

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of
DOOR COUNTY and DOOR COUNTY COURTHOUSE EMPLOYEES UNION

Involving Certain Employees of

DOOR COUNTY

Case 51
No. 55597
ME-907

Decision No. 24016-G

Appearances:

Attorney Grant P. Thomas, Corporation Counsel, 421 Nebraska Street, Sturgeon Bay, Wisconsin 54235, appearing on behalf of Door County.

Mr. Michael J. Wilson, Staff Representative, Suite B, 8033 Excelsior Drive, Madison, Wisconsin 53717, and **Mr. Neil Rainford**, Staff Representative, 14002 County Road C, Valders, Wisconsin 54245, appearing on behalf of Door County Courthouse Employees Union.

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

Door County initiated this matter on February 12, 2002, by filing a Petition to Clarify Bargaining Unit seeking to remove the allegedly supervisory position of Child Support Supervisor from a bargaining unit represented by Door County Courthouse Employees Union. Thereafter, the Door County Courthouse Employees Union filed a Petition to Clarify Bargaining Unit on May 29, 2002, seeking to include the positions of Parks Lead Worker and Airport Lead Worker in the Courthouse Employees unit. The County asserts the two Lead Workers are supervisors who should continue to be excluded from the unit.

The two petitions were consolidated and hearing was held in Sturgeon Bay, Wisconsin, on June 21, 2002, before Examiner Steve Morrison, a member of the Commission's staff.

Dec. No. 24016-G

The parties filed briefs by October 7, 2002.

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

FINDINGS OF FACT

1. Door County, referred to below as the County, is a municipal employer with offices located at 421 Nebraska Street, Sturgeon Bay, Wisconsin 54235.

2. The Door County Courthouse Employees Union, referred to below as the Union, is a labor organization with offices located at 14002 County Road C, Valders, Wisconsin 54245.

3. The County and the Union are parties to a 2002-2004 collective bargaining agreement which contains the following recognition clause:

The Employer recognizes the Union as the exclusive collective bargaining representative for the purposes of conferences and negotiations with the Employer, or its lawfully authorized representatives on questions of wages, hours, and conditions of employment for the Unit of Representation consisting of all regular full-time and regular part-time employees in the Door County Courthouse and Associated Departments as certified by the Wisconsin Employment Relations Commission on November 20, 1986, Case 51, No. 37272, ME-2604, Decision No. 24016, and as amended by Decisions No. 24016-A-B and 25216, excluding supervisory, managerial, confidential, executive and professional employees, elected officials, library employees, and employees in existing bargaining units.

4. Child Support Supervisor The position of Child Support Supervisor within the County Child Support Agency (CSA) is currently filled by Nancy Moore. She is currently a member of the Union bargaining unit. Moore has worked in the CSA for about 20 years.

Prior to 2001, the CSA was manned by the Director, Marybeth Schuster, a non-lawyer who spent 100% of her time directing the agency, and five other employees: Lead Worker Nancy Moore, a half-time Attorney, a Child Services Specialist, a Parent Locate Specialist and a Clerk/Typist I. The Attorney and the Parent Locate Specialist were not included in the bargaining unit — the others were. Prior to 2001, the Lead Worker position had evolved to include additional duties and in 2001 the position was reclassified to reflect those additional duties and the title was changed to “Child Support Supervisor.” The current job description reads as follows:

. . .

Under general supervision of the Child Support Agency Director, supervises, coordinates, plans and directs the activities of assigned staff in the Child Support Enforcement Agency relating to the County's child and spousal support, paternity and medical support liability programs in accordance with state and federal laws, rules and regulations; informs and directs staff regarding changes in legislation affecting such programs; performs case management; provides administrative support and backup to the Child Support Director; and assists in the development and implementation of uniform office procedures.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

