

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 DANE COUNTY JOINT COUNCIL OF :
 UNIONS, AFSCME, AFL-CIO :
 :
 Involving Certain Employees of :
 :
 DANE COUNTY :
 :

Case 91
 No. 32194 ME-2280
 Decision No. 21397-B

Appearances:

- Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, appearing on behalf of the Union.
- Ms. Judith H. Toole, Assistant Corporation Counsel, Dane County, 210 Monona Avenue, Madison, Wisconsin 53709, appearing on behalf of the County.

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

Dane County Joint Council of Unions, having on May 3, 1984, petitioned the Wisconsin Employment Relations Commission to clarify a bargaining unit consisting of all employes of Dane County excluding supervisory employes, law enforcement employes, non-clerical employes of the highway, exposition center and airport departments, confidential employes, professional employes and craft employes to determine whether the position of Administrative Services Supervisor I should be included in said unit; and a hearing having been held on June 6, 1984, in Madison, Wisconsin before Examiner Daniel L. Bernstone, a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared and submitted to the Examiner on June 26, 1984, and Dane County having submitted a brief on November 23, 1984; and the Dane County Joint Council of Unions having reserved the right to file a reply brief and having notified the Examiner on February 14, 1985, that it would not be filing a reply brief; and the Commission, being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. That Dane County, hereinafter referred to as the County, is a municipal employer maintaining its principal offices at City-County Building, 210 Monona Avenue, Madison, Wisconsin.
2. That Dane County Joint Council of Unions, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization maintaining its principal offices at 5 Odana Court, Madison, Wisconsin.
3. That the current collective bargaining agreement between the County and the Union contains the following recognition clause:

ARTICLE I
Recognition

The Employer recognizes the Union as the exclusive bargaining representative for all employees as hereinafter defined except the following: Supervisory employees; law enforcement employees of the Sheriff and Traffic Departments; non-clerical employees of the Highway, Exposition Center and Airport Departments; confidential employees; professional employees as defined by Wisconsin Statutes 111.70 and craft

employees so certified by the Wisconsin Employment Relations Commission, for the purposes of conferences and negotiations with the Employer, or its authorized representative on question of wages, hours and other conditions of employment.

Employees defined as regular full-time or regular part-time (permanent) appointed according to the Civil Service procedure who shall have all of the rights, benefits and responsibilities of this Agreement. A regular full-time employee is one who is regularly scheduled to work forty (40) hours per week. A regular part-time employee is one who is regularly scheduled to work less than forty (40) hours per week.

Employees defined as Limited Term Employees (LTE) shall be covered by the terms of Article III and Appendix B. Any disagreement as to the application of Article III and Appendix B shall be resolved in accordance with Article V.

4. That on May 3, 1984, the Union filed a petition requesting the Commission to clarify whether the position of Administrative Services Supervisor I should be excluded from the bargaining unit described in Finding of Fact 3 above.

5. That Carol Little is the Dane County Clerk and in that position is responsible for the administration of County Board proceedings, committee proceedings, marriage licenses, hunting and fishing licenses, the account for Dane County, and the administration of County-wide elections; that at the time of the hearing in the instant matter, Little had been in that position for one and one-half years; that on July 26, 1982, Carol Little's predecessor requested that the Dane County Department of Administration conduct a review of the duties, responsibilities and operations of the County Clerk's office; that the purposes of the review were to settle some longstanding classification issues and to analyze office operations in the hopes of improving productivity; that Marc Wirig has been employed by the County for approximately 7 1/2 years, during the last year and a half of which he has been serving in the capacity of Employee Relations Manager; that prior to then he was the County's Assistant Personnel Manager; that he is familiar with the County's classification system and one of his primary job responsibilities has been to be involved with job reclassifications and making recommendations to department heads about reorganizations and restructurings to achieve efficiencies on the job; that Wirig conducted a study and recommended the County Clerk's office have a first line supervisor; that the recommendation was made as a result of that study, in connection with the organization of Carol Little's office; that Patricia Roller, employed in the County Clerks office as the County Board and Elections Clerk, retired in April of 1984; that Roller had occupied that position at the time of her retirement and upon her retirement that position was restructured and reclassified to the position of Administrative Services Supervisor I, and has since then been occupied by Rilla Belle Leigh; that the Administrative Services Supervisor I which is now occupied by Rilla Belle Leigh, was created in accordance with the recommendations of the Department of Administration; that the salary range for the position of Administrative Services Supervisor I is from \$17,740.00 to a maximum of \$21,225.00; that at the time the position of Administrative Services Supervisor I was created, the position of County Board Election's Clerk was eliminated on the recommendation of Carol Little; that it was only upon the retirement of Roller in April of 1984 that Carol Little felt the recommendation to create the Administrative Services Supervisor I position could be implemented, and that is why it was done at that time.

