

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
TREMPEALEAU COUNTY HOUSING
AUTHORITY EMPLOYEES
LOCAL 382, AFSCME, AFL-CIO
Involving Certain Employees of
TREMPEALEAU COUNTY
(HOUSING AUTHORITY)

Case 30
No. 34907 ME-19
Decision No. 23469

Appearances:

Mr. Daniel R. Pfeifer, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, Route 1, Sparta, Wisconsin 54656, appearing on behalf of the Petitioner.
Mr. David Warner, Executive Director, Trempealeau County Housing Authority, Trempealeau County Courthouse, Whitehall, Wisconsin 54773, appearing on behalf of the Trempealeau County Housing Authority.

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

Trempealeau County Housing Authority Employees Local 382, AFSCME, AFL-CIO, having, on April 25, 1985, filed a petition requesting the Wisconsin Employment Relations Commission to clarify an existing voluntarily recognized unit of Trempealeau County Housing Authority employees, by determining whether the position of Maintenance Worker II should be included in said unit; and hearing in the matter having been conducted on August 26, 1985, at Whitehall, Wisconsin before Examiner Coleen A. Burns, a member of the Commission's staff, and a transcript of the proceedings having been received by September 6, 1985; and the parties having filed post-hearing briefs by September 18, 1985; and the Commission having considered the evidence and arguments of the parties and being fully advised in the premises hereby makes and issues the following

FINDINGS OF FACT

1. That Trempealeau County Housing Authority, hereinafter the Housing Authority, is a municipal employer which has offices located at the Courthouse, Whitehall, Wisconsin.
2. That Trempealeau County Housing Authority Employees, Local 382, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization which has offices located at Route 1, Sparta, Wisconsin.
3. That the Housing Authority and the Union are signatories to a 1985-86 collective bargaining agreement wherein the parties have voluntarily recognized the Union as the exclusive bargaining agent for all regular full-time and regular part-time employees of the Housing Authority, but excluding supervisory, confidential and casual employees.
4. That on April 25, 1985, the Union filed a petition to clarify a bargaining unit of municipal employees requesting that the maintenance position, hereinafter referred to as Maintenance Worker II, be included in the existing collective bargaining unit; and that the Housing Authority opposes the inclusion on the basis that the position is supervisory.
5. That the Housing Authority owns and/or manages 154 housing units located in various municipalities throughout Trempealeau County, e.g., Galesville, Arcadia, Whitehall, Blair and Pigeon Falls; that Edmond Getts, the employee occupying the position of Maintenance Worker II is the only regular, full-time Housing Authority employee engaged in buildings and grounds maintenance; that the Housing Authority employs two part-time employees who perform buildings and grounds

maintenance on an "as needed" basis; that the Housing Authority employs one summer, seasonal employee to perform lawn maintenance; and that the Housing Authority hires casual employees and independent contractors, as needed, to perform specific work of limited duration.

6. That the Housing Authority has a contract with ORC, wherein the Housing Authority pays ORC to provide building cleaning service; that ORC is a organization which provides work opportunities for handicapped workers; that ORC places, trains and supervises the workers which are provided to the Housing Authority; that ORC workers are employees of ORC; that Getts may approach ORC workers to discuss any dissatisfaction with their job performance; that, if a worker's job performance does not improve, Getts does not have authority to take any further action against the ORC worker, but rather, must refer the matter to an ORC supervisor.

7. That Getts' job description contains the following:

The duties of of (sic) the Maintenance Worker II shall include but not be limited to the following:

