

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**WASHBURN COUNTY PROFESSIONAL, TECHNICAL
AND CLERICAL EMPLOYEES UNION, LOCAL 2816, AFSCME, AFL-CIO**

Involving Certain Employees of

WASHBURN COUNTY

Case 16
No. 53060
ME(u/c)-791

Decision No. 21674-F

Appearances:

Mr. Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, WI 54751, appearing on behalf of Washburn County Professional, Technical and Clerical Employees Union, Local 2816, AFSCME, AFL-CIO.

Weld, Riley, Prenn & Ricci, S.C., by **Attorneys Kathryn J. Prenn and Christopher R. Bloom**, 3624 Oakwood Hills Parkway, P.O. Box 1030, Eau Claire, WI 54702-1030, appearing on behalf of Washburn County.

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

On November 30, 2000, Wisconsin Council 40, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to determine whether the position of Network Administrator should be included in the existing collective bargaining unit of Washburn County employees represented by Washburn County Professional, Technical and Clerical Employees Union, Local 2816, AFSCME, AFL-CIO.

No. 21674-F

Washburn County maintains that the incumbent in the position is both a supervisor and a managerial employee within the meaning of the Municipal Employment Relations Act and, therefore, should continue to be excluded from the unit.

A hearing on the petition was held at the Washburn County Courthouse in Shell Lake, Wisconsin, on May 15, 2001, before Stephen G. Bohrer, an Examiner on the Commission's staff.

The parties filed post-hearing briefs, the last of which was received on September 27, 2001, whereupon the record was closed.

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

FINDINGS OF FACT

1. Washburn County Professional, Technical and Clerical Employees Union, Local 2816, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization having its principal offices c/o Steve Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751.

2. Washburn County, hereinafter the County, is a municipal employer having its principal offices at 110 West Fourth Avenue, Shell Lake, Wisconsin 54871.

3. The Union is the exclusive bargaining representative for a bargaining unit of County employees described in the parties' 2000-2002 collective bargaining agreement as follows:

. . . all regular full time and regular part time employees employed by Washburn County in the Courthouse, Human Services Department and related departments, including professional employees, but excluding Highway Department "blue collar" employees, law enforcement employees, elected officials, supervisory, managerial, confidential, and casual employees.

4. The County has an Information Technology Department (formerly titled Data Processing) whose basic function is to provide and maintain a computer network system of between ten and fifteen servers for various departments in the County. The Department is currently staffed with four employees: Director Thomas Miller, incumbent Network Administrator Mary Evich, PC Technician Debbie Perry, and Administrative Assistant II Julie Thayer.

Under the County's organizational structure, Perry reports to Evich, and Evich and Thayer report to Thomas Miller. These four employees' offices are located in a large room in the lower level of the County Courthouse at 110 West Fourth Avenue, Shell Lake, Wisconsin. Director Thomas Miller reports to the County's Administrative Coordinator/ Personnel Director Michael D. Miller.

The number of employees in the Department has grown since its inception in 1996. Incumbent Mary Evich was originally hired in 1998 as the Department's first PC Technician and, at that time, reported to Thomas Miller. On February 27, 2000, Evich left the PC Technician position and became the Department's first Network Administrator where she continued to report to Thomas Miller. On April 3, 2000, the County hired another PC Technician who reported to Evich. That PC Technician was involuntarily terminated effective February 9, 2001. For purposes of this case, that employee shall be referred to as the 2000 PC Technician. On April 9, 2001, the County hired Debbie Perry as the PC Technician and Perry continues to hold that position. For purposes of this case, that employee shall be referred to as the 2001 PC Technician.

5. Evich's Position Description, dated September, 1999, states, inter alia, the following:

Purpose of Position

The purpose of this position is to administer computer network systems; implement and configure network hardware and software; establish and maintain network security procedures and administrative policies. The work is performed under the general direction of the Data Processing Director.

Essential Duties and Responsibilities

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

Plans, designs and implements network systems for telecommunications.

Supervises technicians in the installation, setup and maintenance of network systems including hardware and software. Monitors work load and work schedules.

Supervises and evaluates subordinates, provides discipline and guidance, recommends on hiring, transfer and promotion.

Establishes network security, policy and procedures. Investigates suspected policy violations and reports them for action.

