

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
**CITY OF LADYSMITH EMPLOYEES LOCAL 1425A,
AFSCME, AFL-CIO**

Involving Certain Employees of
CITY OF LADYSMITH

Case 8
No. 57546
ME(u/c)-983

Decision No. 23322-B

Appearances:

Mr. William R. Sample, Labor Relations Consultants, Inc., 31 West Superior Street, Suite 402, P.O. Box 808, Superior, Wisconsin 55801-0808, appearing on behalf of the City of Ladysmith.

Mr. Steven Hartmann, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 364, Menomonie, Wisconsin 54751-0364, appearing on behalf of the City of Ladysmith Employees Local 1425A, AFSCME, AFL-CIO.

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

On September 11, 2000, City of Ladysmith Employees Local 1425A, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission to clarify an existing bargaining unit of City of Ladysmith employees by including the Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor.

Examiner John R. Emery, a member of the Commission's staff, held a hearing on February 6, 2001, in Ladysmith, Wisconsin. As of the hearing date, the disputed position had

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become Parks and Sanitation Director/Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor. The City contends that the incumbent in this position is a supervisor and, therefore, should continue to be excluded from the bargaining unit. The City's brief was filed on May 7, 2001, and the Union's brief was filed on May 9, 2001, whereupon the record was closed.

To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.

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

FINDINGS OF FACT

1. The City of Ladysmith, herein the City, is a municipal employer with offices at 120 Miner Avenue West, Ladysmith, Wisconsin.

2. City of Ladysmith Employees Local 1425A, AFSCME, AFL-CIO, herein the Union, is a labor organization with offices at P.O. Box 364, Menomonie, Wisconsin 54751.

3. At all times material, the Union has been the certified exclusive bargaining representative for a unit described in CITY OF LADYSMITH, DEC. NO. 23322 (WERC, 4/86) as:

All regular full-time and regular part-time employees of the City of Ladysmith, excluding professional, craft, supervisory, managerial, executive and confidential employees, elected officials, and law enforcement employees with the power of arrest.

4. In July, 2000, the City created the position of Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor as a salaried, non-bargaining unit position. The City hired Kurt Gorseigner to fill the position in July, 2000. Prior to that time, Gorseigner had been a City employee and member of the bargaining unit for over five years, most recently in the Public Works Department.

The job description for the position stated as follows:

**TITLE: BUILDING INSPECTOR
WEED COMMISSIONER
ZONING ADMINISTRATOR
FORESTER
ASSESSOR**

DEPARTMENT: BUILDING INSPECTION

RESPONSIBLE TO: CITY ADMINISTRATOR, MAYOR AND COUNCIL

PURPOSE:

TO MANAGE THE BUILDING INSPECTION DEPARTMENT, AND PERFORM DUTIES OF THE WEED COMMISSIONER AND CITY FORESTER, ZONING ADMINISTRATOR AND CITY ASSESSOR.

DISTINGUISHING FEATURES OF THE CLASS:

THE EMPLOYEE IN THIS CLASS MUST UNDERSTAND VERTICAL CONSTRUCTION, DEPARTMENT OF COMMERCE B SAFETY AND BUILDING DIVISION REQUIREMENTS AND BE ABLE TO INTERPRET WISCONSIN STATE STATUTES/CITY ORDINANCES.

ESSENTIAL JOB FUNCTIONS:

THESE ARE EXAMPLES:

ADMINISTER, INTERPRET, AND UPDATE THE CODE OF ORDINANCES THAT APPLY TO AREAS OF RESPONSIBILITIES.

ISSUE BUILDING PERMITS.

APPROVING BLUE PRINTS.

ENFORCE BUILDING STANDARDS AND ZONING ORDINANCES.

ON SITE INSPECTION OF CONTRUCTION.

MAINTAIN FILES ON ALL CONSTRUCTION.

INSPECTIONS OF REHABILITATION PROJECTS.

WORKING IN COOPERATION WITH STATE INSPECTIONS.

