

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
: :
KEWAUNEE COUNTY HIGHWAY :
DEPARTMENT EMPLOYEES, LOCAL : Case VI
1470, AFSCME, AFL-CIO : No. 32274 ME-2285
: Decision No. 21344
: :
Involving Certain Employees of :
: :
KEWAUNEE COUNTY :
(HIGHWAY DEPARTMENT) :
: :

Appearances:

Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Post Office Box 370, Manitowoc, Wisconsin 54220 appearing on behalf of Kewaunee County Highway Department Employees, Local 1470, AFSCME, AFL-CIO.
Nash, Spindler, Dean & Grimstad, Attorneys at Law, by Mr. John M. Spindler, 201 East Waldo Boulevard, Manitowoc, Wisconsin 54220, appearing on behalf of Kewaunee County.

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

Kewaunee County Highway Department Employees, Local 1470, AFSCME, AFL-CIO, having on September 30, 1983, filed a petition with the Wisconsin Employment Relations Commission requesting that the Commission clarify an existing bargaining unit to include two positions, Solid Waste Manager and Solid Waste Manager Assistant, in an existing voluntarily recognized bargaining unit of all employes of the Kewaunee County Highway Department but excluding supervisory, executive and clerical employes; and hearing in the matter having been held on November 9, 1983, at Kewaunee, Wisconsin before Examiner Mary Jo Schiavoni, a member of the Commission's staff; and a transcript of said proceedings having been prepared and received on November 22, 1983; and both parties having waived the filing of briefs and making of oral argument; and the Commission having considered the evidence and the positions of the parties, and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusion of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That Kewaunee County, hereinafter referred to as the County, is a municipal employer having its offices at 713 Vliet Street, Kewaunee, Wisconsin; and that among its principal governmental functions is the operation of a highway department and a solid waste landfill.
2. That Kewaunee County Highway Department Employees Local 1470, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization representing employes for the purposes of collective bargaining; and that its offices are at P.O. Box 370, Manitowoc, Wisconsin.
3. That the Union represents all employes of the Kewaunee County Highway Department receiving compensation based on hourly rates, but excluding administrative, executive, salaried supervisory and salaried office personnel; and that at all times material herein, the Union and the County have entered into successive collective bargaining agreements covering the wages, hours, and working conditions of employes in the above voluntarily recognized unit.

4. That in January of 1983, the County created two new job positions to operate the newly established landfill site; that on January 14, 1983, the County hired two applicants for these positions of Solid Waste Manager and Solid Waste Manager Assistant; and that in February of 1983, Solid Waste Manager William Maigatter and Solid Waste Manager Assistant Daniel Fager commenced employment at the landfill site.

5. That on September 30, 1983, the Union filed a petition with the Wisconsin Employment Relations Commission requesting the positions of Solid Waste Manager and Solid Waste Manager Assistant be unconditionally included in the existing bargaining unit described in Finding of Fact 3 above; and that the County, contrary to the Union, contends that Maigatter and Fager are managerial employes and should therefore be excluded from the bargaining unit.

6. That both positions are part-time positions wherein the Solid Waste Manager and the Solid Waste Manager Assistant work three days a week or approximately twenty-four hours a week; that Maigatter and Fager are responsible for the operation of the landfill; that they weigh and sort the waste materials determining what may be reclaimed and sold, what needs to be baled and what may be hauled directly to the site for burial; that they bale materials and haul them to the site where they operate heavy earth moving equipment, such as a Caterpillar and front end loader, to bury the waste materials; that approximately seventeen of the twenty-four hours are spent in the actual processing of the waste as described above; that in addition to processing the waste, Maigatter and Fager perform minor maintenance upon the equipment, but that more substantial repair work is performed by Highway Department employes; that Maigatter and Fagan also collect monies from haulers for casual use of the landfill and keep a daily record of all tonnage received as well as all accounts receivable, but that they do not handle monthly billing to private haulers; that they do, however, issue receipts for checks and monies received and deposit same once every two weeks with the County Treasurer; that Maigatter and Fager informally work out their schedules, compensatory time, and absences between themselves; that they meet with the County's Solid Waste Committee with respect to operation of the landfill; that they have established a procedure for sorting and selling recyclable waste to independent haulers and are developing a land reclamation policy; that Maigatter and Fager assisted in the preparation of the budget for the solid waste operation, but that several of the items such as salaries, convention and dues allotments, travel, and outside contracts with a consulting firm were determined by the County's Solid Waste Committee without their input and that the remaining items are basically projections of current or anticipated future expenses; that although Maigatter and Fager have the ability to make purchases for the landfill, these purchases are relatively routine in nature, and except for one order of baling wire, relatively inexpensive; and that, at least as of the date of the hearing, neither Maigatter nor Fager participate to a significant degree in the formulation and implementation of policy as it relates to the County's solid waste program.

7. That there are no other unrepresented non-professional, non-supervisory full-time or regular part-time employes employed by the County; that there are three established bargaining units of County employes in the County: a unit of courthouse and clerical employes, a unit of law enforcement employes, and a unit of highway department employes; that, similar to the highway department employes, the Solid Waste Manager and Solid Waste Manager Assistant operate heavy equipment and are responsible for its maintenance; that the positions of Solid Waste Manager and Solid Waste Manager Assistant have a substantial community of interest with other employes of the County included in the highway department bargaining unit represented by the Union.