Develops bid specification, evaluates vendor responses and selects vendors for equipment and services in accordance with policy.

Develops and administers network budget in accordance with purchasing policy.

Oversees installation of network software and maintenance by vendors.

Maintains local area and wide area network systems for multiple facilities. Manages LAN and WAN user accounts.

Manages servers and applications for files, printing, e-mail and other applications. Monitors server and network performance and identifies server/disk use or network capacity. Manages enterprise servers.

Enforces network security policies and procedures.

Maintains knowledge of computer operating systems, software, programming, computer networks and hardware, county information management needs. Researches new hardware and software technologies.

Manages network system configuration, capacity analysis and hardware/software installation.

Consults with department staff, managers and vendor representatives regarding network systems.

. . .

Physical and Mental Abilities Required to Perform Essential Job Functions

Language Ability and Interpersonal Communication

Ability to perform mid to upper-level data analysis including the ability to coordinate, strategize, systemize and correlate, using discretion in determining time, place and/or sequence of operations within an organizational framework. Requires the ability to implement decisions based on such data, and overseeing the execution of these decisions.

Ability to provide first line supervision. Ability to persuade, convince, and train others. Ability to advise and provide interpretation regarding the application of policies, procedures and standards to specific situations.

. . .

6. Evich was involved in the hiring of both the 2000 and 2001 PC Technicians. With regard to the former instance, Michael D. Miller screened the applicants with Thomas Miller to determine which applicants would be interviewed, instead of with Evich, because Evich was out of town at the time. Evich was one of five on the Selection Committee interviewing panel and whose members also included Thomas Miller, Michael D. Miller, and two County Board members. On March 10, 2000, using a predetermined set of questions, the panel interviewed five applicants and individually scored the applicants on a scale of 1 to 7 for each question. Evich was not involved in the creation of the interview questions, but she did review the questions prior to the interviews and recommended that nothing be changed. The panel members' scores were totaled for each applicant and then averaged to produce the highest ranking applicant. The panel then voted unanimously to offer the position to the highest ranking applicant, the 2000 PC Technician.

With regard to hiring the 2001 PC Technician, Evich reviewed the position's job description, at the request of Michael D. Miller, and she made adjustments, without approval, as to the type of software applications system experience needed because the prior job description was outdated. Evich then made revisions to the advertisement for the position. Evich and personnel/computer training employee Cathy Fabert screened over forty applicants to determine whether each met the job description's requirements. Six applicants were selected by Evich and Fabert to be interviewed. Evich reviewed the interview questions prior to the interviews and recommended that nothing be changed. The questions used during the interviews were the same as those in 2000. Evich was one of four on the Selection Committee interviewing panel and whose members also included Fabert and two County Board members. The panel interviewed the applicants, scored their answers, averaged their scores, and voted unanimously to offer the position to the highest ranking applicant, the 2001 PC Technician.

In both instances of hiring, the panel's unanimous vote and decision were final. Following the panel's decision in both 2000 and 2001, the Personnel Department did a background check and then offered the position to the person selected by the panel.

7. The following are pertinent parts of the County's policy on hiring dated November 10, 1998, and which is currently in place:

STATEMENT OF POLICY:

The Personnel Office will administer and coordinate the hiring process for all position vacancies to ensure compliance with contractual, legal, and equal opportunity requirements. All hiring efforts are conducted in the spirit of equal opportunity.

All departments in announcing position vacancies will adhere to the following procedures.

. . .

RECRUITMENT

1. The Personnel Office will be notified immediately of all position vacancies.
2. The affected department may be asked to assist the Personnel Office, as necessary, in formulating the job announcement, ads, and in determining special applicant sources.
3. Ads for local newspapers, trade publications, and professional journals will be developed and placed by the Personnel Department with assistance provided by the affected department. Funding of all general advertisements will be accomplished through the departmental budget.
4. The Personnel Office will screen active application files for possible candidates. These candidates will be contacted to determine current interest in County employment prior to the closing date listed on the employment notice.

. . .

8. The Personnel Office will screen all applicants received to determine qualification (sic) for the position to be filled. This will be done in consultation with the department head and/or committee chair. Applications of top candidates will be reviewed with the affected department and a list of interview candidates developed.
9. Applicants may be disqualified for consideration for employment when any of the following facts exist:

- A. They do not possess the qualifications for the job.