6. That Rilla Belle Leigh has occupied the position of Administrative Services Supervisor I since May 14, 1984; that prior to her assuming that position she occupied the position of Account Clerk II in the County Clerk's office for a little over one year; that prior to that she was a Clerk 4 in the Dane County Controller's division, which position she occupied since approximately 1966; that prior to her assuming the position of Administrative Services Supervisor I she was in the bargaining unit; that Leigh supervises three and one-half permanent full-time positions occupied by four persons in the clerk's division of the County Clerk's office, has sole authority for hiring LTE's in the clerk's division, and

has already hired and fired an LTE which did not require anyone else's approval; that before the creation of the Administrative Services Supervisor I position, Carol Little was not always available to exercise direct supervisory authority over the employees in the clerk's division, and that was one of the reasons the Administrative Service Supervisor I position was created; that Little spends a good deal of her time in the field, and therefore concluded there was a need for a front line supervisor in her office; that Rilla Belle Leigh supervises the activities of administrative support personnel and has responsibility for effectively recommending hiring, making decisions with respect to probationary employees, taking disciplinary action, doing performance evaluations, adjusting grievances, being involved in layoffs, and training new employees; that approximately thirty-five percent (35%) of Leigh's time is involved in the management and direction of election operations, which includes but is not limited to the following activities: advising local clerks of changes in election laws, reviewing nomination papers for compliance with state statutes, reviewing financial statements for compliance with state statutes, formulating and conducting training seminars for municipal clerks, advising candidates on election laws, preparing ballots, newspaper notices, overseeing election night activities, committing County funds pursuant to the election budget, ordering and maintaining supplies and files, and developing and maintaining an elections procedure manual; that approximately 25 percent of Leigh's time is involved in supervising administrative support staff, effectively recommending hiring of new employees, conducting probationary reviews and meting out disciplinary action, up to and including discharge, drafting performance evaluations and playing a leadership role in the performance evaluation interview; orienting and training new employees and being responsible for assigning and directing the work force, including the assignment of overtime; and that approximately 10 percent of Leigh's time is involved in serving in the absence of the County Clerk to provide statutorily mandated services to the County Board at County Board meetings.

7. That in the position of Administrative Services Supervisor I, Rilla Belle Leigh reports to Carol Little, the Dane County Clerk; has the authority to hire limited term employees in the interest of the County; that she has authority to effectively recommend hiring of permanent employees and will play a leading role in recommending permanent full-time positions in the very near future; that she has the authority to effectively recommend the promotion of employees; that Leigh has authority to transfer work from one employee to another and does not need prior approval from anyone in order to do so; that she has authority to suspend employees in the interest of the County and specifically, may mete out a three day suspension without prior approval of anyone; that she has the authority to discipline employees verbally and in writing and has authority to layoff or effectively recommend the layoff of employees; that she has the authority to effectively recommend the discharge of employees who are under her control and in such a situation, she would consult with Little, and while Little would have the final authority, she would give serious consideration to the recommendation of Leigh; that Leigh has authority to sign paychecks of employees as well as the authority to approve their sick leave and vacation requests; that she will conduct evaluations on a regular basis of the employees who work under her, and as a result of those evaluations, she will make recommendations as to the granting or denial of merit increases for those employees; that Leigh has authority in the interest of the County to adjust grievances of employees under her, and has the authority to authorize overtime of those employees without seeking prior approval of anyone, provided that the overtime is within the budgetary limits assigned to her; and that Leigh is responsible for the work performed by those employees under her control and is expected to exercise independent judgment in the performance of the aforementioned duties on a daily and continuous basis.

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

CONCLUSION OF LAW

That Rilla Belle Leigh, the occupant of the position of Administrative Services Supervisor I, is a supervisor within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act.

Based upon the foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

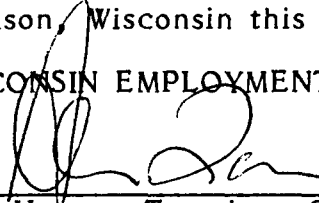
ORDER CLARIFYING BARGAINING UNIT 1/

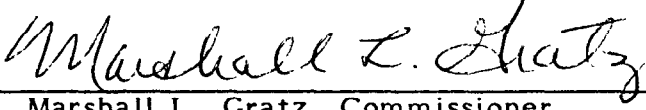
That Rilla Belle Leigh, the occupant of the position of Administrative Services Supervisor I be, and hereby is, excluded from the bargaining unit set forth in Finding of Fact 3 above.

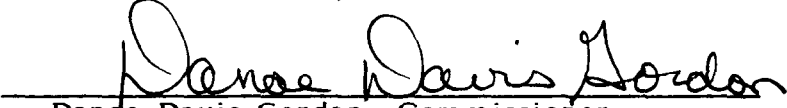
Given under our hands and seal at the City of Madison, Wisconsin this 2nd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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 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 (Footnote 1 Continued on Page 5)

1/ (Continued)

proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.20 upon which petitioner contends that the decision should be reversed or modified.