CONDEMNATION OF UNSAFE BUILDINGS.

EROSION CONTROL FOR CONTRUCTION SITES.

ENFORCE WETLAND AND SHORELAND ORDINANCES.

NOTIFY PROPERTY OWNERS TO CORRECT OR ABATE ANY
NUISANCE OR SOURCE OF FILTH.

ADVISE COMMITTEES, DEPARTMENT HEADS, AND EMPLOYEES
REGARDING INSPECTION ISSUES.

DEVELOP, IMPLEMENT, AND COORDINATE CITY EFFORTS TO
MAINTAIN COMPLIANCE WITH THE AMERICAN S WITH
DISABILITIES ACT.

PERFORM DUTIES AS THE WEED COMMISSIONER AS DEFINED IN
SEC. 2-3-14 OF THE CODE OF ORDINANCES.

PERFORM DUTIES AS THE ZONING ADMINISTRATOR TO INCLUDE
ANSWERING ZONING QUESTIONS ABOUT ANNEXATION
PROCEDURES, VARIANCE PROCEDURES, CONDITIONAL USE
PERMITS, SET BACK REQUIREMENTS, AND ANY OTHER RELATED
QUESTIONS/DUTIES.

ENSURES PLAYGROUND EQUIPMENT IS INSPECTED PERIODICALLY
AND EQUIPMENT IS REPLACED IN TIMELY MANNER TO MEET
FEDERAL SAFETY GUIDELINES.

BUILDING MAINTENANCE FOR LIBRARY B HEATING & AIR
CONDITIONING PROBLEMS.

LOCATE LOT LINES FOR PROPERTY OWNERS.

PHYSICAL DEMANDS OF THE POSITION:

CLIMBING, STOOPING, BENDING, TRAVERSING ROUGH AND
UNEVEN GROUND, TYPING, SITTING, DIGGING, VISION

EDUCATION REQUIRED:

STRONG KNOWLEDGE OF VERTICAL CONSTRUCTION AND EROSION
CONTROL MEASURES.

GOOD KNOWLEDGE OF COMPUTERS.

FAMILIAR WITH LEGAL DESCRIPTIONS AND ASSESSMENT ROLLS.

HIGH SCHOOL DIPLOMA OR EQUIVALENT

REQUIRED LICENSES/PERMITS:

VALID WISCONSIN DRIVER S LICENCE

CERTIFICATION REQUIRED UPON COMPLETION OF PROBATIONARY PERIOD:

ONE AND TWO FAMILY: UDC-CONSTRUCTION
 UDC-ELECTRICAL
 UDC-PLUMBING
 UDC-HEATING, VENTILATION, AND
 AIR CONDITIONING

Assessor 1 & 2

NOTE: THIS POSITION REQUIRES A PROBATIONARY PERIOD OF 2 YEARS.

Wage Rate: 80% of base at time of hire with first certification, 85% of base upon completion of second certification, 90% of base upon completion of third certification, 95% of base upon completion of fourth certification, 100% of the base upon completion of fifth certification

5. On September 11, 2000, the Union filed a petition for unit clarification, seeking to have the position included in the bargaining unit. The position's job description was subsequently amended to add the following items to the position's essential job functions:

DEVELOP ANNUAL OPERATING BUDGETS FOR ASSESSING AND BUILDING INSPECTION DEPARTMENTS.

DEVELOP AND IMPLEMENT DEPARTMENT PROCEDURAL AND OPERATING GUIDELINES.

6. On January 22, 2001, the City Council adopted the following resolution adding the title and duties of Parks and Sanitation Director to Gorsegner's position and increasing the position's salary by \$1060.80 per year.