. . .

TESTING

1. Examinations may be developed for certain positions based on the position's responsibilities, the qualifications required, and resources available.
2. The examination may consist of oral interview/application review, a structured questionnaire, practical tests, written tests, or assessment center, etc. In all cases, the testing will be job related and designed to determine the candidate's knowledge, skills and abilities (KSA's) for the position.
3. The examination contents are developed or required by the Personnel Office with assistance provided by the affected department. . . .

. . .

INTERVIEW PROCESS

The employment interview is a supplement to and part of the selection process. The primary function of the interview is to obtain data or certain knowledge, skills, abilities of a candidate not available through a review of resumes or other testing mechanisms. Certain guidelines will be observed to maximize the validity and reliability of the interview process as well as ensure the adherence to current EEOC requirements.

1. The Personnel Office shall coordinate the interview process, including selection of panel members, scheduling candidates, development of interview questions, etc.
2. The interview panel will be selected and confirmed by the Personnel Office with input by the affected Committee. Generally no more than four individuals will serve on the interview panel. The composition of the interview panel shall generally consist of the personnel director (or designee), department director, a member of the committee of jurisdiction, a member of the personnel committee. Two members of the committee, Personnel Committee Chair, Administrative Coordinator & County Board Chair shall select (Department Head vacancies if he or she desires.) . . .
3. Personnel Office and the Department Head of the department in which the position vacancy exists (the Administrative Coordinator in vacancies involving department head openings) shall be responsible for the development of interview questions and standards for measurement of candidate responses. . . .

. . .

8. Each rater scores the candidates independently.
9. Following the interview, the interview panel shall attempt to reach consensus and report the interview results and recommendations to the Personnel Office. The panel shall decide if the position should be offered to more than the top ranked candidate.

REFERENCE CHECK

1. Before the Personnel Office extends any offer of employment, the Personnel Office conducts a reference check on the final candidate(s). The check includes verification of employment duties, dates of employment, work record, attendance record, strengths, weaknesses, safety record, and other pertinent information. Parts of the reference check may be delegated to the affected department.

...

8. Regarding discipline, on August 30, 2000, Evich prepared a written Letter of Reprimand to the 2000 PC Technician for taking a computer home without permission. That document states that such conduct is a serious violation of policy and that further violations will result in discipline up to and including discharge. Prior to its issuance, Evich met and discussed the severity of the situation with Michael D. Miller, pursuant to County policy, and arrived at a joint decision not to terminate. During this conversation, Michael D. Miller and Evich determined that the offense qualified for termination, but Evich recommended that the employee not be terminated and be given another chance, to which Miller agreed. Evich privately gave the written reprimand to the employee, discussed it with the employee, and the employee signed it. Copies were sent to Thomas Miller and to the personnel file.

On January 3, 2001, Evich gave an oral reprimand to the 2000 PC Technician for wearing a tongue ring during working hours. Evich met privately with the employee and discussed the matter. Evich later documented the meeting which states that the "ring affects [the 2000 PC Technician's] ability to communicate with users, which is a crucial part of his position."

Also on January 3, 2001, Evich prepared a written reprimand to the 2000 PC Technician for coming to work late. That document states that it is a follow up from the employee's initial performance review, that there is a pattern of coming to work late, that a large percentage of the employee's start times are hand written as opposed to punching in at the time clock, and that Evich will meet with the employee in 4-6 weeks to review the situation. Evich met privately with the employee, discussed the matter, and Evich and the employee signed the document. Evich did not seek approval before she issued the reprimand.

Evich is the only County employee who gave any reprimands, oral or written, to the 2000 PC Technician.

On February 5, 2001, Evich prepared a written memo to Thomas Miller regarding the termination of the 2000 PC Technician for coming to work late and for failing to punch in at the time clock. That document states in part that "I am terminating [the 2000 PC Technician]."

Evich initiated the conversations with Thomas Miller and Michael D. Miller regarding the termination. Pursuant to County policy, Evich sought out Michael D. Miller's concurrence which was received. Evich also informed Thomas Miller of her decision to terminate to which Thomas Miller agreed. The purpose of Evich's notice to Thomas Miller was to keep him informed. Pursuant to County policy, the termination letter to the employee was issued by the Personnel Department.

