

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Petition of	:	
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INTERNATIONAL UNION OF	:	
OPERATING ENGINEERS	:	Case 4
LOCAL 139, AFL-CIO	:	No. 34747 ME-2439
	:	Decision No. 22826
Involving Certain Employees of	:	
	:	
TOWN OF MERCER	:	
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In the Matter of the Petition of	:	
	:	
INTERNATIONAL UNION OF	:	
OPERATING ENGINEERS	:	
LOCAL 139, AFL-CIO	:	
	:	Case 1
Involving Certain Employees of	:	No. 35440 ME-2492
	:	Decision No. 22827
SANITARY DISTRICT NO. 1 1/	:	
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Appearances:
Mr. George M. Blauvelt, Attorney, P. O. Box Q, Mercer, Wisconsin,
appearing on behalf of the Employer.
Mr. Ed Guthman, Business Representative, Route 2, Holcombe, Wisconsin,
appearing on behalf of the Union.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTIONS

International Union of Operating Engineers, Local No. 139, AFL-CIO having, on March 12, 1985, filed a petition requesting the Wisconsin Employment Relations Commission to conduct an election, pursuant to the provisions of the Municipal Employment Relations Act, among certain employees in the employ of Town of Mercer; and a hearing having been held in the matter on April 25, 1985 in Mercer, Wisconsin, before Examiner Christopher Honeyman; and the transcript having been prepared by June 6, 1985; the Commission, having considered the evidence and arguments and being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. That International Union of Operating Engineers Local 139, AFL-CIO, herein referred to as the Petitioner or Union, is a labor organization and has it offices at 2233 Birch Street, Eau Claire, Wisconsin 54703.
2. That Town of Mercer, herein referred to as the Employer or Town, is a municipal employer with its principal offices located at the Town Hall, Mercer, Wisconsin 54547.
3. That Mercer Sanitary District No. 1, herein referred to as the District, is a municipal employer and has its principal offices located at the Town Hall, Mercer, Wisconsin.

1/ The instant case was initiated by a petition involving Town of Mercer employees. Thereafter, the parties executed a stipulation agreeing that the correct employer of some of the employees involved is the Sanitary District No. 1, as noted in Finding of Fact 4, below.

4. That the Town is governed by a Board of Supervisors, and that the same persons are members of the separate Board of the Sanitary District; that the Town and the Sanitary District No. 1 maintain the same address, but separate bank accounts; that the sole employee of the Sanitary District No. 1 is Ron Bell, while the Town Street Department employs James Kichak and Joseph Hammond as full-time employees, and also employs three irregular part-time employees to plow snow in winter; that when either unit of government borrows an employee of the other to perform work, the lending unit is repaid by the borrowing unit for labor costs; and that the parties agree that the Sanitary District No. 1 is a separate employer from the Town, and stipulate to separate bargaining units.

5. That the Town Board members have exercised close control over the activities of the Street Department; that James Kichak has been classified as a foreman by the Town and the Street Department for approximately five or six years; that Kichak gives a report to the Town Board every two weeks concerning Street Department activities; that Kichak is paid 50 cents per hour above the regular employee rate for acting as foreman; that Kichak spends the vast majority of his time performing the same work as Hammond; that Kichak does not have an office or any benefits different from those given to Hammond; that Kichak has never hired, fired, laid off, adjusted the grievance of, promoted, transferred or rewarded any employee, or effectively recommended such action; that on one occasion Kichak sent home an employee who refused to do a job, but that no further action was taken against that employee; that Kichak has regularly assigned work to Hammond and to between two and four youths employed pursuant to a summer youth program, but that little independent judgment was involved in such assignments; that Kichak can purchase up to approximately \$50 worth of parts or materials without approval from a Town Board member, but not more than that amount; that Kichak does not possess or exercise supervisory duties and responsibilities in sufficient combination and degree to render him a supervisory employee; and that Kichak does not participate in a significant manner in the formulation, determination and implementation of management policy or have effective authority to commit the Employer's resources so as to render him a managerial employee.

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

CONCLUSIONS OF LAW

1. That all regular full-time and regular part-time employees of the Mercer Sanitary District No. 1, excluding supervisory, managerial and confidential employees, constitute an appropriate collective bargaining unit within the meaning of MERA.

2. That all regular full-time and regular part-time employees of the Town of Mercer Street Department, excluding supervisory, managerial and confidential employees, constitute an appropriate collective bargaining unit within the meaning of MERA.

3. That James Kichak, the occupant of the foreman position in the Town's Street Department, is neither a supervisory nor a managerial employee and is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

DIRECTION OF ELECTIONS

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this directive in the following collective bargaining units to determine whether a majority of employees voting in each unit desire to be represented for the purpose of collective bargaining with their respective employers over wages, hours and conditions of employment by Operating Engineers Local Union No. 139, AFL-CIO:

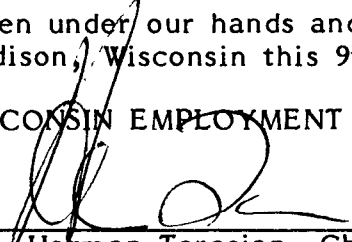
1. All regular full-time and regular part-time employees of the Mercer Sanitary District No. 1, excluding supervisory, managerial and confidential employees.