. . .

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

Note: For purposes of the above-noted statutory time-limits, the date of Commission service of this decision is the date it is placed in the mail (in this case the date appearing immediately above the signatures); the date of filing of a rehearing petition is the date of actual receipt by the Commission; and the service date of a judicial review petition is the date of actual receipt by the Court and placement in the mail to the Commission.

DANE COUNTY

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

The County argues that the position of Administrative Services Supervisor I currently occupied by Rilla Belle Leigh, is supervisory in nature and should be excluded from the bargaining unit. It contends there is no question that Leigh possesses supervisory powers and responsibilities in sufficient combination and degree to warrant the conclusion that she is a supervisor. As a secondary argument, the County asserts that the position of Administrative Services Supervisor I is managerial and should be excluded from the bargaining unit on that basis as well. The Union argues that the position of Administrative Services Supervisor I in the County Clerk's office is in fact that of a lead worker. It asserts that the occupant of this position will, and must in fact, perform bargaining unit work. It contends that there are four workers whose activities Ms. Leigh may well in fact supervise but that the position has not been in existence long enough for the Commission to make a determination as to whether or not the position will in fact supervise employees rather than work.

DISCUSSION

Section 111.70(1)(o)1., Stats., defines "supervisor" as follows:

1. As to other than municipal and county fire fighters, 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.

In determining whether a position is supervisory in nature the Commission considers 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 workforce;
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/her skills or for his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of this time supervising employees; and,
7. The amount of independent judgment exercised in the supervision of employees. 2/

2/ City of Milwaukee, Dec. No. 6960 (WERC, 12/64); City of Manitowoc, Dec. No. 18590 (WERC, 4/81).

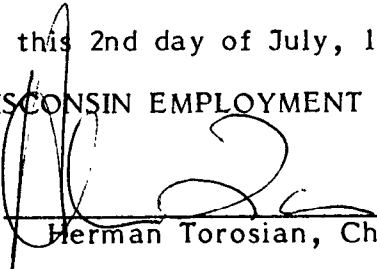
Not all of the above factors considered by the Commission in determining supervisory status need be present, but if they appear in sufficient combination and degree the Commission will find an employe to be a supervisor. 3/

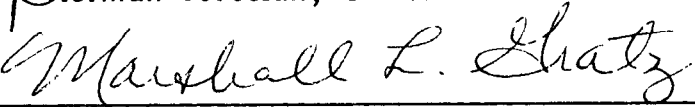
The duties of the Administrative Services Supervisor I in the Dane County Clerk's office are of such a nature that we are satisfied the relevant factors are present in sufficient combination and degree to warrant the conclusion that Rilla Belle Leigh is a supervisor. Contrary to the Union's contention, we conclude that the position has been in existence sufficiently long for the Commission to make a determination of Ms. Leigh's supervisory status. She already supervises three and one-half permanent full-time positions occupied by four persons. She is salaried and possesses the sole authority to hire and fire LTE's in the clerk's division of the Dane County Clerk's office, which authority has already been exercised by her in that she has hired an LTE whom she later terminated. She has the authority to effectively recommend the hiring of other employes. She has the authority to suspend employes and may mete out a suspension of up to three (3) days without consultation with, or approval from anyone. She has the authority to transfer work from one employe to another. She has authority to effectively recommend the lay off of employes. Since the Dane County Clerk, Carol Little, must spend a great deal of her time out of her office, Leigh must therefore supervise the activities of administrative support personnel. Further evidence of Leigh's supervisory status is the fact that approximately thirty-five percent (35%) of her time will be devoted to the management and direction of election operations. Additionally, she has the authority to sign employes' paychecks as well as the authority to approve sick leave and vacation requests. She has the authority to effectively recommend the promotion of employes. On a regular basis, she will conduct evaluations of the employes she supervises and will thereafter recommend the granting or denial of merit increases for those employes. She has the authority to grant overtime for employes supervised by her so long as said overtime is within budgetary limitations assigned to her. Furthermore, Leigh has the authority to adjust employes' grievances and is expected to exercise independent judgment on a daily basis in the performance of all her responsibilities. In view of the foregoing, we conclude that Rilla Belle Leigh is a supervisor and should be excluded from the bargaining unit on that basis. Having excluded Rilla Belle Leigh based on her supervisory status, the County's secondary argument that Leigh could also properly be excluded from the bargaining unit on the ground that she is a managerial employe need not be addressed.


Dated at Madison, Wisconsin this 2nd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

3/ Dodge County, Dec. No. 17558-A (WERC, 2/81); City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).