9. Evich formally evaluated the 2000 PC Technician. On July 28, 2000, Evich prepared a Three Month Performance Appraisal as part of the 2000 PC Technician's first year probationary period. The appraisal form calls for a determination of nine predefined work competencies such as "knowledge of work," "quantity of work," "quality of work," etc. Each competency requires a determination of whether the employee "exceeds requirements," is "competent," "needs improvement," or is "unsatisfactory." The form also provides for written comments. Evich completed the form including written comments that the employee's work speed and quantity needed improvement, that using unauthorized software and taking a computer home for use without permission was not allowed, that the employee needed to be to work on time, and that personal matters needed to be done outside of normal business hours.

Evich met privately with the employee and discussed the appraisal. Evich did not discuss the appraisal with anyone prior to meeting with the employee. Evich and the employee signed the appraisal, whereupon it was sent to the personnel office. Evich's signature states that she is the employee's "supervisor."

The 2000 PC Technician was not employed long enough for the County to give that employee any further formal evaluations. Evich has not yet formally evaluated the 2001 PC Technician because she had only been employed five weeks at the time of the hearing.

10. The parties' collective bargaining agreement in effect at the time of the hearing states that the first step in the grievance procedure is for the aggrieved employee to orally explain the nature of the grievance to the employee's "immediate supervisor." It further states that this first step must be done within ten days of when the employee knew or should have known of the cause of such grievance, unless such timeline is extended by mutual agreement.

If a PC Technician files a grievance, that person procedurally first goes to Evich as the “immediate supervisor” and in accordance with Step 1 of the parties’ current collective bargaining agreement.

11. Evich assigns work projects to be completed by the PC Technician. During the time that the 2000 PC Technician was employed, Evich supervised that employee for, at most, about two hours each day. This two-hour amount occurred in the last three months of that employee’s employment period when Evich was closely tracking the employee’s use of work time. Otherwise, the 2000 PC Technician worked independently.

Evich routinely signed the 2000 and 2001 PC Technicians’ time sheets every two weeks to verify their accuracy. Thomas Miller signs the PC Technicians’ time sheets when Evich is absent. Evich is also responsible for approving planned time off by the PC Technician such as anticipated sick leave or vacation.

With regard to overtime, the PC Technician does not normally work it. On occasion, however, there is voluntary overtime to finish a project and authorization from Evich is required. During the time that the 2000 PC Technician was employed, Evich approved that employee’s overtime six to eight times. During the time that the 2001 PC Technician has been employed, Evich has approved overtime twice.

12. Evich currently receives an annual salary of \$45,600. By comparison, Thomas Miller receives an annual salary of \$54,000; the PC Technician position starts at \$14.23 per hour (\$29,598 per annum) and after twenty-four months receives \$15.47 per hour (\$32,178 per annum); and the Administrative Assistant position starts at \$12.11 per hour (\$25,189 per annum) and after twenty-four months receives \$13.16 per hour (\$27,373 per annum).

Evich regularly works from 8:00 a.m. to 4:30 p.m., Monday through Friday. Evich has started as early as 6:00 a.m., she has stayed as late as 6:00 p.m., and she has worked on weekends and once on a legal holiday without additional compensation. Evich’s work outside of her normal schedule occurs when she is completing a project or when the work requires that there are no users on the system. Evich and Thomas Miller make a joint decision for the extent of Evich’s non-regular work hours. Evich does not receive compensatory time off for working non-regular hours. Unlike the 2000 and 2001 PC Technicians, Evich does not punch a time clock.

13. Evich has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSION OF LAW

The incumbent in the position of Network Administrator, Mary Evich, is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and is therefore not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT

The Network Administrator shall continue to be excluded from the bargaining unit described above in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 15th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

WASHBURN COUNTY

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

POSITIONS OF THE PARTIES

The Union

The Network Administrator position should be included in the existing Courthouse/Human Services bargaining unit. It is not a supervisory or a managerial position.

The County's design of having the Department's Director supervise the incumbent, who in turn supervises the PC Technician in a department comprised of four employees, is nothing more than the County's attempt to prevent the incumbent from being represented.