A motion was made by Pohlman, seconded by Lee and carried by voice vote to add the title of Parks and Sanitation Director to the Building Inspector/Assessor/Zoning Administrator's position and designate it a Department Head reporting directly to the City Administrator and granting

supervisory responsibility and authority to the Parks and Sanitation Director over certain city employees, which include the Refuse Supervisor, Refuse Worker, Park Worker, seasonal Park Workers and all Lifeguard staff including the Head Lifeguard. The Council further directs the Parks and Sanitation Director to attend all Park Board meetings as an ex-officio, advisory member and that the base rate of this position will increase \$1,060.80 annually effective January 23, 2001. This motion is contingent upon acceptance of additional position responsibilities by the Building Inspector/Assessor/Zoning Administrator.

The new job description for the position is as follows:

PARKS & SANITATION DIRECTOR, BUILDING INSPECTOR, ASSESSOR, HEALTH OFFICER, ZONING ADMINISTRATOR, WEED COMMISSIONER.

DEPARTMENT: PARKS & SANITATION.

RESPONSIBLE TO: CITY ADMINISTRATOR, MAYOR & CITY COUNCIL.

1. PURPOSE:

Supervise, manage and direct activities of the park and sanitation workers including the completion of job performance evaluations. Manage, administer and direct the operations of the Building Inspection Department and perform the duties of the Weed Commissioner, Zoning Administrator, and City Assessor.

1. DISTINGUISHING FEATURES OF THE CLASS:

The employee in this class must understand vertical construction, requirements of the Dept. of Commerce, Safety and Building Division, be able to interpret WI. State Statutes and local ordinances. As City Assessor, be responsible for discovering, listing and valuing all taxable property, both real and personal. Conduct on site inspections of new residential and commercial properties as well as any remodeling of these properties, to assure proper construction to state and local codes. Ability to manage, organize and supervise employees in performance of their duties and maintain effective operation of departments.

2. EXAMPLES OF WORK:

Develop annual operating budgets for the Parks and Sanitation, Building Inspection and assessing departments.

Administer, interpret, and update the City of Ladysmith Code of Ordinances as needed.

Request, review project blueprints and maintain files of all construction projects.

Issue building permits.

Enforce building standards and zoning ordinances.

Conduct on-site inspections of building projects including rehabilitation projects.

Work closely with State oversight agencies and officials.

Condemnation of unsafe buildings.

Erosion control procedures for construction sites.

Enforcement of wetland and shore land ordinances.

Notice to owners of property to correct or abate nuisances.

Advise Council, Committees, other Dept. Heads and employees regarding inspection issues.

Develop, implement, and coordinate City efforts to maintain compliance with the Americans With Disabilities Act.

Perform duties of Weed Commissioner as defined in Sec. 2-23-14 City of Ladysmith Code of Ordinances.

Perform duties of Zoning Administrator to include fielding questions regarding annexation and variance procedures, conditional use permits, set back requirements. Recommend and implement necessary changes to zoning code.

Locate lot lines for property owners.

Location and identification of all taxable properties in the jurisdiction.

Inventory of all taxable property, including quantity, quality, and important characteristics.

Determination of the extent of each properties taxability.

Estimation of the market value of each taxable property.

Calculate the assessed value of each property to market value.

Preparation and certificate of the assessed value of their property.

Upon appeal of the property owner, appearance and defense not only of the value of the property, but also of the methods used to establish value.

Make and keep accurate lists and descriptions of all parcels of real property in the city.

Record all personal property to assessment roll.

Ensures playground equipment is inspected periodically and equipment is replaced in a timely manner to meet federal safety guidelines.

Participates in the interviewing and hiring of refuse and park workers.

Conducts evaluation of subordinate employee performance.

Adjust grievances of employee supervised at the step 1 level.

Attend Park Board meetings as an ex-officio member.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or logical assignment to the position.

The job duty examples do not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

3. SUPERVISION RECEIVED:

General direction from City Administrator, City Council, and Park Board.

4. SUPERVISION EXERCISED:

Directly supervise refuse and park employees. Authority to issue verbal and/or written warnings and to recommend suspension and-or termination to Human Resource Coordinator and Personnel Committee.

5. PHYSICAL DEMANDS OF THE POSITION:

Climbing, stooping, bending, traversing rough and uneven ground, typing, sitting, digging, good sensory skills.

