data.
- Ability to communicate with, and/or train others. Ability to act in a lead worker capacity. Ability to advise and interpret how to apply policies, procedures and standards to specific situations.
- Ability to utilize a variety of advisory data and information such as building permits, property sales reports, property records cards, comparative sales forms, Wisconsin Assessment Manual, cost manuals, appraisal manuals, legal real estate documents, maps, real estate transfer records, statutes, procedures, guidelines and non-routine correspondence.
- Ability to communicate orally and in writing with Department of Revenue personnel, property owners, other appraisers, real estate sales persons and brokers, attorneys, engineering personnel, Assessor Department personnel and utility company personnel.

The Property Appraisal position requires the following mathematical abilities:

- Ability to calculate percentages, fractions, decimals, volumes, ratios, present values, and spatial relationships. Ability to interpret basic descriptive statistical reports.

The Property Appraisal position requires the exercise of independent judgment, including the following independent judgment and situational reasoning abilities:

- Ability to use functional reasoning and apply rational judgment in performing diversified work activities.
- Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against measurable criteria.

11. Pursuant to the position description for the Property Appraisal position on file with the City, the minimum training and experience required for the position is an associate degree in real estate or related field, three to five years real estate experience, or any combination of education and experience that provides equivalent knowledge, skills, and abilities. Nevertheless, the City Assessor would only consider hiring an appraiser without a bachelor's degree if that individual possessed many years of experience in the appraisal/assessment field. When the most recent Property Assessor was hired by the City in 2006, only a few of the eleven or twelve individuals interviewed for the position by the Assessor Department did not have a bachelor's degree.

12. Property Appraiser employed by the City is required to obtain an Assessor I certification from the Wisconsin Department of Revenue within six months of hire.

13. Laurie Krueger was hired by the City as a Property Appraiser in 2000. Krueger has a four-year Bachelor of Science degree from the University of Wisconsin-Stevens Point with a major in Business Administration (with an emphasis in Real Estate, Management Information Systems, Finance and Accounting) and a minor in Economics. Krueger also had experience in the appraiser/assessor field when she was hired.

14. Timothy Pfotenhauer was hired by the City as a Property Appraiser in February of 2006. Pfotenhauer has a four-year Bachelor of Arts degree from the University of Wisconsin-Green Bay with a major in History and a minor in Pre-Law. Pfotenhauer also had obtained a real estate license and had worked as a real estate agent prior to being hired by the City.

15. The general purpose of the Commercial/Residential Appraiser position is to inspect residential and commercial properties considering factors such as current market value, location of property and building or replacement costs.

16. The following are the essential duties and responsibilities associated with the Commercial/Residential Appraiser position:

- All duties and responsibilities identified under Finding of Fact 9, above.

- Provides assistance to the Assessor in developing and completing real estate property assessment rolls and State-required final reports.
- Analyzes, collects and verifies commercial property assessment information from appraisals, rents, income and expenses, sales, permits, market trends, etc.
- Establishes and maintains good public relations. Consults with engineers, clerks, Register of Deeds, accounting, and other City departments regarding assessments and assessment valuation process. Provides information regarding taxable property valuation process to the general public, property owners, government officials, appraisers and special interest groups.
- Maintains knowledge of current local and State requirements regarding assessment/appraisal, market characteristics and trends, and Department and City policies and procedures.
- Conducts open book conference with the general public to eliminate errors in assessed values proper to Board of Review proceedings.
- Assists the Assessor with defending and supporting assessed values at Board of Review sessions. May present facts and valuation methods used to derive protested assessed values; locates and prepares maps, assessments, and other records to defend assessment values.