The County's assertion that the incumbent works at times other than 8:00 a.m. to 4:30 p.m. is inconsequential since other unit employees, such as the professional and nonprofessional Home Health employees in the Public Health Department, do the same.

With regard to hiring, there were two instances where a PC Technician position was filled: one before the instant petition was filed and one after. It was not until the second instance, which followed the instant petition, that the County asserted the incumbent Evich was reviewing applications with the Personnel Department. Therefore, the timing of any such evidence is suspect. Further, even though Evich was consulted regarding the qualifications and the job description of the PC Technician, such consultation draws upon the incumbent's technical expertise and not upon any supervisory indicia exercised by Evich. Similarly, Evich's involvement in the interview process was de minimus since she was one of five or six interviewers, the interview group used predetermined questions, and the interview group's decision was based upon an average total numerical score.

The County's assertions that Evich directs the PC Technician's tasks and signs the PC Technician's time cards are insignificant. Such duties are typically performed by lead workers and bargaining unit foremen. This is not a basis for exclusion.

There is little question that Evich did performance reviews and that she was involved in some discipline of the 2000 PC Technician. However, Evich's termination of the 2000 PC Technician did not include Evich issuing the termination letter. More importantly, any such supervisory elements are only present because they were scrubbed or stripped off of the Director's position for the purpose of keeping Evich out of the unit. One supposes that the

County could have the PC Technician position supervise the Administrative Assistant II position and have three supervisors for a four-person department. The County appears to assert that so as long as there is one non-supervisor employee per department, then the other employees can supervise each other.

The County's assertion that Evich possesses managerial authority does not have merit. Evich's recommendation to Department Director Miller of which model and vendor to use in the purchase of personal computers does not support an assertion that Evich affects the Department's budget. Rather, such evidence merely makes use of Evich's technical expertise. Further, the fact that Evich signs vouchers to approve payment for equipment which has been previously budgeted and decided upon does not make Evich a managerial employee since she does not have authority to independently commit the resources of the County.

Finally, the allegation that there is a confidential component to the incumbent's position because of Evich's work on a PC system that may involve confidential labor materials is de minimus. Evich has only checked on the security level for such documents. Moreover, such work could be efficiently dealt with by Department Director Miller.

The County

The Network Administrator performs supervisory duties as defined by Sec. 111.70(1)(o)1, Stats. The County's job description for the position confirms this. With regard to the two instances of hiring, Evich was a member of both the 2000 and 2001 hiring committees, she interviewed all of the candidates during both sets of interviews, and she made a recommendation for hire for each set of interviews which resulted in offers of employment to the 2000 and 2001 PC Technicians. Further, and regarding the 2001 hiring instance, Evich screened the applications with personnel employee Fabert, Evich approved the interview questions to be used, and Evich provided the highest score to the person offered the 2001 PC Technician position.

Evich has disciplined the 2000 PC Technician on August 30, 2000, January 3, 2001, and on February 5, 2001, all without approval or authorization. This included the termination of the 2000 PC Technician.

Evich is the person to whom the PC Technician takes grievances in Step 1 of the collective bargaining grievance procedure.

Evich determines the work projects to be completed, approves leave requests, and signs time sheets every two weeks for the PC Technician. In addition, she authorizes overtime. Further, Evich made a formal three month evaluation for the 2000 PC Technician.

With regard to Evich's level of authority exercised over the PC Technician, Evich assumes this alone. Although she discussed the appropriate level of discipline with her supervisor, Thomas Miller, the purpose of such discussion was to keep Miller "in the loop." Further, discussion with Michael D. Miller was done because it is often required by County policy. Nevertheless, Evich retains the ultimate authority to discipline the PC Technician.

The County's Information Technology Department is expanding in an ever-growing field. Thus, negative inferences of supervisory status should not be drawn from the fact that Evich only supervises one employee. CITY OF FOND DU LAC, DEC. NO. 8168-D (WERC, 7/98).

The level of pay for the Network Administrator position, \$45,600, is substantially greater than the level of pay for the PC Technician, \$14.23-\$15.47 per hour (the equivalent of \$29,598-\$32,178 per annum). Thus, the difference in pay shows that Evich is paid for her supervisory authority.