6. REQUIREMENTS EDUCATIONAL:

Strong knowledge of vertical construction and erosion control measures. Good knowledge of computer and related office equipment. Familiarity with legal descriptions and assessment procedures. A continuing educational commitment.

High School Diploma or equivalent.

Supervisory experience.

7. REQUIRED LICENSES/PERMITS:

Valid Wisconsin Driver's License.

8. CERTIFICATION REQUIRED UPON COMPLETION OF PROBATIONARY PERIOD:

One and Two Family Construction: UDC-Construction, UDC-Electrical
UDC-Plumbing, UDC-HVAC

Assessor I & II

On January 25, 2001, the City gave Gorseigner the following memo regarding his additional responsibilities as Parks and Sanitation Director.

. . .

I have received your acceptance of the new position of Parks and Sanitation Director, which will be in addition to your current duties. I would like to highlight some features of your new duties in light of your acceptance so there will be no misunderstanding about the City's expectations. These new responsibilities include:

1. You will sit on the Personnel Committee, interviewing candidates and make advisory recommendations to the Personnel Committee for vacant positions in Refuse Worker and Park Worker classifications as well as all Park workers including all lifeguards.
2. You will supervise the daily activities of the Refuse and Park workers, both Union and non-Union, and will be responsible to see that those employees

properly perform their duties and assignments. This authority will include determination of whether or not to replace absent employees, the authorization to approve overtime requests, and the prioritization of work performed by those employees. You will not be expected to perform any of the duties of employees that you supervise.

3. You will be responsible for the work and performance evaluations of employees that you supervise as directed by the Personnel Committee.
4. You will be responsible for the adjustment of Union employee grievances at the Step 1 level and non-Union employee complaints prior to those complaints coming to the HRC, the Personnel Committee or the Park Board.
5. You will have the authority to issue verbal and/or written warnings for violations of City rules and regulations governing employee conduct and performance on the job.
6. You will have the authority to recommend suspension or termination of the employees you supervise. Any such recommendations would be to myself as the Human Resource Coordinator and the City's Personnel Committee and Park Board.
7. You will attend Park Board meetings as an ex-officio member to advise on issues of Park employees and Park policy.

. . .

7. As Parks and Sanitation Director, Gorsegner is responsible for the supervision of two full-time sanitation employees and one full-time seasonal park employee. He will also supervise 20 part-time seasonal park employees and lifeguards. His responsibility includes sitting as an *ex officio* member of the Personnel Committee, reviewing employment applications, participating in hiring interviews for open positions in the Parks and Sanitation Department and making recommendations on hiring to the full Committee. He will direct the day-to-day activities of the Park and Sanitation employees and the lifeguards and will conduct performance evaluations of those employees. He has authority to authorize overtime, adjust grievances at the Step 1 level, issue verbal and written warnings to employees for rule violations and effectively recommend suspension or termination.

8. As Parks and Sanitation Director, Kurt Gorsegner has supervisory 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

1. The Parks and Sanitation Director is a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and, therefore, is 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

1. The Parks and Sanitation Director shall continue to be excluded from the bargaining unit referenced in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin this 25th day of October, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

CITY OF LADYSMITH

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

POSITIONS OF THE PARTIES

The Union

The City created the position of Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor as a non-bargaining unit position without providing a legal basis for exclusion, which resulted in the instant petition. Thereafter, the City changed the job description for the position to include some budgetary responsibilities in order to qualify the position as managerial. It is clear from the evidence, however, that the position is not managerial, as it does not have significant budgetary or policy-making responsibility, and the City does not seriously contend otherwise. Rather, after the original hearing had been postponed and rescheduled, the City once again changed the position description to add the title and function of Parks and Sanitation Director, along with purported supervisory responsibilities over several employees.

