

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of :
DOOR COUNTY PUBLIC EMPLOYEES :
LOCAL 1658, AFSCME, AFL-CIO :
Involving Certain Employees of :
DOOR COUNTY (COURTHOUSE) :

Case 51
No. 40278 ME-253
Decision No. 24016-B

Appearances:

Mr. Dennis D. Costello, Corporation Counsel, Door County, 138 South Fourth Avenue, Sturgeon Bay, Wisconsin 54235, appearing on behalf of the County.
Mr. Michael J. Wilson, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, P.O. Box 370, Manitowoc, Wisconsin 54221-0370, appearing on behalf of the Union.

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

Door County Public Employees Local 1658, AFSCME, AFL-CIO having, on February 23, 1988, filed a petition requesting that the Wisconsin Employment Relations Commission clarify a collective bargaining unit of courthouse employees represented by Wisconsin Council 40, AFSCME, AFL-CIO to exclude the position of Administrative Assistant IV/Bookkeeper from that unit; and a hearing on the petition having been conducted at Sturgeon Bay, Wisconsin, on June 9, 1988, before Examiner Martha Askins, a member of the Commission's staff; and a stenographic transcript of the proceedings having been prepared; and briefs by the parties having been received by July 12, 1988; 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 Door County, hereinafter referred to as the County, is a municipal employer having its offices at the Door County Courthouse, Sturgeon Bay, Wisconsin 54235.

2. That the Door County Public Employees Local 1658, AFSCME, AFL-CIO, hereinafter referred to as the Union, is a labor organization having its offices at P.O. Box 370, Manitowoc, Wisconsin 54221-0370.

3. That the Union is the certified exclusive collective bargaining representative for certain employees of the County in a bargaining unit described as follows:

all regular full-time and regular part-time nonprofessional employees of Door County employed in the Courthouse and associated departments, but including only the following offices and departments: Ag. and Extension Education; Ambulance Department; Buildings Operations; Child Support; Circuit Court Clerk; County Clerk; County Treasurer; Data Processing; District Attorney; Public Health Department; Highway Department; Planning Department; Register of Deeds; Sanitarian; Circuit Court Judge; Sheriff's Department; Soil and Water; Unified Board; Unit on Aging; and Veterans; but excluding supervisory, managerial, confidential, executive and professional employees, elected officials, library employees, and employees in existing bargaining units.

4. That, on February 23, 1988, the Union petitioned the Commission to clarify the unit described in Finding of Fact 3, above, to include the position of Assistant Administrator IV/Bookkeeper in the Highway Department.

5. That Shirley Onsager currently holds the position of Administrative Assistant IV and Bookkeeper in the Door County Highway Department; that there are four classifications of Administrative Assistant, with Administrative Assistant IV being the highest classification; that Onsager has worked in the Highway Department since 1970; that Onsager's position has been reclassified twice, but her duties have remained virtually unchanged since she was hired; that Onsager spends approximately 75% of her time doing bookkeeping and accounting functions, including such duties as writing up receipts for all monies received, preparing bank deposits, organizing vendor invoices, setting up, typing and listing voucher jackets, setting up "schedule" vouchers for bills paid, preparing and submitting forms to the County Clerk's office for such things as Wisconsin Retirement and state withholding, and preparing gas and diesel reports for usage and taxes; that Onsager spends approximately 25% of her time answering the phone in the Department, handling inquiries from walk-in customers and fielding calls on the highway radio; that Onsager has spent a minimal amount of time supervising temporary employees who very occasionally work in the Highway Department office; that Sylvia Meier is a Cost Accountant I in the Highway Department and the only other employe in the office; that Meier was hired in 1972 as a "timekeeper" and has since been reclassified to a Cost Accountant I; that Meier's primary duties are payroll duties; that Onsager trained Meier when she was hired; that Onsager's role in Meier's hiring was limited to typing letters to applicants, including Meier, for the Highway Commissioner's signature; that Meier does not require significant supervision; that Onsager does not assign work to Meier; that Onsager and Meier each ask the other for advice and assistance on occasion; that Onsager's level of pay is higher than Meier's; that Onsager has no authority to hire, or to promote, transfer, discipline or discharge Meier or any other employes, or to effectively recommend same, but that she has, on occasion, told the Highway Commissioner that an employe is doing a particularly good job; that Onsager has never received anything in written form advising her of any authority to hire or fire; that Onsager is not involved in the adjustment of employe grievances; that the Highway Commissioner prepares the Highway Department's budget; that for the past two years the Commissioner has prepared the budget without any assistance from Onsager; that Onsager is not called upon to present the budget to the Highway Committee, Finance Committee or County Board; that Onsager has no authority to transfer funds in the budget from one area to another; that Onsager has authority to sign reports and purchase orders in the Highway Commissioner's absence; that Onsager has authority to order ordinary office supplies, but not large items such as a typewriter or file cabinet; that Onsager's overall responsibility is to handle all bookwork in the Highway Department relating to expenses, billings and incoming monies and to keep track of such expenses, billings and monies, as well as fielding phone and radio calls and inquiries from the public.

6. That Onsager does not possess or exercise supervisory responsibilities in sufficient combination and degree to render her a supervisory employe.

7. That Onsager does not sufficiently participate in the formulation, determination and implementation of County policy or exercise sufficient authority to commit the County's resources to render her a managerial employe.

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

CONCLUSION OF LAW

1. That the position of Administrative Assistant IV/Bookkeeper, currently held by Shirley Onsager is neither supervisory nor managerial, and therefore, Onsager is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats., and her position is appropriately included in the unit described in Finding of Fact 3, above.

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

ORDER CLARIFYING BARGAINING UNIT 1/

1. That the position of Administrative Assistant IV/Bookkeeper is included in the bargaining unit described in Finding of Fact 3, above.

Given under our hands and seal at the City of
Madison, Wisconsin this 25th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman
Herman Torosian
Herman Torosian, Commissioner
A. Henry Hempe
A. Henry Hempe, Commissioner

1/ Pursuant to Sec. 227.48(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. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 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.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefore 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. 227.49, 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. 227.48. If a rehearing is requested under s. 227.49, 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. 77.59(6)(b), 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

(Footnote 1/ continued on page 4)

1/ continued

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. 227.57 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.

DOOR COUNTY (COURTHOUSE)

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

POSITIONS OF THE PARTIES

The Union argues that the position in dispute has absolutely no indicia of supervisory or managerial status. It claims that Shirley Onsager, who currently holds the Administrative Assistant IV/Bookkeeper position, does not now, and never has, performed the duties and responsibilities characteristic of a supervisory or managerial employee. Specifically, the Union argues that Onsager does not have the authority to layoff, recall, reward, hire, discipline or promote employees, or adjust employee grievances, nor does she have a leadership role in the preparation of the Highway Department budget.

The County argues that in the Highway Department office of two people, Onsager is clearly the supervisor. In support of its position, the County states that Onsager's classification is higher than that of Meier, that Onsager has complete authority to train and supervise the Cost Accountant I (Meier), that Onsager is paid more than Meier, and always has been paid more, and that Onsager "would review (job) applications" for the Cost Accountant I position in the event of a vacancy. The County claims that Onsager's job description confers supervisory authority to her, that Onsager utilizes a substantial amount of independent judgment and discretion over the training and supervision of Meier, and that she "is considered the Administrative Office Department Head" for the Highway Department. Finally, it argues that the fact that the Highway office has only two employees should not weigh against her exclusion based on supervisory status.

The County argues that Onsager's position is managerial because she participates in the formulation, determination and implementation of County Highway policy to a significant degree, citing Kewaunee County v. WERC, 141 Wis. 2d 347, 415 N.W.2d 839 (1987) and City of Milwaukee v. WERC, 71 Wis.2d 709, 239 NW2d 63, 67 (1976). The County points to evidence indicating that Onsager drafts forms, develops methods for their use, trains and supervises, signs documents in the absence of the Highway Commissioner, sets her own schedule and establishes her own daily work schedule to prove her managerial status. It claims that Onsager has effective authority to commit the County's resources by allocating funds for differing program purposes from the original budget, that Onsager "has complete control over the resources of the administrative offices" for the Highway Department (County's Brief at p.8), as well as the ability to enter into contracts on the County's behalf. The County argues:

As head of the Department, Ms. Onsager has sole responsibility to decide what capital expenditures were necessary to operate her office.

. . .

She is responsible for the major segment of the administrative office's operations. She determines the services to be provided and supplies required to provide those services (County's Brief at p.9).

DISCUSSION:

Supervisory Status

The Commission considers the following factors in determining whether a position is supervisory in nature. Not all of the criteria need be present for a position to be found supervisory. Rather, in each case the inquiry is whether the supervisory criteria described below are present in sufficient combination and degree to warrant the conclusion that the position is supervisory:

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 or her skills or for his or her 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 or she spends a substantial majority of his or her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 2/

We conclude that Shirley Onsager, the current Administrative Assistant IV/Bookkeeper, does not have the characteristics of a supervisor in sufficient combination and degree to render her a supervisor. The record reflects that Onsager does not have authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. When Sylvia Meier, the only other employee in the Highway office, was hired, Onsager's involvement was limited to typing letters to the applicants for the Highway Commissioner's signature. Since Meier's hire in 1972, Onsager has neither promoted nor disciplined her, and according to her testimony, she lacks the authority to do either. Evidence was adduced at the hearing that Onsager trained Meier in her payroll duties when she was hired (although she did not train her on the computer) and that Onsager earns more than Meier. There is no evidence to suggest that Onsager's rate of pay is higher due to any supervisory responsibilities, however; it is more likely that her higher rate of pay is due to her longevity and greater, more varied responsibilities. There is also no significant evidence to show that Onsager directs Meier's work or assigns duties to her. The County asserts that Onsager would have complete authority to train and direct the work Meier's replacement should Meier leave her position. Assuming this is true, this is insufficient to render Onsager a supervisor.

We reject the County's suggestion that one of the two employees in the Highway Department must be a supervisor. The record suggests that the supervisor in the office is the Highway Commissioner. It is also not enough to point to Onsager's higher classification to prove supervisory status. It appears that Meier and Onsager have a division of labor in the Highway office, with Onsager having more responsibilities, but not supervisory duties. We also reject the County's argument that Onsager's job description confers supervisory authority to her. We base our conclusion as to employee status based on that employee's actual job duties. Where her actual job duties are inconsistent with the job description, that job description becomes irrelevant.

Managerial Status

A two-fold analysis is used to determine whether an employee is "managerial" within the meaning of the statute. The Commission has held that a managerial employee is one who participates in the formulation, determination and implementation of policy to a significant degree, or who possesses effective authority to commit the the employer's resources either by exercising the authority to establish an original budget or to allocate funds for differing program purposes from such an original budget. 3/ The court in Kewaunee County

2/ Town of Conover, Dec. No. 24377-A (WERC, 7/87); Portage County, Dec. No. 6478-C (WERC, 10/87).

3/ Kenosha County (Sheriff's Department), Dec. No. 21909 (WERC, 8/84); Town of Conover, Dec. No. 24371-A (WERC, 7/87), Portage County, Dec. No. 6478-C (WERC, 10/87).

v. WERC, 141 Wis.2d 347, 355, 415 N.W.2d 839 (1987) approved this analysis. Based on our evaluation of her actual job duties, we conclude that Onsager clearly does not participate in the formulation, determination and implementation of County policy, or have authority to commit the County's resources in sufficient degree to render her a managerial employee.

The record fails to show that Onsager's actual duties satisfy either the first or second prong of the managerial standard. The record is virtually devoid of evidence to show that Onsager participates in the formulation, determination and implementation of County policy. At best, Onsager's responsibilities in this area are to create the bookkeeping and accounting forms she needs, and use them as she sees fit. Onsager's creation of bookkeeping forms and implementing their use are insufficient to meet this standard. As to authority to commit the County's resources, Onsager is not involved in the preparation of the County's budget, nor does she have authority to allocate funds for differing programs within that budget. Her authority to commit the County's resources is limited to the ordering of office supplies for daily use, and to the authority to sign purchase orders in the Highway Commissioner's absence. This is insufficient to meet the second prong of the standard for managerial status articulated above. As the Court stated in Kewaunee County (141 Wis.2d at p. 353), the authority to make ministerial expenditures is not a factor in the "managerial" test.

The County appears to argue that Onsager's interests are more closely aligned with those of management than those of other employees. See Kewaunee County and City of Milwaukee v. WERC, 71 Wis.2d 709, 239 N.W.2d 63 (1976). The County points to evidence that Onsager exercises substantial independent judgment and discretion, and sets her own schedule to support its claim that Onsager is a managerial employee. The fact that Onsager exercises substantial independent judgment and sets her own schedule, within limits, under the facts herein tend to show she is a responsible and valued employee, but not that she is managerial.

While it is clear that Onsager performs a vital function in the administration of the Door County Highway Department, her actual duties do not satisfy either the supervisory or managerial tests articulated by the Commission. No doubt the County values her highly, but the County overstates her involvement in supervisory and managerial areas. Onsager's testimony contradicts the County's assertion that she can allocate funds within the budget, and the record as a whole fails to show that Onsager has "complete control" over the office resources, that Onsager is the head of the Department, or that she has "sole responsibility to decide what capital expenditures were necessary to operate her office." Again, we do not underestimate Onsager's contribution to the Highway Department. She is not, however, supervisory or managerial and therefore is a municipal employee within the meaning of the statute.

Dated at Madison, Wisconsin this 25th day of August, 1988.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Stephen Schoenfeld
Stephen Schoenfeld, Chairman

Herman Torosian
Herman Torosian, Commissioner

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