

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

 In the Matter of the Petition of :
 :
 MADISON MUNICIPAL EMPLOYEES :
 LOCAL 60, AFSCME, AFL-CIO : Case XL
 : No. 32193 ME-2279
 Involving Certain Employes of : Decision No. 21633
 :
 JT. SCHOOL DISTRICT NO. 2, :
 CITY OF SUN PRAIRIE, ET AL. :
 :

Appearances:

Mr. Darold Lowe, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, WI 53719, appearing on behalf of the Union.
 Mulcahy & Wherry, S.C., Attorneys at Law, by Mr. John T. Coughlin, 131 West Wilson Street, P.O. Box 1110, Madison, WI 53703-1110, appearing on behalf of the District.

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

Madison Municipal Employees Local 60, AFSCME, AFL-CIO having, on September 16, 1983, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing certified bargaining unit by determining whether the position of Night Supervisor should be included in said unit; and hearing on the matter having been held in Sun Prairie, Wisconsin, on December 2, 1983 before Examiner Jane B. Buffett, a member of the Commission's staff; and a stenographic transcript of the hearing having been received on December 16, 1983; and the District having filed a brief on February 28, 1984; and the Union having notified the Commission on March 1, 1984 that it would not file a brief; and the Commission having considered the evidence and arguments 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 Madison Municipal Employees Local 60, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its offices at 5 Odana Court, Madison, WI 53719.
2. That the Jt. School District No. 2, City of Sun Prairie, et al., hereinafter the District, is a municipal employer having its offices at 220 Kroncke Drive, Sun Prairie, WI 53590.
3. That on June 6, 1983, following an election, the Commission amended the prior unit certification by certifying the Union as the exclusive bargaining representative of District employes in the following bargaining unit:

 all regular full-time and regular part-time clerical, custodial, maintenance and teacher aide employes of Jt. School District No. 2, City of Sun Prairie, et al., excluding supervisory, professional and confidential employes. 1/
4. That the Union initiated the instant proceeding by petitioning, on September 16, 1983, the Commission to clarify the bargaining unit described in Finding of Fact 3, above, by determining whether the position of Night Supervisor should be included in said unit; and that the District, contrary to the Union, asserts that said position should be excluded as supervisory.

1/ Decision No. 20459, (3/83).

5. That, prior to April, 1983, custodial workers on the second and third shifts were directed in their work assignments by the Night Custodian Supervisor, Jim Kiesow, a bargaining unit member, who spent a majority of his time performing work similar to that performed by the other custodial workers; that when Kiesow retired in April, 1983, the District eliminated said position; that in June, 1983, the District developed the position description for the Night Supervisor - Physical Plant as follows:

REPORTS TO: Manager - Physical Plant

SUPERVISES: All night custodial and maintenance personnel

JOB GOAL: The Night Supervisor - Physical Plant shall:

1. Act as the Assistant Manager - Physical Plant and, when necessary, fill in for the Manager - Physical Plant.
2. Work as a supervisor in training employees in care, cleaning, and protection of district facilities.
3. Assist the Manager - Physical Plant in the direction and evaluation of the District's buildings and grounds, custodial and maintenance programs.
4. Guide the development, implementation and evaluation of preservice and inservice training programs for all 2nd and 3rd shift custodial-maintenance personnel and others as directed.
5. Guide, direct and evaluate all 2nd and 3rd shift maintenance schedules, personnel assignments, and role descriptions.
6. Develop systems with custodians in all schools to establish the best and most efficient methods of accomplishing custodial duties and assigned tasks.
7. Conduct time studies in areas that are causing problems and direct the correction of the problems after consultation with the Manager - Physical Plant.
8. Prepare and maintain an inventory of custodial equipment and supplies.
9. Evaluate custodial materials and their uses.
10. Coordinate with principals, teachers, and other affected personnel to determine area conditions and time available to clean and correct problems.
11. Direct and complete such other responsibilities as may be assigned by the Manager - Physical Plant.

TERMS OF EMPLOYMENT:

Salary and work year to be established by the School Board.

6/1/83

and that in August, 1983, the District filled the position of Night Supervisor by hiring Bob Wilson.