Since the new duties were added less than two weeks prior to the hearing, they are, at best, prospective. Gorseigner had not, as yet, had occasion to perform any of them. His input into hiring will be limited to reviewing applications and sitting in on interviews with seven other people. His supervisory responsibility is further called into question by the fact that the Street Department Leadman, who had previously overseen the parks and refuse workers, was told by both the City Administrator and the Human Services Director/Comptroller that his role would not change and that he need only refer issues he could not handle to Gorseigner.

The City has clearly attempted to keep this position out of the Union at all cost and, to that end, has continued adding duties to job description, which cannot be refuted because they have not been exercised. The Commission should rely on the original job description created for the position and, on that basis, order the position included in the bargaining unit.

The City

The position of Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor was originally created as a non-bargaining unit position, for which the incumbent, Kurt Gorseigner, was hired. After the petition for unit clarification was filed, Gorseigner indicated that he did not wish to be in the unit, and it also was felt to be in the City's interest that the position remain non-union.

After reviewing the legal criteria, the City concluded that statutory exclusions for managerial, professional and craft employees did not apply. At the same time, the City was considering staffing options in light of anticipated retirements in the near future, among them the Public Works Director. It was determined that some Public Works responsibilities should be transferred to Gorsegner in anticipation of the Director's eventual retirement and the possibility of Gorsegner replacing him. For this reason, Gorsegner was given the added role of Parks and Sanitation Director.

As Parks and Sanitation Director, Gorsegner will screen applicants for employment, participate in the interview and selection process, issue discipline, adjust grievances and direct the workforce. He is the direct supervisor of the Parks and Sanitation employees and is specifically paid for undertaking these responsibilities. He does not function as a Park or Sanitation worker himself. He operates virtually autonomously in the supervision of the employees in his department. Under Commission precedents, Gorsegner qualifies as a supervisor and, therefore, the petition should be denied.

DISCUSSION

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

Under that statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

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. 1/

1/ MILWAUKEE PUBLIC SCHOOLS, DEC. No. 6595-C (WERC, 5/96).

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 appear in sufficient combination and degree to warrant finding an employee to be a supervisor. 2/ Further, it is not necessary for all conferred supervisory responsibilities to have been exercised, where the incumbent has only held the position for a short time or the occasions for exercise of certain supervisory functions are infrequent, so long as the existence of such responsibilities is established by competent evidence. 3/

2/ RICE LAKE HOUSING AUTHORITY, DEC. No. 30066 (WERC, 2/01).

3/ MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. No. 17009-F (WERC, 4/01); WHITEHALL SCHOOL DISTRICT, DEC. No. 29286-B (WERC, 7/99).

Kurt Gorsegner assumed most of his new responsibilities in July, 2000 when he was hired for the position of Building Inspector/Weed Commissioner/Zoning Administrator/Forester/Assessor. From the start, the City wanted to exclude the position from the bargaining unit to give the City greater control over the position as well as greater flexibility for future modifications of the position (in light of factors such as the anticipated retirement of the Director of Public Works). 4/ After the Union filed its petition for unit clarification, however, as the City acknowledged, it began to entertain some doubts as to whether the position it had created would be able to be excluded from the bargaining unit as a matter of law. Although it added certain budgetary responsibilities to the position description in September, 2000 in hopes of bolstering the position's managerial components, the City ultimately concluded that the new responsibilities were insufficient for the position to be excluded from the bargaining unit as "managerial."

4/ The City notes Gorsegner's expressed desire to remain non-union. Under Commission case law, Gorsegner's preference in this regard is irrelevant and has not been considered by the Commission. CITY OF OCONTO FALLS, DEC. No. 29402-B (WERC, 5/99).

Thus, in January, 2000, Gorsegner's position was augmented by adding the duties of Parks and Sanitation Director. The responsibility of supervising the park employees and refuse workers was specifically added to Gorsegner's position tasks, with the view that Gorsegner may ultimately fill the vacant slot that will be left when the Public Works Director retires. Consequently, the City has abandoned its previous arguments that Gorsegner is a managerial employee and now contends that he be a supervisor.