1. The duties of the Maintenance Worker II may include all duties listed for Maintenance Worker I.
2. The Maintenance Worker II shall perform all maintenance duties as it relates to Housing Project Maintenance. Such duties are of both a technical and non-technical nature and shall include but not be limited to heating and cooling equipment maintenance and repair, electrical repair of basic electrical equipment, motor vehicle maintenance and repair, and repairs of appliances.
3. The Maintenance Worker II shall assign work to the Maintenance Worker I and supervise the Maintenance Worker I as necessary at the direction of the Executive Director.
4. The Maintenance Worker II will schedule and perform the Tenant Service Requests, or assign such requests to the Maintenance Worker I as the work load dictates and at the direction of the Executive Director.
5. The Maintenance Worker II shall maintain routine schedules of preventative and corrective maintenance items at the direction of the Executive Director.
6. The Maintenance Worker II shall assist the Housing Authority Staff with moving, move out, and annual inspections and preform (sic) and/or supervise apartment turn around work.
7. The Maintenance Worker II shall assist the Executive Director in determining inventories of materials and supplies and maintain inventory records and purchase orders, and determine customer billing on maintenance calls where necessary.
8. The Maintenance Worker II shall assist the Executive Director in determining modernization needs and in preparing the CIAP program.
9. The Maintenance Worker II shall perform other duties and responsibilities as directed by the Executive Director.
10. The Maintenance Worker II shall perform carpenter duties as directed by the Executive Director. Such duties could include small building additions, changes, and other minor general construction work.

8. That at the time of hearing, Getts had been employed with the Housing Authority for a period of twenty months; that during this period, Getts has not formally evaluated, promoted, transferred and/or discharged any employee of the Housing Authority, that authority to evaluate, promote, transfer, and/or discharge an employee, resides with the Executive Director and/or Housing Authority Board, rather than with Getts; that the Housing Authority has never formally evaluated or discharged any employee; and that promotions have been accomplished through reclassifications which have been negotiated by the Union and the Housing Authority Board.

9. That Getts has authority to review the work product of Housing Authority employees; that, as a result of this review, Getts may praise or criticize the employees work product; that Getts has authority to request an employee to correct unsatisfactory work; that on the one occasion Getts requested such a correction, the employee complied with the request; that if the employee had not complied with Getts' request, Getts would have referred the matter to his supervisor, the Executive Director; and that authority to discipline Housing Authority employees resides with the Executive Director and/or the Housing Authority Board, rather than with Getts.

10. That the employment of the two "on call" maintenance workers pre-dates that of Getts; that each of the two "on call" maintenance workers is limited to working no more than 600 hours per year; that the two "on call" maintenance workers perform routine maintenance, such as changing light bulbs, snow shoveling and lawn maintenance, as well as repairs to building facilities; that the two "on call" maintenance workers may be notified of needed repair work by Getts, building residents, and/or other Housing Authority employees, such as the Executive Director or the office secretaries; and that, for the most part, the duties of the two "on call" maintenance workers are performed as conditions require and are performed with little, if any, direction from Getts.

11. That when Getts determined that there was a need for an employee to perform lawn maintenance, he requested the Executive Director to approve such a position; the Executive Director agreed that there was a need for the position and, together, the Executive Director and Getts discussed likely candidates; that Getts and the Executive Director jointly decided to offer the position to the individual who resided closest to the work site; that this individual was thereafter employed to work during the summer season; and that the work of this individual is performed as lawn condition require, rather than as Getts requires.

12. That in addition to the hiring of the summer seasonal employee, Getts has also been involved in the hiring of casual employees and independent contractors; that on at least three occasions during Getts' tenure as Maintenance Worker II, the Housing Authority has hired casual employees and independent contractors to perform specific work of limited duration, i.e., painting and building construction; that the hiring of casual employees and independent contractors may be initiated by Getts by informing the Executive Director that he needs assistance, or the Executive Director may independently determine that the workload necessitates such a hiring; that Getts' requests for assistance have been granted in the past and are likely to be granted in the future, subject to the Executive Director's determination that funding is available; that prior to hiring casual employees and independent contractors, the Executive Director consults with Getts regarding likely candidates, that the Executive Director may rely upon Getts to name likely candidates, or the Executive Director may also name likely candidates; that Getts' recommendations regarding the hiring of independent contractors and/or casual employees, whether they be negative or positive recommendations, are generally given effect by the Executive Director; and that the wages of casual employees and/or independent contractors are determined by the Executive Director, in accordance with the requirements of the Davis-Bacon Act.