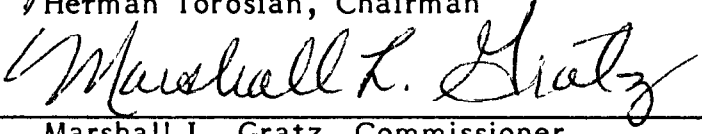
2. All regular full-time and regular part-time employees of the Town of Mercer Street Department, excluding supervisory, managerial and confidential employees.

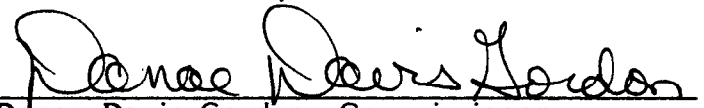
Given under our hands and seal at the City of Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

TOWN OF MERCER

MEMORANDUM ACCOMPANYING FINDINGS OF FACT CONCLUSIONS OF LAW AND DIRECTION OF ELECTIONS

The sole issue is whether or not James Kichak, foreman in the Street Department, is a supervisory employee. The Town adduced evidence at the hearing to the effect that Kichak could purchase certain amounts of materials or parts without referring the matter to a Town Board member, but it does not contend specifically that Kichak is a managerial employee, and as noted in the findings, the amount involved is limited to \$50 or less and there is no evidence that Kichak has authority to establish a budget or effectively commit the Employer's resources.

The only full-time employee other than Kichak works closely with him, and the record does not reveal any notable independence of judgment exercised by Kichak in connection with his responsibility to direct the work of the two to four 15 to 18 year old high school students who work for the Town each summer mowing lawns and doing other like work. Kichak testified that he is active in the selection of the students given this work, but a Town supervisor also participates in the selection and they have always agreed on which youths to select. The Town pays none of the labor costs of these youths, who are paid by a regional agency identified in the record as CEP.

Kichak, the record shows, has no substantial authority with respect to the three casual employees employed by the Town to plow snow during the winter; the record shows that on the occasions when he calls them to report for work, there is sufficient snow that no independent judgment is required as to whether or not they should be called.

The record shows that the Town Board members have exercised close control over the activities of the Street Department, and former Town Supervisor Earl Spencer testified that he would often go out to look at the crew's road work to make sure that it was being done correctly. Board members' involvement is not limited to supervision, and the record shows that a cooperative manner of management is practiced, in that Board members have regularly done tree removal and similar Street Department work themselves when necessary. Kichak gives a report to the Town Board every two weeks concerning Street Department activities, but fills out a time sheet in the same manner as Hammond does, and Kichak does not approve Hammond's time sheets. In the past, Kichak and Hammond have gone jointly to the Board each year to request pay increases.

The record shows only one instance in which Kichak took any labor relations-related action of any identifiable type, other than routine work assignment. In that instance, a summer employee refused to do lawn raking, and Kichak sent that employee home. No further disciplinary action was taken against that individual, and we find this to be a de minimis exercise of supervisory authority.

The WERC considers the following factors in determining if a position is supervisory in nature:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
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 skills or for his supervision of employees.
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and

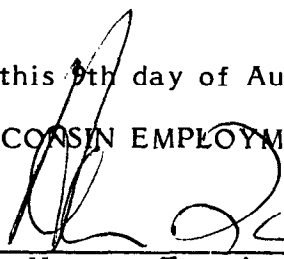
7. The amount of independent judgment exercised in the supervision of employees. 2/

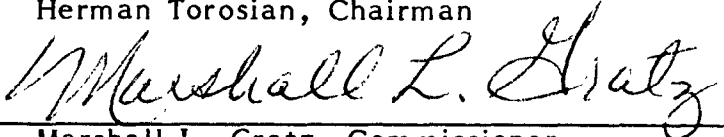
Comparison of these factors with the facts listed in the findings and discussed above show that virtually none of the factors here listed militate in favor of finding that Kichak is a supervisor within the statute's meaning. Despite the fact that Kichak is the employee of the Town with the most responsibility, the record shows that he is at best a lead worker and has relatively little supervisory responsibility over other employees. We conclude that he does not possess authority or responsibilities in the necessary combination or degree so as to constitute either a supervisor or a managerial employee.

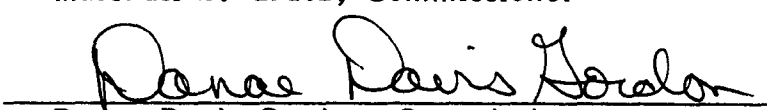
Dated at Madison, Wisconsin this 9th day of August, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

2/ City of Rice Lake, Dec. No. 20791 (WERC, 6/83); Jefferson Water and Electric Department, Dec. No. 20511 (WERC, 4/83).