

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Joint :
Petition of :
 :
TOWN OF ALLOUEZ and DRIVERS, : Case 21
WAREHOUSE & DAIRY EMPLOYEES, : No. 33230 ME-2350
LOCAL NO. 75 : Decision No. 22065
 :
Involving Certain Employes of :
 :
TOWN OF ALLOUEZ :
 :

Appearances:

Mr. Bruce K. Patterson, Employee Relations Consultant, 3685 Oakdale Drive,
New Berlin, Wisconsin 53151, appearing on behalf of the Town of
Allouez.

Mr. Glenn Tarkowski, Business Representative, 1546 Main Street, Green Bay,
Wisconsin 54302, appearing on behalf of Drivers, Warehouse & Dairy
Employees, Local No. 75.

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

The Town of Allouez and Drivers, Warehouse and Dairy Employees, Local No. 75, hereinafter referred to as the Town and the Union, respectively, having on April 30, 1984, jointly filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify an existing voluntarily recognized bargaining unit; and hearing in the matter having been held on June 20, 1984, at Allouez, 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 July 11, 1984; and the parties having filed briefs on August 10 and 24, 1984, respectively; 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, Conclusions of Law and Order Clarifying Bargaining Unit.

FINDINGS OF FACT

1. That the Town is a municipal employer having its offices at 1649 South Webster, Allouez, Wisconsin; and that among its principal governmental functions is the operation of a fire department, a water department, a street department, and a parks, recreation and forestry department.

2. That the Union is a labor organization representing certain employes of the Town for purposes of collective bargaining; and that its offices are at 1546 Main Street, Green Bay, Wisconsin.

3. That the Union has been the exclusive collective bargaining unit of certain employes of the Town in a voluntarily recognized collective bargaining unit entitled the Town Department Heads Unit consisting of the positions of director of park, recreation and forestry, water department superintendent, street department superintendent, fire department chief and building inspector since 1980; and that the Union and Town have entered into successive collective bargaining agreements covering the wages, hours and conditions of employment of employes in the above-described voluntarily recognized unit.

4. That early in 1984 a dispute arose within another bargaining unit of Town employes represented by the Union prompting the Town to question whether certain employes should be included in the unit described in Finding of Fact 3, hereinafter referred to as the Department Heads Unit; and that the Town and Union on April 30, 1984, jointly petitioned the Commission for purposes of determining the appropriateness of including these employes within said unit.

5. That both parties stipulated at hearing that the position of building inspector was non-supervisory in nature and that the building inspector is a municipal employe within the meaning of MERA, and appropriately included in the bargaining unit.

6. That the only issue is whether the four remaining positions are supervisory in nature; that the Union contends they are non-supervisory while the Town contends that all four positions are supervisory within the meaning of Sec. 111.70(1)(o)1, Stats.; and that the fire department chief should also be excluded from any collective bargaining unit based on Sec. 111.70(1)(o)2, Stats.; and that neither party contends that any of the four individuals are managerial employes.

7. That each of the department heads is responsible to the town administrator and the Town Board for the administration of his respective department; that the rates of pay for the department heads substantially exceed the rates of pay of their immediate subordinates by amounts ranging up to 38%. That none of the department heads possesses the effective authority to hire or fire regular full-time employes independently; that none has been involved in promotion or transfer; that they do, however, schedule vacation in accordance with the dictates of those collective bargaining agreements; and that they have not been involved in the adjustment of grievances.

8. That the director of parks, recreation and forestry is involved in the hiring of all part-time employes for his department by interviewing and effectively recommending their hire to the Town Board; that he also participates on a hiring panel along with the town administrator and a town board member in the interviewing and selection process for the hiring of regular full-time employes in his department; that that hiring panel effectively recommends hiring decisions to the Town Board; that he does not possess any authority to discipline employes other than to orally warn them; that he effectively directs the work force, which consists of anywhere from ten to forty part-time employes and five full-time employes; and that he spends approximately 60% of his time in the supervision of said work force; that he exercises independent judgment in determining the priority of certain work to be performed, the number of employes to be utilized to perform such work and the timing of the work within budgetary authorization and other policies provided by the Town Board; and that he is responsible for the day-to-day operation of his respective department.

9. That the water department superintendent does not possess the authority to independently hire employes; but that he also participates on the hiring panel along with the town administrator and a town board member in interviewing and selecting employes for his department; that he does not possess authority to discipline or discharge employes; that there is no evidence that he possesses the authority to effectively recommend the discipline or discharge of employes; but that he effectively directs the work force of seven full-time and two or three part-time employes and spends approximately 70% of his time in supervision of said work force; that he exercises independent judgment in determining the priority of certain work to be performed, the number of employes to be used to perform such work and when the work will be performed within the budgetary constraints and other policies provided by the Town Board; and that he is responsible for the day-to-day operation of his department.

10. That the street department superintendent does not possess the authority to independently hire employes but also participates along with the town administrator and a town board member in the hiring process; that he also possesses the authority to effectively recommend the retention of probationary employes; that he does not, however, possess the authority to discharge employes, but that he does possess the authority to effectively recommend the discipline of employes and is in the process of issuing a written warning to an employe in his department; that he effectively directs a work force of fourteen full-time and five to eight part-time employes and spends approximately 50% of his time in the supervision of said work force; that he determines when overtime is necessary and makes overtime assignments; that he exercises independent judgment in determining the priority of work assignments, the number of employes to be utilized as well as when the actual work will be performed in accordance with budgetary constraints and other policies of the Town Board; and that he is responsible for the day-to-day operation of his department.

11. That the fire department chief is responsible for the day-to-day operation of the Town's fire department; that he is the highest ranking officer in a municipality where there is only one fire station.

CONCLUSIONS OF LAW

1. That the occupants of the positions of director of parks, recreation and forestry, water department superintendent and street department superintendent are supervisors within the meaning of Sec. 111.70(1)(o)1 of the Municipal Employment Relations Act.

2. That the occupant of the position of fire department chief is a supervisor within the meaning of Sec. 111.70(1)(o)2 of the Municipal Employment Relations Act.

ORDER CLARIFYING BARGAINING UNIT 1/

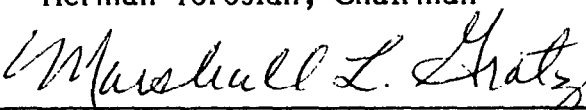
That the positions of director of parks, recreation and forestry, water department superintendent, street department superintendent, and fire chief are excluded from the voluntarily recognized unit set forth in Finding of Fact 3, above.

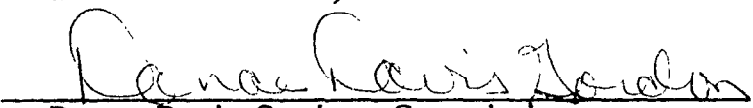
Given under our hands and seal at the City of
Madison, Wisconsin this 1st day of November, 1984.

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.

(Footnote One continued on Page Two)

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.

(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.

TOWN OF ALLOUEZ

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

The parties in a joint petition seek to clarify a voluntarily recognized bargaining unit. The Town seeks to exclude as supervisors four of five individuals currently constituting that collective bargaining unit. These four individuals have been included in this unit since the Union was voluntarily recognized as its representative in 1980. The Union argues that the facts do not indicate that a sufficient number or a combination of "supervisory indicia" exist to warrant a determination that the classifications in question are supervisory in nature. It stresses that the supervisory authority has been retained by the Town Board and town administrator and that any authority possessed by the department head is routine in nature and does not involve independent judgment. The sole issue for consideration is whether or not the four individuals are supervisors within the meaning of MERA. Section 111.70(1)(o)1 of MERA defines the meaning of "supervisor" as follows:

. . . as other than municipal and county firefighters, 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 that requires the use of independent judgment.

Furthermore, Section 111.70(1)(o)2 of MERA defines the term "supervisor" with respect to municipal and county firefighters as follows:

In municipalities where there is but one fire station, the term "supervisor" shall include only the chief and the officer in rank immediately below the chief. No other firefighter shall be included under the term "supervisor" for the purposes of this subchapter.

The Commission, in order to determine whether the statutory criteria are present in sufficient combination and degree to warrant the conclusion that the individuals in question are supervisors, considers the following factors:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
3. The level of pay, including an evaluation of whether the supervisor is paid for his skill or for his supervision of employees;
4. Whether the supervisor is a working supervisor or whether he spends a substantial portion of his time supervising employees;
5. The number of employees supervised and the number of employees exercising greater, similar or lesser authority over the same employees;
6. The amount of independent judgment and discretion exercised in the supervision of employees; and
7. The authority to direct and assign the work force. 2/

2/ Dodge County, Dec. No. 18076-A, (WERC, 3/83).

Moreover, the Commission has held that not all of the above factors need be present, but if a sufficient number of said factors appear in any given case, the Commission will find an employee to be a supervisor. 3/

With respect to the director of parks, recreation and forestry and both the street and water department superintendents, we note that these individuals are totally responsible for the scheduling and assigning of work in their respective departments and establishing the priority of performing said work within the budgetary constraints and other policies established by the Town Board and each has a working foreman or leadman working foreman. Contrary to the assertions of the Union, this work is not routine in nature but requires the exercise of substantial independent judgment. Unlike their subordinates, these three department heads are not eligible for overtime compensation, and each receives a substantially higher rate of pay than any of his subordinates. All three department heads participate directly in the hiring of regular full-time employees for their respective departments as part of a hiring panel wherein the department head, the town administrator and a town board member interview and recommend the hiring of said employee. The director of parks, recreation and forestry possesses the authority to hire part-time seasonal employees and determine their length of employment. The street department superintendent possesses the authority to recommend the retention or discharge of probationary employees and is responsible for ascertaining the need for, as well as the scheduling of overtime in his department. He also possesses the authority to issue written warnings as well as oral warnings. In addition, none of the three individuals spends a majority of his time on work similar to that of his subordinates, and the outcome proposed by the Town produces a far more realistic supervisor-to-subordinate ratio than that urged by the Union. For those reasons and based generally upon the facts set forth in Findings of Fact 7, 8 and 9, we are satisfied that the supervisory indicia are present for these individuals in sufficient combination and degree to warrant the conclusion that their positions are supervisory in nature so that they should be excluded from the unit.

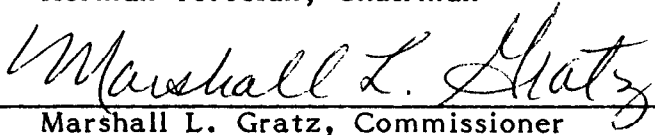
With regard to the fire department chief, it is apparent that he is the highest ranking officer in a municipality possessing one fire station and accordingly we find that he is a supervisor within the meaning of Sec. 111.70(1)(o)2 of MERA and therefore excluded from the collective bargaining unit.

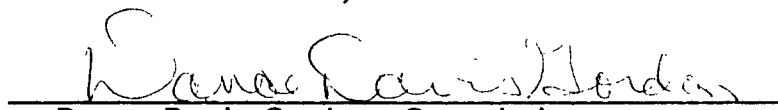
Dated at Madison, Wisconsin this 1st day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

3/ City of Lake Geneva (Police Department), Dec. No. 18057 (3/81); Dodge County, supra.