
In the Matter of the Petition of

WISCONSIN COUNCIL 40,
AFSCME, AFL-CIO

Involving Certain Employees of

DANE COUNTY

Appearances:

FINDINGS OF FACT

- ## ARTICLE I
- ### Recognition

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- No. 22976-A

Legal Secretary, District Attorney's office; and that as a consequence of the audit the County concluded that the three positions were supervisory in nature and thereafter treated them as excluded from the bargaining unit.

5. That the County thereafter submitted a resolution, Resolution No. 97, to it's Board to reclassify the three positions in question; that those three positions were all reclassified on or about September 20, 1985 to a common classification, Administrative Service Supervisor I; and that the Administrative Service Supervisor I classification is an existing classification within the organizational chart of the County.

6. That prior to the reclassification, Joyce Armson was an Administrative Legal Secretary, a position which she held since 1984; that Rebecca Cascio was an Administrative Assistant I with the Extension, a position she held for a period of three years; and that Sharon Durst was an Administrative Legal Secretary with the District Attorney's office, a position she held since 1978.

7. That on November 5, 1985, the Union filed a petition to clarify the bargaining unit referenced in paragraph 3 above, requesting that the three positions referenced in Findings of Fact 4, 5, and 6, above, be included in the bargaining unit; and that the County opposes inclusion on the basis that the positions are supervisory.

8. That the County's Criminal/Traffic Division employs approximately 37 people including attorneys, other professional staff, a paralegal, Victim/Witness Specialist, First Offender Specialist, clerk typists, and Administrative Assistant; that the District Attorney serves as Department Head and that there are two Deputy District Attorney's, one of whom, Fred Erhardt, exercises supervisory authority.

9. That Sharon Durst oversees the work of 14 clerical employes of the Criminal/Traffic Division; that she has solely conducted the pre-hiring interviews and effectively recommended the hire of the only two original clerical hires in the last three or four years; that she has solely conducted the pre-transfer/promotion interviews on seven occasions in the last three or four years; that she screens applicants, rejects applicants and effectively recommends selection of transfer/promotion applicants; and, that her recommendations relative to hiring, promotion, and transfer are made to Fred Erhardt and that they have never been rejected.

10. That Durst makes non-routine work assignments to clerical employes, transfers work from employe to employe, and evaluates the clerical employes on an annual basis; that she approves requests for time off including vacation and sick leave; that she has exercised this authority to deny requested vacation and to request a medical slip from an employe experiencing medical problems; that she has exercised and exercises the authority to authorize and assign overtime; that she secures and terminates Limited Term Employes, and that on at least one occasion she has terminated a Limited Term Employee for failing to meet Departmental expectations; that she schedules and conducts office meetings; that she has an office with an observational window which overlooks the work area; that she does little if any clerical work; and that following her reclassification she earns more than do the clerical employes of the Department.

11. That, to date, there have been no grievances nor any serious discipline meted out; that she did on one occasion Durst prepared a written reprimand for Erhardt to issue and he did so on her recommendation; that she has verbally reprimanded clerical employes for coming in late and/or improper personal use of the telephone; and that Durst possesses supervisory authority in sufficient combination and degree to render her position supervisory.

12. That the Dane County Extension office employs approximately 14 people including Extension Agents, maintenance employes, and clerical staff; that the Department Head, Tom O'Connell, manages the Department; that Rebecca Cascio spends about 10% of her time providing administrative and clerical support for O'Connell.

13. That in addition to the clerical work, Cascio is the contact person for the Extension Building and as such is responsible for building-related problems such as heating and plumbing; that Cascio provides substantial training on word processing equipment and has budgeting and accounting responsibilities.

14. That Cascio oversees the work of four permanent status clerical employees and 1 Limited Term Employee in the Extension Department, 1 permanent status clerical employee in the Land Conservation Department, and 2 permanent status maintenance employees assigned to the building.

15. That Cascio has, without input from her Department Head, hired 4 Limited Term Employees since March of 1985; that she has participated in the hiring of 2 permanent status clerical employees by sitting on a hiring committee composed of herself, the Department Head, and the agent whose work was involved, and that the committee achieved consensus relative to who was to be hired; that she assigns workload in other than routine matters; that she can, and on two occasions has, approved overtime for clerical employees; that she approves use of vacation and sick leave for clerical employees and in the exercise of that authority she has denied vacation requests; that she does not schedule vacations for custodians; that clerical employees calling in sick call her; that she completes annual evaluation forms on the clerical staff and maintains personnel files; that for clerical employees she has the authority to set maintenance priorities; that in response to work site problems she has effectively recommended a rotation of assignments which had the effect of redistributing workload and assignment; that she has scheduled lunch breaks to provide an orderly noon hour; that she has, on occasion, directed clerical employees to redo work which she has regarded as sub-standard; that she has the authority to adjust certain grievances for clerical employees; and that with her reclassification Cascio earns more than do the clerical employees.