6. That the Night Supervisor works varying hours during the second and third shift; that his immediate supervisor is the Manager of Physical Plant, Ray Laufenberg, who works first shift and supervises the eighteen employes at nine facilities on first shift; that the Night Supervisor directs and assigns twenty employes working on the second and third shifts at nine facilities; that he will

participate in the employment interviews of applicants for these positions, along with Laufenberg and the Director of Business Services, Mike Glowacki, and will be expected to recommend the applicant he believes should be hired; that the Night Supervisor can recommend promotions and discharges to Laufenberg and Glowacki; that he has the authority to administer discipline, such as sending home an employe who arrives at work in an unfit condition, and has verbally reprimanded two employes for leaving work early, which reprimands were documented with memos; that he assigns work to the twenty custodial employes on the second and third shifts and has the authority to transfer employes from building to building, to call in a relief worker, and to call in another employe for overtime when an employe is absent; that he approves vacation and time off requests and sends them to Laufenberg who signs the written request form, and that at the time of the hearing, all of his recommendations had been followed by Laufenberg; that he does not have authority to transfer employes from one shift to another; that he is paid on a salary, rather than an hourly, basis, does not receive overtime pay, and receives fringe benefits in accordance with the Administrative Pay Plan; that he spends approximately eighty per cent (80%) of his time supervising employes by moving from building to building to see that necessary work is done and to instruct employes in how the work should be done, for example, by showing an employe how to make a minor repair to a vacuum cleaner; that he spends twenty per cent (20%) of his time conferring with administrators, planning for future work needs to meet demands of school activities, and performing other administrative tasks; that he normally does not perform the tasks which are performed by the employes he supervises, such as running vacuums, scrubbers, waxers, or fixing light fixtures; that he does help out in situations of immediate need, such as helping unload a few cartons, but if more work were involved, such as the unloading of a truck, he would call another employe to help; and that the position description for Night Supervisor states that he must be able to lift seventy-five pounds, which requirement is based on the need to be able to lift and move equipment to check on employes' performance or to assist in emergency situations, rather than to perform custodial work on a regular basis.

7. That the position of Night Supervisor - Physical Plant possesses supervisory duties and responsibilities in sufficient combination and degree to be rendered a supervisor.

CONCLUSION OF LAW

That the position of Night Supervisor - Physical Plant is supervisory within the meaning of Section 111.70(1)(o) of MERA, and therefore that the occupant of said position is not 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 and issues the following

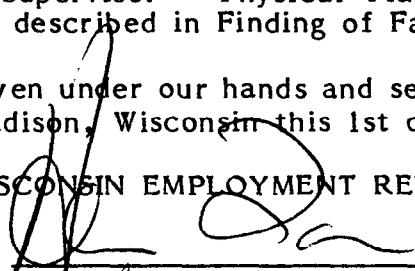
ORDER CLARIFYING BARGAINING UNIT 2/


That the position of Night Supervisor - Physical Plant be, and hereby is, excluded from the bargaining unit described in Finding of Fact 3.

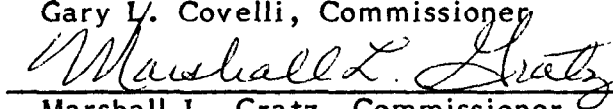
Given under our hands and seal at the City of
Madison, Wisconsin this 1st day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

2/ 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.
(Continued on page 4)

2/ (Continued)

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 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 Union contends that the position of Night Supervisor - Physical Plant should be included in the certified bargaining unit. The District asserts that the position is supervisory and therefore should be excluded from the unit.

In making such a determination, the Commission considers whether the following factors are present in such combination and degree so as to render the disputed position supervisory:

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;
7. The amount of independent judgment exercised in the supervision of employes. 3/

Application of these criteria to the Night Supervisor's functions unmistakably reveals that the Night Supervisor is a supervisor within the meaning of MERA. The Night Supervisor will be involved in the hiring, disciplining, evaluating performance annually, promoting and discharging of employes. As of the hearing, he has issued verbal reprimands to two employes. He gives initial approval of requests for vacations and time off. He spends all his time either in the direct supervision of work, or in planning and other administrative tasks. When employes are absent, he has authority to shift employes between buildings or tasks, call in the relief worker, or call in employes for overtime in order to get the work done. On occasion, he shows employes how to perform a task, such as repairing a small machine, and helps an employe with a task, such as unloading a few cartons from a truck, but if the work is more extensive, he calls other employes to help perform the work. He is not expected to perform, on a regular basis, the duties performed by the other custodial employes.

3/ Fond du Lac County 10579-A (1/72); and Kenosha County (Brookside Care Center) 19435 (3/82).


Inasmuch as the Night Supervisor directs the work force, has authority to effectively recommend hire, discipline, promotion and termination, and, normally does not perform the same work as is performed by the employes he supervises, the Commission is satisfied that the Night Supervisor position is supervisory and therefore, is excluded from the bargaining unit.

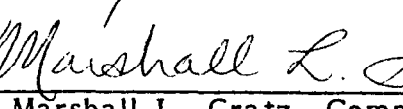
Dated at Madison, Wisconsin this 1st day of May, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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