13. That although Getts, as Maintenance Worker II, has authority to effectively recommend the hiring of Housing Authority employees, he does not exercise the other indicia of supervisory authority in sufficient combination or degree to accord Getts supervisory status.

CONCLUSIONS OF LAW

1. That the occupant of the Maintenance Worker II position, Edmund Getts, is not a supervisor and, therefore, is a municipal employee within the meaning of Sec. 111.70(1)(i) of the Municipal Employment Relations Act.

2. That the position of the Maintenance Worker II is appropriately included in the collective bargaining unit described above in Finding of Fact 3.

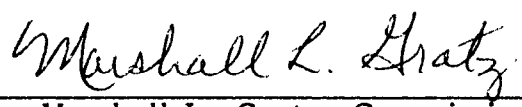
ORDER CLARIFYING BARGAINING UNIT1/

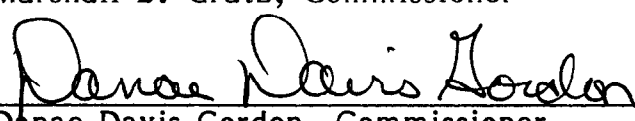
That the position of Maintenance Worker II, currently occupied by Edmund Getts, is hereby included in the collective bargaining unit described above in Finding of Fact 3.

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

(Footnote 1 continued on Page 5)

(Footnote 1 continued)

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.

TREMPEALEAU COUNTY (HOUSING AUTHORITY)

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

INTRODUCTION

The Union and the Housing Authority are signatories to a 1985-86 collective bargaining agreement wherein the Union is recognized as the exclusive bargaining representative of all regular full-time and regular part-time employees of the Housing Authority, excluding supervisory, confidential and casual employees.

The Union has petitioned the Commission to clarify the existing bargaining unit by including the position of Maintenance Worker II. At hearing, the parties stipulated that the only issue to be determined is whether Edmund Getts, the employee currently occupying the position of Maintenance Worker II, is a supervisor.

POSITION OF THE PARTIES

The Union:

The Union contends that Edmund Getts is primarily involved in the performance of maintenance work. The Union further contends that Getts' supervisory duties, if any, are insufficient to warrant a finding that Getts is a supervisory employee.

The Union maintains that authority to effectuate the hiring, promotion, transfer, discipline and/or discharge of Housing Authority employees resides with the Executive Director, rather than with Getts. The Union further maintains that Getts has little, if any, authority to direct and assign work to employees. While acknowledging that Getts may praise or criticize an employee's work, the Union avers that any further supervisory action resulting from an employee's work performance originates with the Executive Director, and not with Getts.

The Union avers that the two "casual" on call employees who perform maintenance work perform rather routine repairs and, thus, require little, if any, direction from Getts. According to the Union, independence from Getts is further evidenced by the fact that the two "casual" employees may be called to work not only by Getts, but also by the Housing Authority secretarial staff, the Executive Director and building residents.

The Union denies that Getts either lets work to outside contractors or supervises such work. The Union contends that ORC employs its own supervisors and that Getts refers matters involving ORC workers to the ORC organization.

The Union acknowledges that level of pay may serve as an indicia of supervisory status, but argues that wage comparisons are of little value herein. According to the Union, there are inherent differences between regular, full-time employees, such as Getts, and those other individuals who perform maintenance work, i.e., casual employees and independent contractors, which make wage comparisons difficult.

In conclusion, the Union avers that Getts' supervisory duties, if any, primarily involve the supervision of an activity, rather than an employee, and thus, do not warrant a finding that Getts is a supervisory employee. Accordingly, the Union requests the Commission to include the position in the existing collective bargaining unit.

Housing Authority:

In support of its position, the Housing Authority relies on the Maintenance Worker II job description which states that the duties include the supervision of and assignment of work to Maintenance Worker I employees. Additionally, the Housing Authority asserts that the daily work of the Maintenance Worker II involves the exercise of each of the management rights set forth in Article IV,

Section 1, of the labor agreement, limited only by the necessity of complying with applicable governmental rules and regulations and the necessity of discussing any budgetary impact with the Director.