17. The Commercial/Residential Appraiser position requires the following language and interpersonal abilities:

- Ability to analyze and categorize data and information in order to determine the relationship of the data with reference to established criteria/standards. Ability to compare, count, differentiate, measure and/or sort data, as well as assemble, copy and record and transcribe data and information. Ability to classify, compute and tabulate data.
- Ability to utilize a variety of advisory data and information such as financial statements, maps, real estate deeds and transfer records, mortgages, building permits, trade journals, blueprints, City ordinances, appraisals, assessor's reports, tax and assessment rolls, a variety of statistical and narrative real estate related reports, State statutes, property cost manuals, procedures, guidelines, Wisconsin Assessment Manuals and non-routine correspondence.

- Ability to communicate orally and in writing with property owners, appraisal and clerical staff, engineers, building inspectors, attorneys, State agency personnel, title company personnel, Realtors, County Treasurer, property description personnel, County Register of Deeds, and data processing personnel.

The Commercial/Residential Appraiser position requires the following mathematical abilities:

- Ability to calculate percentages, fractions, decimals, volumes, ratios, present values, and spatial relationships. Ability to develop and analyze inferential statistical reports.

The Commercial/Residential Appraiser position requires the following judgment and situational reasoning ability:

- Ability to use functional reasoning and apply rational judgment in performing diversified work activities.
- Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against measurable criteria.

18. The minimum training and experience required by the City to qualify for the Commercial/Residential Appraiser position is a bachelor's degree in real estate or related field with three to five years real property appraisal/assessment experience, or any combination of education and experience that provides equivalent knowledge, skills, and abilities.

19. A Commercial/Residential Appraiser employed by the City is required to obtain an Assessor II certification from the Wisconsin Department of Revenue within six months of hire.

20. Richard Rubow was hired by the City as a Property Appraiser in 2003. In February of 2006, Rubow was promoted to his current position of Commercial/Residential Appraiser. Rubow graduated from Northcentral Technical College with a course emphasis in Business Management, and he subsequently obtained a Bachelor of Science degree from Upper Iowa University in Business Management, with an emphasis in Human Resources.

21. The Commercial/Residential Appraiser position was first created in 2001. As the result of a reorganization of the Department, the position was created to replace the eliminated position of Deputy Assessor. The reorganization was intended to make the Department more efficient and save City tax dollars. For that reason, the wages for the Commercial/Residential Appraiser position wages were lower than the wages had been for the Deputy Assessor position, despite the fact that the duties and responsibilities assigned to the

Commercial/Residential Appraiser position were largely identical to those that had been assigned to the Deputy Assessor position.

22. Among other duties, the Deputy Assessor position was responsible for supervising assigned appraisal and clerical employees, assisting in the selection and termination of assigned staff, training staff, prioritizing and assigning tasks, evaluating performance and implementing discipline. The supervisory duties that were formerly included in the position description for the Deputy Assessor were not transferred to the position description for the Commercial/Residential Appraiser.

23. Since the point in time when Rubow was promoted to the position of Commercial/Residential Appraiser, in early 2006, there has been effort to involve him in the supervision of the two Property Appraisers, the Property Appraisal Technician, and the Office Technician in the Department.

24. Rubow has had the opportunity to be involved in one hiring process, that being the hiring of Property Appraiser Timothy Pfotenhauer. Rubow was a member of a three-person hiring committee, which also included Giese. Of the ten questions prepared in anticipation of the interviews, a few were suggested by Rubow. During the interviews, Rubow was responsible for posing some questions to the candidates, for scoring each of the candidates' responses independently, and for sharing his evaluative input with the rest of the hiring committee. The decision to hire Pfotenhauer was a mutual decision agreed upon by all three of the members of the hiring committee. In the case of a disagreement among committee members, however, the final hiring decision would be made by the Giese as the head of the Department.

25. Rubow has the authority to assign and prioritize work in the Department. As a general method of assigning work among the Department appraisers, the City is divided among the appraisers into geographical regions. Further, there are established priorities in the Department for how work should be accomplished, dictating for example that high priority is given to the finalizing of inspections and that the technicians are to complete sales work prior to permit work.