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

CONCLUSION OF LAW

1. That, since the positions of Solid Waste Manager and Solid Waste Manager Assistant are not managerial in nature, the occupants of said positions are "municipal employes" 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 and issues the following

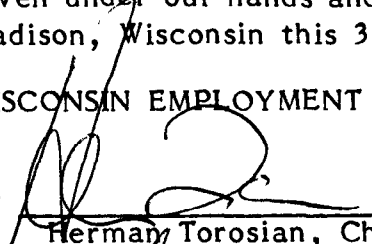
ORDER CLARIFYING BARGAINING UNIT 1/

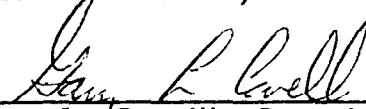
That the positions of Solid Waste Manager and Solid Waste Manager Assistant are appropriately included in the highway department employees' collective bargaining unit represented by the Union.

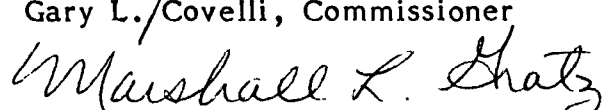
Given under our hands and seal at the City of Madison, Wisconsin this 31st day of January, 1984.

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 (Footnote Continued on Page Four)

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

The County, at the hearing, argued that both the Solid Waste Manager and the Solid Waste Manager Assistant positions currently occupied by William Maigatter and Daniel Fager are managerial in nature. It stresses that these individuals are salaried employes who establish their own hours and handle substantial funds for the County. According to the County, both Maigatter and Fager develop the solid waste program's budget and have authority to commit the County's resources.

The Union, on the other hand, asserts that neither position is managerial and argues that these employes share a community of interest with employes in the highway department collective bargaining unit. It requests that they be included unconditionally in this existing collective bargaining unit.

The evidence adduced at hearing reveals that both Maigatter and Fager spend approximately seventeen out of their twenty-four working hours in actually processing the waste materials at the landfill. The remainder of their time is divided between collecting monies or fees from haulers, recording the tonnage of the waste received along with the monies owed for said receipt, and generally maintaining the facility and equipment. Although the County contends that both positions are managerial, a thorough review of the record indicates that neither employe, at least to date, is a "managerial" employe. We have consistently held that in order for an employe to be found to be a managerial employe, said employe must participate in the formulation, determination, and implementation of policy to a significant degree or must have the effective authority to commit the municipal employer's resources. 2/

The record does not establish that Maigatter and Fager participate in the formulation, determination and implementation of the County's solid waste program to any significant degree. They did not participate in determining the number of days or number of hours on which the landfill is to be open nor did they participate in setting fees for the haulers. Although the record reveals that Fager and Maigatter arranged for certain waste materials to be sorted, set aside, and sold to recycling firms, and are responsible for land reclamation procedures, such activities, even in combination with their participation in developing the budget, are insufficient to establish that they participate in the formulation, determination and implementation of policy to a significant degree.

With respect to the second aspect of the standard, the effective authority to commit the municipal employer's resources, the Commission has held that this power involves the authority to establish an original budget or to allocate funds for differing purposes from such a budget. The power must not be merely ministerial such as the authority to spend money from a certain account for a specified purpose. 3/ While Maigatter and Fager do participate in developing the budget, there is no evidence that they enjoy the power to establish an original budget or to deviate from the budget established by the County's Solid Waste Committee. Most of the items in the budget such as salaries, convention and dues allotments, travel expenses and outside consulting contracts were determined by the members of the County's Solid Waste Committee without their input; and the remaining items were merely projections of current fixed expenses or projections of anticipated future expenses at the landfill site. With respect to their authority to make purchases for the landfill site, the evidence establishes that these purchases, with the exception of one major order for baling wire, are for inexpensive or low cost items. Thus, their authority is more ministerial than managerial in nature. Accordingly, it is concluded that neither the Solid Waste Manager nor the Solid Waste Manager Assistant possesses the type of authority necessary in committing the County's resources, nor do they participate in the formulation,

2/ Oneida County (9134-D) 7/83; Green County (16270) 3/78; City of Wausau (14807) 7/76; Door County (14810) 7/76.

3/ Ondossagon School District (19667) 6/82.

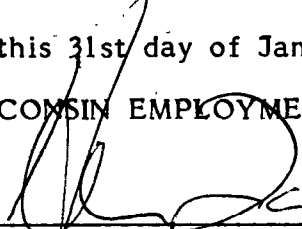
implementation, or determination of the County's solid waste program to such a degree or in such a manner, to be sufficient to warrant their exclusion as managerial employes within the meaning of the Municipal Employment Relations Act.

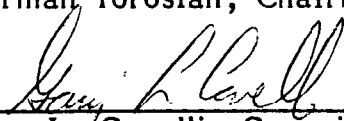
The record reveals that there are three established bargaining units in the County: courthouse and clerical employes, law enforcement employes, and highway department employes. There are no unrepresented non-professional or non-supervisory employes employed by the County, other than Maigetter and Fager. In light of the anti-fragmentation policy of the Commission a separate solid waste unit would be inappropriate. Based on the similarity in job functions, we find that the Solid Waste Manager and Solid Waste Manager Assistant should be included in the highway department employes bargaining unit. They operate heavy equipment as do the highway department employes and are responsible for the maintenance of this equipment as are certain employes in the highway department bargaining unit. Their unconditional inclusion in the highway department employes' bargaining unit represented by the Union is, therefore, appropriate.

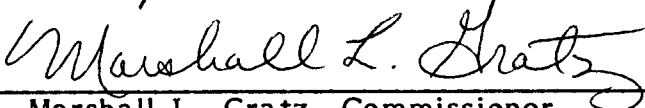
Dated at Madison, Wisconsin this 31st day of January, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


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