While acknowledging that Getts' recommendations regarding the hiring of employees and independent contractors is subject to approval by the Director, the Housing Authority avers that such approval is required by budgetary considerations and does not involve an evaluation of the merits of the recommendation. The Housing Authority contends that Getts' recommendations with respect to the hiring of part-time and casual employees, as well as independent contractors, have almost always been followed. The Housing Authority acknowledges that there have not been any employee layoffs or discharges. The Housing Authority further acknowledges that the Director, and not Getts, would decide whether or not a lay-off is appropriate. The Housing Authority asserts, however, that if Getts made a recommendation regarding lay-off, such recommendations would be given consideration by the Director. The Housing Authority further asserts that Getts can effectively recommend against hiring, which it argues is akin to the power to effectively recommending discharge.

The Housing Authority maintains that the use of part-time and casual employees in the maintenance work force results in few, if any, disciplinary problems. The Employer argues, however, that the responsibility to direct, correct, and lead maintenance employees resides with Getts. In conclusion, the Housing Authority argues that Getts exercises supervisory authority and is appropriately excluded from the existing collective bargaining unit.

DISCUSSION

At hearing, the parties stipulated to the fact that the only issue to be decided herein is whether Getts, the employee occupying the position of Maintenance Worker II, is a supervisory employee.

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 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/

Not all of these factors need to 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/

At the time of hearing, the Housing Authority either owned or managed 154 housing units, which units were scattered throughout Trempealeau County. Getts was the only regular, full-time Housing Authority employee engaged in buildings and grounds maintenance. Two part-time employees performed maintenance work on an "as needed" basis and one employee performed lawn maintenance during the summer months. Casual employees and independent contractors were hired, as needed, to perform work of limited duration. Building cleaning service was provided through a service contract with ORC, an organization which provides employment opportunities for handicapped workers.

The Housing Authority pays ORC to provide custodial workers. Moreover, ORC workers are placed, trained and supervised by ORC, rather than by the Housing Authority. Getts may approach an ORC worker to discuss any dissatisfaction which Getts may have with the ORC worker's work performance. However, if the work performance does not improve, Getts has no authority to take further action against the employee, but rather, refers the matter to an ORC supervisor. Consequently, we are satisfied that ORC workers are employees of ORC and not of the Housing Authority.

At the time of hearing, Getts had been employed with the Housing Authority for a period of twenty months. During that period, Getts has not been involved in the promotion, transfer, and/or discharge of any employee. 4/ Moreover, we are satisfied that authority to promote, transfer and/or discharge any employee, resides with the Executive Director and/or Housing Authority Board, rather than with Getts.

Getts has authority to review an employee's work product and to request the employee to correct unsatisfactory work. Getts, however, does not have authority to impose any disciplinary action upon an employee who may fail to comply with Getts' order. Rather, should disciplinary action be required, Getts would refer the matter to the Executive Director, who would decide what, if any, disciplinary action should be taken. We are satisfied, therefore, that Getts does not have effective authority to discipline Housing Authority employees.

Since the employment of the two "on call" maintenance workers pre-dates that of Getts, Getts was not involved in the decision to hire these two maintenance workers. Getts, however, was involved in the hiring of the summer seasonal employee. Specifically, Getts decided that there was a need to employ a worker to perform lawn maintenance and requested the Executive Director approve such a position. The Executive Director approved Getts' request and, thereafter, consulted with Getts regarding likely candidates. After discussing various individuals who came to mind, both agreed that the position should be offered to one individual on the basis that the individual resided closest to the work site.