26. Rubow has had the opportunity to be involved in the formal evaluation of one employee, Pfotenhauer. Rubow independently completed an evaluation form relating to Pfotenhauer's performance and shared his input with the Giese. Giese filled out her own evaluation form regarding Pfotenhauer's performance. She did not make alterations to Rubow's completed evaluation.

27. Although Rubow has never faced a situation in which an employee required formal discipline, he has informally counseled Department employees regarding quality of work issues on approximately three occasions. In one instance in which Rubow observed what he believed to be sub-par work, he consulted with Giese about the situation and received instruction from her to record his observations in case the need for discipline arose. If an



employee refused to complete assigned work, Rubow would speak with Giese and the City Human Resources Department about how to proceed. Rubow does not have the authority to suspend or discharge employees or to effectively recommend such action.

28. Overtime, compensatory time, or temporary workers can only be authorized if the Department budget has funds available for such work. Rubow can authorize overtime or compensatory time, if the budgetary funds are available. However, he would not enlist the assistance of temporary workers without seeking Giese's permission to do so first.

29. Rubow typically only authorizes sick leave or other absences in Giese's absence.

30. Supervisory meetings are held once per month and attended by the heads of the City departments. Rubow would only attend a supervisory meeting if Giese requested that he do so in her absence. Staff meetings within the Department are held on a weekly basis. All subjects relevant to the Department are discussed at these meetings, such as events occurring in the City, changes to Department materials, scheduling work for the year, and Board of Review events. Although Rubow's role in setting the agenda has gradually increased and he has, on occasion, taken sole responsibility for setting the agenda for such meetings, he generally works with Giese to establish the agenda.

31. Rubow generally is expected to fill Giese's role, if necessary, in her absence. She is not, however, absent from the Department on a regular basis.

32. Rubow spends 90 to 95 percent of his time doing assessment work.

33. Although Rubow has worked with City attorneys to set policy with uncollected tax bills that are in litigation, he does not have a regular role in creating policies for the Department.

34. Because Giese wants her small Department staff to be involved in the budget process, she encourages input from the staff regarding budgetary matters. Rubow and Krueger have both been involved in discussions relating to the budget. Pfotenhauer has not been involved in such discussions only because of his status as a relatively new hire in the Department. Although Giese anticipates increasing Rubow's participation in the process of physically assembling the budgetary documents, Giese makes the final, substantive decision on budgetary matters.

35. To become certified as an assessor/appraiser in the State of Wisconsin, one must pass an examination administered by the Wisconsin Department of Revenue. Although a Wisconsin Association of Assessing Officers committee, in which Giese is involved, is in the process of proposing to the State of Wisconsin that there should be stricter educational requirements necessary to sit for the certification examination, it is not currently necessary to have taken any specific course(s) or to possess a specific degree or license to be qualified to sit for the examination.

36. It is not the expectation that any appraiser hired by the City will have obtained the necessary certification prior to the date of hire.

37. There are a variety of ways to prepare for the certification examination and for work in the assessor/appraiser field. In the past, the Milwaukee Area Technical College has offered a three-year program that prepares students to attain assessor/appraiser certification and work in the field. Further, the Department of Revenue will recommend a study packet to prepare those who desire to sit for the certification examination, which packet includes the relevant statutory provisions, instructional materials on mathematical and statistical studies, as well as references to other appraisal materials. When preparing for the examination, Rubow obtained and studied such instructional materials from a library. Assessors/appraisers also receive training through attendance of classes and quarterly and annual educational meetings sponsored by the international, regional, and state-level assessors/appraisers professional organizations. All the appraisers in the Department belong to such professional organizations and attend such meetings, and some have attended the classes. When preparing for his certification examination, Rubow also attended a five-day instructional class sponsored by the Wisconsin Department of Revenue. Assessors/appraisers are also guided by the Wisconsin Property Assessment Manual, which those appraisers working for the City are expected to study.