Evich often spent two hours per day supervising the 2000 PC Technician, checking that employee's time cards, etc. Thus, Evich is supervising an employee and is not supervising an activity.

Evich exercises independent judgment. She has sole authority to discipline an employee. Evich does not need approval from Michael D. Miller or Thomas Miller to issue an oral or written reprimand. Regarding the decision to terminate, Evich initiated the discussion with Michael D. Miller and with Thomas Miller. Further, Thomas Miller's testimony supports the fact that the decision was purely up to Evich and that Evich spoke to Thomas Miller simply to keep him informed.

Evich solely administered the three-month appraisal without assistance or discussion from anyone.

Evich performs the same duties as a computer accounts specialist found to be a "supervisor" in CITY OF ASHLAND, DEC. NO. 18808-A (WERC, 7/86). Moreover, Evich's duties have been performed on a more regular, extended, and clearly defined basis than those duties found to be "supervisory" in CITY OF ASHLAND, SUPRA. Therefore, the Network Administrator position meets the requirements to be a "supervisory" employee.

The Network Administrator position is properly excluded from the unit as a supervisory employee.

The Network Administrator is also a managerial employee because she establishes network policy and procedures. Examples include Evich and Thomas Miller working on new procedures for the Human Resource Department. Evich also implements policy through her

own investigations and the reporting of suspected policy violations. Moreover, Evich has access to all information on the County's computer systems. Thomas Miller and Evich are the only County employees with such access. Thus, Evich is able to examine any document on a computer system of between ten and fifteen servers, including confidential information in the Sheriff's Department and the Personnel Department.

Evich exercises a high level of responsibility in implementing and establishing network security policy and procedures. With respect to the local area and wide area networks, Evich creates the accounts, maintains the accounts, sets up the permission and security rights, disables the accounts if an employee is absent for an extended period, and deletes accounts of those who have left the County.

Evich's position has a "unique interest" from other unit employees. No bargaining unit employee has the same level of access to County records and information as Evich. This access is essential to Evich's position and would conflict with the interests of other bargaining unit employees.

Evich commits the County's resources at a level which significantly affects the nature and direction of the County's operations. Her job description confirms this. To this end, Evich evaluates new models of computers on the market and works with vendors to obtain bids at least once per year during the County's capital ordering cycle. Although Evich does not select the vendors from which the County purchases its computers, she signs vouchers to approve the release of funds for their purchase. In addition, Evich coordinates what computer equipment will be replaced as well as the corresponding costs. Evich also makes three to five year planning projections. Further, Evich recommends whether to maintain or replace the County's computer hardware and software. This includes reviewing models, determining the County's needs, and determining the necessary size of hard drive and memory capacity. It also includes determining whether users need more hardware to run new applications and whether the County should transfer to a new operating system. Thomas Miller accepts Evich's computer hardware and software recommendations. Moreover, Evich recommends budget amounts for staff training.

In CITY OF RACINE, DEC. NO. 17724 (WERC, 4/80), the Commission found a position similar to Evich's position to be managerial. Evich's position is similar in that it determines the specifications and needs for the County's network and computer equipment. Evich also is subject to only minor restrictions when independently selecting equipment to be purchased. Thomas Miller relies primarily on Evich's independent judgment in making such decisions.

The Union asserts that Evich is only providing her expertise. However, Evich is responsible for determining and meeting the future needs of the County's computer network and related equipment. Evich is responsible for projecting and determining the County's long-range computer needs. Evich's duties run the full gamut in determining the County's overall computer needs.

The Union's claim that Evich's role in the interview process is de minimus does not have merit. Although Evich was not involved in screening applications in 2000, this was because Evich was out of town. Moreover, the County's hiring policy states that the Personnel Office is responsible for screening applicants and in consultation with the department head and/or committee chair. The policy does not state that Evich's department is responsible. Further, the Union has failed to note that Evich reviewed the interview questions for the hiring of both the 2000 and 2001 PC Technicians.

The Union's claim that Evich did not issue the termination letter for the 2000 PC Technician is insignificant. Evich did not issue the letter because she was out of the office on the effective date of termination. Further, the County's policy is to issue such letters through the Personnel Office, which was done in this case.

The Network Administrator, Mary Evich, has performed sufficient duties to satisfy the statutory requirements for a supervisory and managerial employee.