Getts has also been involved in the hiring of casual employees. Getts may decide that he needs assistance and request the Executive Director to authorize employment of a casual worker, or the Director may decide that the workload

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);

4/ The Housing Authority, a relatively small agency, has never discharged an employee. Moreover, "promotions" have been accomplished through reclassifications which have been negotiated by the Union and the Housing Authority.

necessitates the employment of a casual worker. Getts' requests for casual employees are granted, unless the Executive Director is without funds to pay such an employee. Prior to hiring a casual employee, the Executive Director seeks Getts' opinion regarding likely candidates. At times, the Executive Director relies upon Getts to supply a list of such candidates. At other times, the Executive Director may supply a list. In either event, Getts' recommendations are considered and generally given effect by the Executive Director. The wages to be paid the casual employees, however, are determined by the Executive Director, subject to the requirements of the Davis-Bacon Act.

While it is true that the Executive Director must approve Getts' request to hire employees, it is equally true that since the commencement of Getts' employment with the Housing Authority, the Executive Director has not engaged maintenance workers without first consulting with Getts. We are persuaded that a positive recommendation from Getts is sufficient to ensure that an individual be hired and that a negative recommendation is sufficient to ensure that an individual not be hired. Consequently, we are satisfied that Getts has effective authority to recommend the hiring of at least some Housing Authority employees.

For the most part, Housing Authority employees are hired to perform specific duties and perform these duties without further direction from Getts, or any other Housing Authority employee. For example, the two "on call" employees perform their duties, i.e., lawn maintenance, snow shoveling, and building maintenance, as conditions require, rather than as Getts requires. Thus, while Getts may "call-in" a maintenance employee to perform repair work, the maintenance employee may also be "called-in" by any of the building residents or other Housing Authority employees. Similarly, the primary work of the seasonal employee, lawn maintenance, is performed as conditions require, rather than as Getts directs. Since casual employees are hired to perform a specific job, such as painting, it appears that Getts has little opportunity, if any, to use independent judgment in assigning work to casual employees. Consequently, we are not persuaded that Getts' job duties involve significant authority to direct and assign the work force. To be sure, Getts reviews the work product of maintenance employees and has authority to praise or criticize the same. We consider such conduct, however, to primarily involve the supervision of an activity, rather than the supervision of an employee.

As the Union argues, there may be inherent differences in the employment of part-time, seasonal, and casual employees which would make it difficult to compare their wages to those of Getts, a regular, full-time employee. In the present case, however, the record is devoid of any evidence as to the wages received by the different types of maintenance employees and, therefore, such comparisons have not been made herein.

In conclusion, we are persuaded that Getts is primarily involved in the performance of maintenance work, rather than the supervision of Housing Authority employees. With the exception of Getts' significant involvement in hiring, Getts' "supervisory" duties primarily involve the supervision of an activity, rather than the supervision of an employee. While it is true that Getts has authority to effectively recommend the hiring of maintenance employees, we do not consider this exercise of supervisory authority to be sufficient to warrant a finding that Getts is a supervisor within the meaning of Sec. 111.70(1)(o)1., Stats.

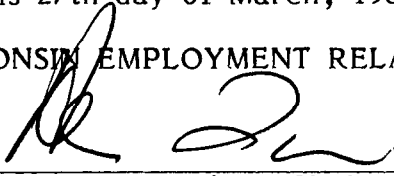
At hearing, the Executive Director stated that there are several provisions of the existing collective bargaining agreement which, if applied to the position of Maintenance Worker II, would make it difficult for the Housing Authority to service Housing Authority clients. As we have previously held, terms and conditions of an existing collective bargaining agreement do not automatically

apply to classifications of newly included employees in an existing collective bargaining unit. The terms to be applied to the newly included individuals depend on the results of collective bargaining on such matters between the parties. 5/

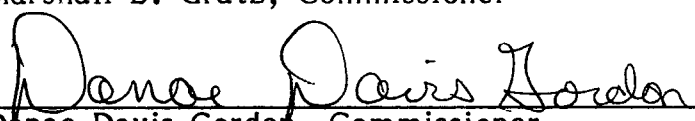
Dated at Madison, Wisconsin this 27th day of March, 1986.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Marshall L. Gratz, Commissioner


Danae Davis Gordon, Commissioner

5/ Chetek School District, Dec. No. 19206 (WERC, 12/81); Minocqua Jt. School District, Dec. No. 19381 (WERC, 2/82).