38. The work performed by the Property Appraisers and the Commercial/Residential Appraiser does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education.

39. Rubow does not have supervisory authority in sufficient combination and degree to be a supervisor.

40. Rubow does not sufficiently participate in the formulation, determination and implementation of management policy or have sufficient authority to commit the City's resources to be a managerial employee.

### **CONCLUSIONS OF LAW**

1. The Property Appraisers and the Commercial/Residential Appraiser are not professional employees within the meaning of Sec. 111.70(1)(L), Stats.

2. The Commercial/Residential Appraiser, Richard Rubow, is not a supervisor within the meaning of Sec. 111.70 (1) (o) 1, Stats. or managerial employee within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

**ORDER CLARIFYING BARGAINING UNIT**

The two Property Appraisers and the Commercial/Residential Appraiser shall be included in the bargaining unit represented by Wausau City Hall Employees Union Local 1287(CH), AFSCME, AFL-CIO.

Given under our hands and seal at the City of Madison, Wisconsin, this 17th day of September, 2007.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner

**CITY OF WAUSAU**

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

As stated above, the City contends that all of the appraiser positions cannot be accreted into the non-professional employee bargaining unit because they are held by professional employees and because they do not share a community of interest with the bargaining unit of City employees currently represented by the Union. Further, the City contends that the position of Commercial/Residential Appraiser should be excluded from the bargaining unit as a supervisor and/or managerial employee. We will address each of these contentions, and our reasons for rejecting them, in turn.

**Professional Status**

The City has raised objection to the inclusion of the disputed positions in the Union's non-professional employee bargaining unit because the incumbents are professional employees. Section 111.70(1)(L), Stats., defines a "professional employee" as follows:

1. An employee engaged in work:
  - a. Predominantly intellectual and varied in character as opposed to routine mental, manual mechanical or physical work;
  - b. Involving the consistent exercise of discretion and judgment in its performance;
  - c. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time;
  - d. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher education or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine, manual or physical process; or
2. An employee who:
  - a. Has completed the courses of specialized intellectual instruction and study described in subd. 1.d.;

- b. Is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in subd. 1.

All of the criteria in 1 or 2, above, must be present for an employee to be deemed professional. CHIPPEWA VALLEY TECHNICAL COLLEGE, DEC. NO. 22230-A (WERC, 5/88). We have generally interpreted the Sec. 111.70(1)(L)1.d., Stats., criterion of “a prolonged course of specialized intellectual instruction and study” as being met by a four year specialized degree. CITY OF STEVENS POINT, DEC. NO. 30941 (WERC, 6/04); MATC, DEC. NO. 6343-D (WERC, 10/89). The educational background of incumbents may be relevant in determining the manner in which the knowledge required to do the work is generally acquired, but the statutory definition focuses on the nature of the work that the employee performs. While job descriptions can be relevant evidence as to the nature of the work involved, they are only one form of such evidence and must be considered along with the balance of the record in determining the actual nature of the work and the knowledge needed to perform it. OUTAGAMIE COUNTY, DEC. NO. 21143-A (WERC, 10/86).

There is evidence in the record that may support the City's claim that the appraisers satisfy the first three components of the Sec. 111.70(1)(L)1, Stats., definition of a professional employee. The work performed by the City's appraisers is intellectual and varied to some degree, involves some exercise of discretion and judgment, and is such that the output produced or the result accomplished would be difficult to standardize in relation to a given period of time. Whether these traits are present with regard to the disputed positions in sufficient degree, however, we need not determine, because the appraisers at issue in this case fail to meet the fourth necessary component of the definitional standard. As we have held repeatedly in the past, appraiser/assessor work does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. *See, e.g.*, TOWN OF VERNON, DEC. NO. 24967 (WERC, 11/87), CITY OF RACINE, DEC. NO. 17724 (WERC, 4/80), CITY OF WISCONSIN RAPIDS, DEC. NO. 11897 (WERC, 5/73), CITY OF OAK CREEK, DEC. NO. 10890 (WERC, 3/72); CITY OF KENOSHA, DEC. NO. 7529-A (WERC, 6/66).