16. That no one has been terminated at the Extension; that Cascio has never denied a merit increase; that there has never been a grievance filed; that there has been no disciplinary action taken with the exception that Cascio once issued a verbal reprimand which was not significant enough to be placed in the employee's personnel file; and that Cascio possesses supervisory authority in sufficient combination and degree to render the position supervisory.

17. That the Family Court Commissioner's office is headed by Ralph Guerin, Family Court Commissioner; that in addition to Guerin, the office consists of 3 Assistant Family Court Commissioner, Joyce Armson, the Administrative Services Supervisor I, five permanent status clerical employees, and 1 Limited Term Employee; and that, except in the absence of Guerin, none of the Assistant Family Court Commissioners exercises any supervisory authority.

18. That Armson oversees the work of the 5 permanent status clerical employees and the Limited Term Employees; that she assigns all work, and that work assignments are predicated upon Armson's assessment as to the capabilities of the employees involved; that she has formulated and issued written work rules relative to appropriate work attire, no smoking on the job, and no beverages near the word processing equipment; that while the no smoking policy is a County policy, and the beverage restriction was an idea of the Court Commissioner and the dress restrictions reflected Armson's view of appropriate attire; that she screens the work of the clerical employees and if dissatisfied with the quality requires the work to be redone; that she can transfer work between clerical employees; that she completes annual evaluation forms regarding the clerical employees; that she has, at least on one occasion, screened transfer requests including conducting pre-transfer interviews of applicants, checking references, and making the ultimate selection; that she has hired four or five Limited Term Employees; that she does very little clerical work; that she effectively recommended adding a clerical position to the Department; and that following her reclassification she earns more than do the clerical employees of the Department.

19. That there has not been a serious disciplinary situation in the Family Court Commission's office; but that Armson has verbally cautioned clerical employees about the propriety of their attire and about their personal use of the telephone; that Armson believes that she would need Guerin's approval before issuing a suspension or discharge; that there have been no grievances filed by any clerical employee in the Department; and that Armson possesses supervisory authority in sufficient combination and degree to render the position supervisory.

CONCLUSIONS OF LAW

1. That the three occupants of the Administrative Services Supervisor I classification who were the subjects of this proceeding, Sharon Durst, Rebecca

Cascio, and Joyce Armson are supervisors and therefore not "municipal employees" within the meaning of Sec. 111.70(1)(o) of the Municipal Employment Relations Act,

2. That, because of their supervisory status, the three positions described above are not appropriately included in the collective bargaining unit described above in Finding of Fact 3.

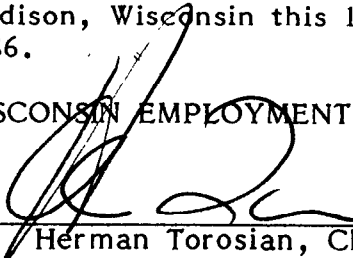
ORDER CLARIFYING BARGAINING UNIT /1

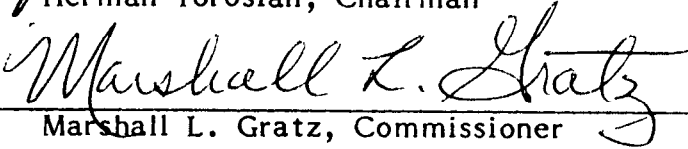
That the three positions in the Administrative Services Supervisory I classification, currently occupied by Sharon Durst, Rebecca Cascio, and Joyce Armson are hereby excluded from the collective bargaining unit described above in Finding of Fact 3.


Given under our hands and seal at the City of
Madison, Wisconsin this 16th day of September,
1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

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- 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.

(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

(Footnote 1 continued on Page 5.)

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.

DANE COUNTY

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

INTRODUCTION

The Union and the County are signatories to a 1984-85 collective bargaining agreement wherein the Union is recognized as the exclusive bargaining representative of employees of the County with specified exceptions, including supervisors. The Union has petitioned the Commission to clarify the existing unit by including 3 positions titled Administrative Service Supervisor I (formerly Administrative Legal Secretary, Administrative Assistant I, and Administrative Legal Secretary, District Attorney's office). At hearing, the parties stipulated that the only issue to be determined is whether Joyce Armson, Rebecca Cascio, and Sharon Durst, the incumbents, are supervisors.