The Union argues that the City has engaged in a sham by continuing to add duties to Gorsegner's position simply to exclude the position from the bargaining unit. The City does not attempt to hide its desire to keep the position out of the bargaining unit, but asserts that the duties it has added to Gorsegner's position are real, not artificial, thus justifying the claimed exclusion.

Section 111.70(1)(o)1, Stats., speaks in terms of the "authority" of an individual to act or effectively recommend action. The statute does not require that the actual exercise of authority to be established before an employee can qualify as a supervisor. Thus, our analysis focuses on whether an individual has the authority to take or effectively recommend action. Clearly, evidence as to the actual exercise of that authority provides conclusive support for the existence of the authority itself. Similarly, where the authority is not exercised in a relevant fact situation, the asserted existence of the authority is substantially if not critically undermined. However, where there has been no occasion to exercise the authority in question, it does not follow that the authority does not exist. Rather, in the absence of factual scenarios in which the existence of authority can definitively be tested, we evaluate the existing evidence presented as to the authority of the individuals in question and make a determination. Where there is no evidence presented that calls into question the existence of asserted authority, we have no legitimate basis for concluding that the evidence supporting the existence of authority is not correct. MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 17009-F (WERC, 4/01); CITY OF MILWAUKEE, DEC. NO. 17741-B (WERC, 1/91); TOWN OF MADISON, DEC. NO. 27784-B (WERC, 8/97).

Here, the testimony of Gorsegner and Dutenhoefer, the content of City Council resolution and the January 25, 2001 memo to Gorsegner all support the existence of significant supervisory authority. The testimony of Street Department Leadman Cote (a bargaining unit employee) indicates that Cote will still interact with other unit employees when work issues arise. However, Cote's testimony does not diminish Gorsegner's role in hiring, discipline, or authorization of overtime and thus does not provide a persuasive basis for concluding that Gorsegner does not possess meaningful supervisory authority.

Given the foregoing, we are satisfied that he has significant input into the hiring process and also has substantial disciplinary authority. He will receive and review all job applications, determining which applicant's are qualified to be considered by the Park Board or the Personnel Committee. He will also have a seat on those bodies and will have an equal voice in the ultimate selection. He has autonomy to give verbal or written warnings to employees for misconduct. He can also recommend suspension or discharge of an employee to the appropriate committee, which will give his recommendation great weight. This is consistent with the authority also held by the Public Works Director.

Gorsegner has authority to direct the activities of the employees under his supervision, but much of the work is routine and does not call for much oversight. The refuse workers have set routes, but may occasionally need to work overtime, which Gorsegner would assign. Likewise, the operations of the Parks department are fairly regular and do not generally require day to day supervision, although Gorsegner would be involved in prioritizing various tasks. He will not, however, have a role in authorizing vacations or sick leave. Most of the day-to-day details that come up in the Parks and Sanitation Departments will continue to be referred to the Street Department Leadman, who has handled this responsibility in the past. The notable change from past practice will be that where the Leadman used to report to the Public Works Director and refer issues to him, he will now report to Gorsegner.

Gorsegner will not be a working supervisor. Whereas his other duties require him to personally perform the necessary job functions, his role as Parks and Sanitation Director will be strictly supervisory. At the present time, he oversees two refuse workers year round, and a full-time seasonal park worker from early May until late in the year. During the summer, the City also hires a number of part-time park workers and lifeguards who Gorsegner will supervise. He is the only direct supervisor of these employees. For carrying out these supervisory functions, the City added \$1,060.80 to Gorsegner's annual salary.

Taking all the foregoing into account, we are satisfied that there are sufficient indicia of supervisory authority to qualify Gorsegner as a supervisor who should continue to be excluded from the bargaining unit. If the passage of time reveals that Gorsegner does not have the supervisory authority which the existing record reflects, then the Union can bring the issue back to us by filing another petition.

Dated at Madison, Wisconsin, this 25th day of October, 2001.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Meier /s/

James R. Meier, Chairperson

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

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