As stated above, we generally have viewed “a prolonged course of specialized intellectual instruction and study” as being met by a four year specialized degree. Although the City requires bachelor's degrees from its appraisers, such a requirement does not make the City's appraisers professionals. An individual is certified as an assessor after successfully passing an examination administered by the State of Wisconsin Department of Revenue. No advance degree or specialized course of study is required to sit for the exam, and the many methods of preparing for the examination do not involve earning a specialized four year degree. We have considered the City's assertion that a bachelor's degree provides a good foundation for doing the appraiser work and that some of the specific classes taken by its appraisers in the process of acquiring a four-year degree, such as statistics and economics, have been helpful and relevant in sitting for the examination and doing the work. Such a general educational background, however, does not rise to the level of specialized instruction,

and a few specific classes do not constitute a prolonged course of study, both of which are required by the statute. Given all of the foregoing, it continues to be our view that the knowledge needed to perform the work of an appraiser is still not customarily acquired through a four year specialized degree. Thus, the appraisers are not professional employees within the meaning of Sec. 111.70 (1) (L), Stats.

Given our conclusion that the appraisers are not professional employees, we turn to the City's argument that it is nonetheless inappropriate to include the appraisers in the non-professional unit because they lack a community of interest with said non-professional employees.

### **Appropriateness of Bargaining Unit Inclusion**

As reflected in Finding of Fact 1, the bargaining unit into which the Union seeks to include the appraisers was established by Commission Decision 20916. Review of that 1983 decision indicates that the City and the Union then agreed to a broadly defined bargaining unit that included all non-professional employees of the City except those already included in existing bargaining units. The parties later voluntarily modified (and shortened) the unit description reflected in decision 20916 to define the scope of the unit by the work location of the non-professional employees, i.e. "City Hall and related buildings". The Commission, by its action in Decision 20916, ratified the parties' agreement that this broad grouping of various employees and job classifications was "an appropriate bargaining unit" and both that ratification and the parties' subsequent modification thereof were consistent with the Sec. 111.70(4)(d)2. a., Stats. directive that the Commission shall "avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force." In such circumstances, the parties and the Commission have already in effect considered community of interest issues along with the above quoted directive in Sec. 111.70 (4)(d) 2.a., Stats and concluded that all employees who fit within the scope of the unit are "appropriately" therein included. Thus, where, as here, a broad but "appropriate" unit already exists, no "community of interest" analysis need be done and our role is limited to determining whether the scope of the unit, in this case non-professional employees who "work in City Hall and related buildings", applies to the disputed employees. See BROWN COUNTY, DEC. NO. 11983-J (WERC, 3/06), Aff'd Cir. Ct. Brown, Case 2006CV0566 (8/07). As evidenced by the fact that the Department's Office Technician and Property Appraisal Technician are included in the unit, it is apparent that the work location of the appraisers falls within the scope of the unit and thus they are appropriately included therein, subject to the City's argument that the Commercial/Residential Appraiser (Rubow) is a supervisor or managerial employee who thus cannot be so included

### **Supervisory Status**

A supervisor is defined in Sec. 111.70(1)(o)1, Stats., 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.

When applying this statutory definition, we consider the following factors:

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 person exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the alleged supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the alleged supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the alleged supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TOWN OF BROOKFIELD, DEC. NO. 26426 (WERC, 4/90).

Not all of the above factors need to reflect supervisory status for an employee to be found a supervisor. Rather, the inquiry in each case is whether the factors are present in sufficient combination and degree to warrant the conclusion that the employee occupying the position is a supervisor. CITY OF GREEN BAY, DEC. NO. 31417 (WERC, 8/05).

Applying the foregoing factors to this case, we conclude that Rubow is not a supervisor.

We conclude that Rubow has limited supervisory authority under the criteria listed in Factor 1. While it is true that Rubow served, with the City Assessor, on the three-person committee that resulted in the hiring of Pfothenhauer, and that he participated in the preparation

for the interviews, posed questions during the interview, and graded and provided input with regard to the candidates, it is clear that, as the Department head, Giese has final decision-making authority with regard to hiring and would not defer to Rubow's judgment if they disagreed over who to hire. As we have held in other cases, participation in the hiring process without the effective authority to make a hire does not establish supervisory status. BAYFIELD COUNTY (HIGHWAY DEPARTMENT), DEC. NO. 31291 (WERC, 3/05). Aff'd Ct. App. Dist III 2006AP720 (7/07). Further, we believe that Rubow's ability to discipline or effectively recommend discipline of employees is also limited. Although Rubow stated that he felt he had the authority to suspend or discharge a Department employee, he contradictorily indicated that he would check with Giese, unless she was absent, before sending someone home for inappropriate behavior. Similarly, although testimony was provided suggesting that Rubow has exercised the authority to counsel employees regarding performance issues in the past, he also indicated that he dealt with at least one such instance by consulting with the Giese and following her instructions to document his observations, in case the need for discipline arose in the future. Given all of the foregoing, we conclude that Rubow does not have the effective authority to hire or to independently impose or effectively recommend suspension or discharge.

Rubow will play a role in any transfer or promotion decisions (there have been none thus far) within the Department but the record is inconclusive as to whether that role will rise to the level of an effective recommendation.

As to Factor 2, we are satisfied that Rubow has some authority to assign and prioritize work, but this authority is exercised primarily within the confines of pre-established Department standards prioritizing how work is to be completed.

As to Factor 3, Rubow directs the work of four people. The City Assessor exercises supervisory authority over the same four individuals.

Regarding Factor 4, the Commercial/Residential Appraiser duties were essentially inherited from the recently eliminated position of Deputy Assessor which position the City asserts was supervisory. Rubow is paid less than the Deputy Assessor. Nonetheless, we are persuaded that at least a portion of the salary differential between Rubow and the Property Appraisers and the Technicians is attributable to his role directing their work.

As to Factors 5 and 6, Rubow spends almost all of his time performing appraiser work. While we do not disagree with the City that the frequency with which an employee exercises supervisory authority is not necessarily determinative of supervisory status, we are influenced in this case by Rubow's credible testimony that he spends the vast majority of his time performing the same type of work as those he allegedly supervises.

As to Factor 7, it is clear that Rubow feels compelled, in many situations, to consult with the City Assessor before taking action that affects Department employees. He would consult with her about an employee who refused to complete a work assignment or prior to sending an employee home for inappropriate behavior; and he defers to her authority to grant



leave of absence or sick leave and to approve the enlistment of temporary workers. The occasions on which Rubow exercises independent judgement and authority are primarily limited to those rare instances in which Giese is absent and Rubow is obligated to step into her shoes. As we have held in the past, CITY OF WISCONSIN RAPIDS, DEC. NO. 11897 (WERC, 5/73), such isolated instances are not sufficient to result in an employee's exclusion from the bargaining unit as a supervisor.

Based on the foregoing, we conclude that Rubow is not a supervisor. He does not have the authority to effectively recommend hiring, or to independently impose or effectively recommend suspension or discharge. He does not exercise significant independent judgment when he directs the work of other Department employees and spends the vast majority of his time performing the same type of work as they do.

### **Managerial Status**

In MILWAUKEE V. WERC, 71 WIS. 2D 709, at 716 (1976), the Wisconsin Supreme Court affirmed the Commission's definition of managerial employee as:

. . . those who participate in the formulation, determination and implementation of management policy or possess effective authority to commit the employer's resources.