POSITION OF THE PARTIES

It is the view of the Union that the supervisory authority of the individuals in question is "de minimus" in nature. At most, the Union would concede that the three are leadworkers and not supervisors within the meaning of the statute.

The County sets forth a lengthy review of record testimony relative to the duties and responsibilities of the three individuals whose positions are at issue. The County contends that all three persons have the authority to effectively recommend hiring, including promotion or transfer, discipline and discharge. Each is alleged to direct and assign work. They are treated as supervisors by those under them. Two others exercise supervisory authority in their respective areas. All three are paid as supervisors and none of them spends much time performing the same work as the employees supervised. In conclusion, the County contends that all of the employees are supervisory and appropriately excluded from the collective bargaining unit.

DISCUSSION

Section 111.70(1)(o)1., Stats., defines a supervisor as follows:

As to other than municipal and county fire fighters, 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, but requires the use of independent judgment.

In determining whether a position is supervisory, the Commission gives consideration to the following factors:

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 its 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/

Not all of these factors need be present in any given case, but a sufficient combination of said factors must be present for the Commission to find an employee to be a supervisor. 3/

The record establishes that Durst has exercised substantial authority and discretion in the hiring process. She effectively recommends the hiring, transfer, and promotion of permanent status employees and hires and fires Limited Term Employees with little or no oversight. On a daily basis she assigns work to numerous clerical employees and monitors the use of vacation and sick leave benefits, authorizes and approves overtime and generally oversees the work of numerous people. Her work appears to be primarily supervisory, and while Erhardt possesses more supervisory authority, it appears that Durst does the direct supervision of clerical staff and that Erhardt is removed from direct supervision of the clerical staff.

Cascio has done less hiring, but participates in all hiring decisions and, acting alone, has hired a number of Limited Term Employees. She has never really exercised supervisory authority over the custodial employees and serves in more of a "lead" capacity with respect to them. However, her ability to assign workload, approve overtime, control the use of benefits, evaluate staff, review and control the quality of work product including the ability to direct that work be redone, when coupled with her input into hiring decisions suggest that hers is a supervisory position vis a vis the clerical employees.

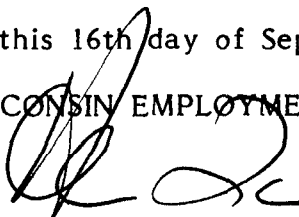
Similarly, Armson assigns work, formulates work rule policies that dictate on the job behavior of certain employees, controls the quality of the clerical's work product, evaluates their performance, and, at least on one occasion, made the meaningful decision as to who among competing applicants, would be allowed to transfer into the Department. She has, acting alone, hired 4 or 5 Limited Term Employees. It was her uncontradicted testimony that based upon her conclusions as to productivity and efficiency, a new position was authorized for the Department. It appears that Armson does all of the direct supervision of the clericals. The Family Court Commissioner appears to be removed from such supervision and not to be involved with day-to-day matters.

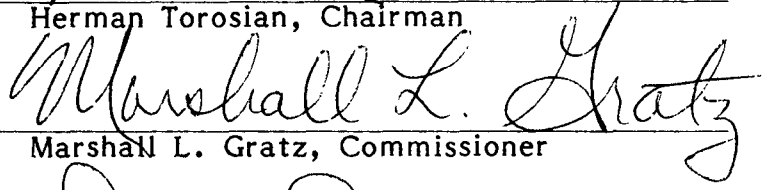
The Commission concludes that Durst, Cascio and Armson exercise sufficient supervisory authority to warrant the conclusion that they are supervisors within the meaning of Sec. 111.70(1)(o)1., Stats, and an order that they shall remain excluded from the bargaining unit.

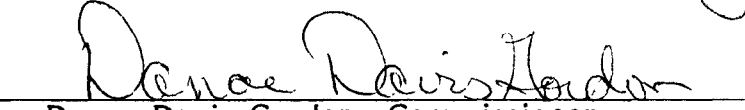
Dated at Madison, Wisconsin this 16th day of September, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

2/ City of Kiel (Police Department), Dec. No. 11370-A (WERC, 3/83); Milwaukee County (Sheriff's Department) Dec. No. 22519 (WERC, 4/85).

3/ Dodge County, Dec. No. 17558-C (WERC, 2/81); Juneau County, Dec. No. 18728-A (WERC, 1/86); School District of Tomahawk, Dec. No. 22495 (WERC, 3/85).