DISCUSSION

Section 111.70(1)(o)1, Stats., defines a supervisor in pertinent part as:

. . . 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 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 evaluating a claim of supervisory status under Sec. 111.70(1)(o)1, Stats., 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 or assign the workforce;
3. The number of employees supervised, and the number of 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 supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor as a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

WOOD COUNTY, DEC. NO. 28172-B (WERC, 8/01)

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors support supervisory status in sufficient combination and degree to warrant finding an individual to be a supervisor. WOOD COUNTY, SUPRA.

We are persuaded that incumbent Mary Evich, as Network Administrator, possesses supervisory indicia in sufficient combination and degree to be considered a supervisor within the meaning of the statute.

The record establishes that Evich participated in the hiring of both the 2000 PC Technician and the 2001 PC Technician. Although the interviews in both instances were conducted by a panel, and the applicants were ranked and recommended on a consensual basis, the record shows that Evich individually reviewed the interview questions which were used in both instances. Evich also took part in screening and determining which applicants qualified for an interview in the second instance. In unrefuted testimony, Evich testified that she would have been part of the screening process in the first instance had she not been out of town during that time. Moreover, and with regard to the second instance, Evich revised the PC Technician's job description and advertisement, without approval, because the old job description was outdated.

The record demonstrates that Evich has independent authority to administer discipline. Evich issued two written reprimands, one on August 30, 2000, and another on January 3, 2001, and met privately to discuss the matter with the 2000 PC Technician on each occasion. Although Evich spoke with Michael D. Miller regarding the first occasion for the purpose of discussing the severity of the situation and prior to Evich meeting with the employee, Evich successfully recommended not to terminate even though the severity of the infraction qualified for such a result. With regard to the second occasion, Evich did not need prior approval or authorization to administer that written reprimand. Evich also orally reprimanded the 2000 PC

Technician on January 3, 2001. It is noted that Evich is the only County employee that disciplined the 2000 PC Technician, oral or written, and that that employee was frequently disciplined during his short period of employment with the County.

Most significantly, Evich effectively recommended the termination of the 2000 PC Technician. Evich's memo dated February 9, 2001, shows that she was effectively the one deciding to terminate: "I am terminating [the 2000 PC Technician] . . ." Pursuant to County policy, Evich initiated conversations with her superiors regarding the employee's potential termination.

The record shows that Evich formally evaluated the PC Technician on July 28, 2000. Although this occurred only once and with regard to the 2000 PC Technician's three-month evaluation, this lack of frequency is due to a lack of opportunity to provide formal evaluations. Because of the turnover rate of the PC Technician position, and the relatively short time in which Evich has held her present position, Evich has not had the opportunity to do more formal evaluations.

Evich also assigns work projects to the PC Technician. Although the PC Technician's work is primarily independent, what supervision of the PC Technician is necessary comes from Evich and not from either Director Thomas Miller or Administrator/Personnel Director Michael D. Miller. Further, Evich is the first person to whom the PC Technician would go to when filing a grievance under the parties' collective bargaining agreement. Evich also routinely verifies and signs the PC Technician's time sheets, approves anticipated sick leave and vacation, and approves overtime when necessary. While it is true that Evich only supervises one employee and spends a limited amount of time doing so, it is clear that Evich is the individual who exercises supervisory authority over that person, the PC Technician.

The difference between Evich's salary and the hourly wage of the PC Technician also supports a finding of supervisory status.

As reflected in *WOOD COUNTY, SUPRA*, and the cases cited therein, even where the number of employees supervised is small and the amount of time spent supervising is limited, a finding of supervisory status is warranted where, as here, the supervisor participates in the hiring of employees, has substantial disciplinary authority, independently evaluates the employee, and exercises independent authority to assign work, approve time off, and overtime where needed, and to verify and sign time sheets. Further, we do not find the County's organization of the Department to be a sham designed to exclude Evich from the unit.

In summary, we are persuaded that Mary Evich, as Network Administrator, has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

Therefore, we have ordered that the Network Administrator position continue to be excluded from the bargaining unit. Having reached that conclusion, we need not and do not address whether or not she is also a managerial employee.

Dated at Madison, Wisconsin, this 15th day of February, 2002.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner