STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of ASHLAND COUNTY Requesting a Declaratory Ruling Pursuant to Section 111.70(4)(b), Wis. Stats., Involving a Dispute Between Said Petitioner and ASHLAND COUNTY HIGHWAY EMPLOYEES LOCAL UNION #216-B	Case 44 No. 34043 DR(M)-358 Decision No. 22142

Appearances:

Mr. William R. Sample, Representative, 2001 London Road, Duluth, Minnesota 55812, for the County.

Mr. James Ellingson, Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Box 2, Brule, Wisconsin 54820, for the Union.

FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Ashland County filed a petition with the Wisconsin Employment Relations Commission on October 31, 1984, seeking a declaratory ruling pursuant to Sec. 111.70(4)(b), Stats., as to its duty to bargain with Ashland County Highway Employees Local Union 216-B over certain matters. The parties waived hearing in the matter and filed written argument the last of which was received on November 16, 1984. Having reviewed the record and the parties' arguments, the Commission makes and issues the following

FINDINGS OF FACT

1. That Ashland County, herein the County, is a municipal employer having its principal offices at the Ashland County Courthouse, Ashland, Wisconsin 54806.

2. That Ashland County Highway Employees Local Union 216-B, herein the Union, is a labor organization representing certain employes of the County for the purposes of collective bargaining having its principal offices at Route 1, Box 2, Brule, Wisconsin 54820.

3. That the County and the Union are parties to a collective bargaining agreement with an expiration date of December 31, 1984, which establishes the wages, hours and conditions of employment of the employes of the County who are represented for the purposes of collective bargaining by the Union. That collective bargaining agreement contains the following provision:

. . .

> Section 3. It shall be the policy of the Employer to promote to supervisory positions insofar as possible from the ranks of employees. Such vacancies shall be posted on the various shop bulletin boards two weeks prior to filling the vacancy and all applications shall be in writing. All applicants will be interviewed by the Highway Committee and Highway Commissioner to determine their qualifications. Seniority will be recognized but may not necessarily be the deciding factor in filling such supervisory positions. Should the County seek to promote a qualified employee with less seniority than some other qualified employee, the matter shall be first submitted to a Committee of equal representation of the Employer and the Union to study the qualifications of each employee who has applied for the job.

. . .

During bargaining over a successor to the parties' current agreement, a dispute arose as to the County's duty to bargain with the Union over the inclusion of the above-quoted provision in a successor agreement; and that the parties were unable to resolve their dispute and the County then filed the instant petition.

4. That the proposal set forth in Finding of Fact 3 primarily relates to the management and direction of the County.

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

CONCLUSION OF LAW

That the proposal set forth in Finding of Fact 3 is a permissive subject of bargaining within the meaning of Sec. 111.70(1)(a), Stats.

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

DECLARATORY RULING 1/

That Ashland County has no duty to bargain within the meaning of Secs. 111.70(1)(a) and 111.70(3)(a)4, Stats., with Ashland County Highway Employees Local 216-B over the proposal set forth in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 27th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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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.

(See Footnote 1 continued on Page 3)

(Footnote 1 continued)

(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.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND DECLARATORY RULING

Discussion:

Before considering the specific proposal at issue herein, it is useful to set forth the general legal framework within which disputes over the duty to bargain must be determined.

Section 111.70(1)(a), Stats., defines collective bargaining as ". . . the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement, . . . the employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the employes . . ." (emphasis added)

When interpreting Sec. 111.70(1)(a), Stats., the Wisconsin Supreme Court has concluded that collective bargaining is required over matters primarily related to wages, hours and conditions of employment but not over matters primarily related to "formulation of basic policy" or the "exercise of municipal powers and responsibilities in promoting the health, safety, and welfare for its citizens." City of Brookfield v. WERC, 87 Wis.2d 819, 829 (1979). See also Beloit Education Association v. WERC, 73 Wis.2d 43 (1976); Unified School District No. 1 of Racine County v. WERC, 81 Wis.2d 89 (1977).

The proposal at issue sets forth a promotion procedure applicable to the filling of supervisory positions. The County contends that as supervisory employes are not included within the definition of "municipal employes" set forth in Sec. 111.70(1)(i), Stats., it has no duty to bargain with the Union over the manner in which it selects supervisory employes. It asserts that the determination as to who will be a supervisory employe should remain exclusively with the County so that concerns for loyalty, attitude, aptitude or any other criterion which the County wishes to consider may be applied without interference from an outside party. The Union counters by arguing that the interference with the employer's operation is minimized by the requirement that unit employes applying for supervisory positions must have the minimum qualifications for the position involved.

Section 111.70(1)(a), Stats., defines collective bargaining as "the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment . . ." As can be seen from the foregoing statutory provision, the duty to bargain only applies to those who meet the statutory definition of employes. Section 111.70(1)(i) defines municipal employes as "any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe." As supervisory employes are not "municipal employes", the County has no duty to bargain over the wages, hours and conditions of employment applicable to supervisory employes. 2/

The proposal at issue herein does not establish the wages, hours and conditions of employment for supervisory employes. Instead it establishes certain rights and procedures applicable to bargaining unit employes who wish to pursue promotion to supervisory positions. As these rights and procedures are applicable to employes while they are in the bargaining unit and remain municipal employes, and as promotion to supervisory positions may well entail an increase in compensation or more desirable conditions of employment, the Union reasonably

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2/ City of Beloit, Dec. No. 12606-B (WERC, 11/74).

argues that this proposal does in fact have some relationship to the wages, hours and conditions of employment of municipal employes represented by the Union herein.

At the same time, however, it is clear that this proposal directly interferes with the County's ability to select individuals for management positions who the County believes will best implement County policy choices and will best supervise the County's employes in the desired manner.

On balance, we conclude this relationship to the management and direction of the County outweighs any relationship to employe wages, hours and conditions of employment. 3/ We therefore find the proposal to be a permissive subject of bargaining.

Dated at Madison, Wisconsin this 27th day of November, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

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Danae Davis Gordon, Commissioner

3/ Accord, City of Green Bay, Dec. No. 12402-B (Schurke, 1/75) aff'd by operation of Sec. 111.07(5), Dec. No. 12402-D, (2/75). See also, Milwaukee Board of School Directors, Dec. No. 20399-A (WERC, 9/83) for discussion of the status of proposals concerning transfer to positions in another bargaining unit.