The Court went on to discuss why the policy component of the Commission's managerial definition was consistent with the Municipal Employment Relations Act, stating the following:

The exclusion of management personnel, as well as certain other categories, such as supervisors and executives, indicates that not all municipal employees are to have the benefit of dispute resolution through collective bargaining. However, the ability of a certain category of employees to effectuate and implement management policy does not necessarily indicate that they should be precluded from protection by the statute. The definition that has been formulated by WERC effectively distinguishes those categories of employees whose interests are shared by persons engaged in a managerial capacity from those categories who are otherwise employed. By defining the managerial exclusion so as to encompass those who formulate and determine policy, as well as implement it, WERC formulated a definition which is consistent with the purposes of the Act and the legislatively expressed intent to exclude managerial employees.

Id. at 717.

Thus, it is clear that to be a managerial employee based on one's policy role, the employee must "formulate and determine policy, as well as implement it." Thus, for instance, applying this policy test for managerial status in EAU CLAIRE COUNTY V. WERC, 122 WIS. 2D

363 (1984), the Court of Appeals concluded that a register in probate was not a policy-based managerial employee because the circuit court had final approval over all of the position's activities.

Lastly, it is important to emphasize that not all policy determinations qualify an individual as a managerial employee. Consistent with the purpose of the managerial exclusion as one which serves to distinguish individuals whose interests are distinct from those employees in the bargaining unit, policy making must be at a "relatively high level" to warrant managerial status. TAYLOR COUNTY, DEC. NO. 24261 (WERC, 7/97).

As noted above, the second path to managerial employee status involves the effective authority to commit the employer's resources. In KEWAUNEE COUNTY V. WERC, 141 WIS. 2D 347, at 355, (1987), the Court of Appeals affirmed the Commission's determination that "effective authority to commit the employer's resources" at a managerial level means possessing:

. . . the discretionary power to determine the type and level of services to be provided and the manner and means by which those services will be delivered.

and involves:

. . . determining the services required, the number of person necessary to deliver those services, and the quantity and type of equipment and supplies required to provide those services.

Here, the Commercial/Residential Appraiser neither makes policy nor has the ability to commit the City's resources in such a way so as to make him a managerial employee.

Although the City argues that Rubow has set policy with regard to uncollected tax bills, this event seems to have occurred on an isolated basis in the past. Rubow, in his testimony, was not able to identify any way in which he has been responsible for setting Department policy. In any event, any role that Rubow could assume with regard to setting policy for uncollected tax bills does not rise to the high level policy making required to confer managerial status.

As for the ability to commit the employer's resources, Rubow's involvement is also limited. Out of a desire to involve the staff in the budget process, Giese invites all of the staff to provide budgetary input. Although Pfothenhauer has not been employed long enough to do so, both Rubow and Krueger have. Further, Giese plans to increase Rubow's budgetary involvement in the future. However, it is clear that Giese retains the ultimate budgetary authority.

Rubow can independently authorize overtime and compensatory time and can enlist temporary employees if there are funds in the account earmarked for paying for such help,

even though he typically seeks Giese's approval prior to doing so. Rubow's authority in this regard is ministerial and falls far short of the type of resource authority that confers managerial status. SHAWANO COUNTY, DEC. NO. 15257 (WERC, 3/77).

Given the foregoing, we conclude that Rubow is not a managerial employee.

**Summary**

We have concluded that: (1) the appraisers are not professional employees; (2) it is appropriate to include them in the existing non-professional unit; and (3) Rubow is not a supervisor or a managerial employee. Therefore, we have ordered that the two Property Appraisers and the Commercial/Residential Appraiser be added to the bargaining unit identified in Finding of Fact 1.

Dated at Madison, Wisconsin, this 17th day of September, 2007.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

Judith Neumann /s/

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Judith Neumann, Chair

Paul Gordon /s/

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Paul Gordon, Commissioner

Susan J. M. Bauman /s/

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Susan J. M. Bauman, Commissioner