1. Supervises, plans, schedules, and directs the work of subordinates; instructs and trains employees in proper methods and procedures; inspects work in progress and upon completion; interviews and makes recommendations regarding prospective candidates; monitors and evaluates performance of staff; disciplines staff as appropriate; develops and is responsible for compliance with policies and procedures; insures the smooth day to day operation of the Child Support program.
2. Assist in the development and maintenance of child support training programs for new and experienced staff; maximize employees capabilities and ensure the continual efficient operation of the agency; schedules in house and external staff training as needs arise.
3. Assist the Child Support Director in managing the daily activities of the agency and its staff; ensures that deadlines are met and goals are accomplished in absence of Child Support Director; answers technical questions of staff.
4. Completes periodic written evaluations of staff and recommends corrective and/or disciplinary action.
5. Performs case management duties; assists in handling difficult cases by providing oversight, facilitation or assuming case management as appropriate; provides case management backup for Child Support Specialists and Account Clerks as required; performs other case management duties as assigned or directed.
6. In the absence of the Child Support Director or as assigned, exercises delegated responsibilities and authority of that position with reference to daily operations and makes independent decisions as required.

7. Conduct paternity interviews and determine appropriate action. Also follow procedures of Wisc. Stat. 69.20 and Administrative rule H.S.S. 81.
8. Interview non-custodial parent and attempt to reach stipulations.
9. Drafts UIFSA petitions and petitions and pleadings for paternity actions, orders to show cause, actions to compel support, other legal documents and letters using the KIDS system.
10. Obtains certified copies of birth certificates from CSDS and lying-in costs from the state in paternity actions.
11. Track orders, paternity establishment and other information as needed for monthly reports.
12. Assists the Account Clerks in computing arrears.
13. Performs special projects as assigned by the Child Support Enforcement Agency Director.
14. Arrange for genetic tests, draft order and notify all parties involved. Submit authorization to paternity blood testing center.
15. Interview parents and determine support obligation in substitute care cases.
16. Appear in court as needed by attorney for Child Support Agency.

KNOWLEDGE, SKILLS AND ABILITIES:

1. The ability to read, comprehend and communicate both verbally and in writing at a level normally associated with completion of a two year college or technical school degree in supervisory or office management or a related field plus three years progressively responsible office management and/or supervisory experience. Three years experience in a Child Support Agency including legal environment required. Any equivalent combination of training and experience which provides the required knowledge, skills and abilities.
2. Knowledge of assigned department operations, organization, terminology, policies, procedures, and laws, governing the department's operations.
3. Knowledge of modern office clerical practices procedures, department terminology, math, English, basic bookkeeping and ability to type at a reasonable rate of speed and accuracy.

4. Knowledge of modern administrative and supervisory practices and procedures.
5. Knowledge of statewide computer systems (KIDS, CARES, CCAP). Ability to operate personal computer and use software.
6. Ability to exercise independent judgement and make decisions independently, in accordance with policies and procedures and local, state and federal rules and regulations.
7. Ability to communicate effectively, both orally and in writing.
8. Ability to obtain required information by interviewing individuals.
9. Ability to organize and arrange priorities.
10. Ability to work with a minimum of supervision and maintain high degree of confidentiality regarding program, client and office information.
11. Ability to establish and maintain effective working relationships with employees, officials, and the public.

WORKING CONDITIONS:

Normal office environment with little or no discomfort due to temperature, dust, noise, wetness or the like. Often must deal with clients who are irate with decisions of the agency or the courts.

PHYSICAL DEMANDS:

Over 75% of time is spent in an office environment setting at a desk, or in a courtroom, operating or using a telephone, typewriter, keyboard or reading. Over 50% of the time employee is speaking and listening to others.

EQUIPMENT OPERATED:

Typewriter, computer, telephone, copy machine, calculator fax machine.

DISCLAIMER

"The above statements are intended to describe the general nature and level of work being performed by people assigned to this job. They are not intended to be an exhaustive list of specific responsibilities, duties, and skills required of personnel so classified."

"This job description approved by the Executive and Personnel Committee -
11/20/01"

Just prior to the reclassification of the Lead Worker position, the CSA structure was reorganized. Marybeth Schuster was replaced by a new Director, Attorney Rodney Dequaine, who assumed the duties not only of CSA Director but of Assistant Corporation Counsel as well. This dual role prevents Dequaine from devoting more than 50% of his time to his CSA administrative and supervisory duties. In Dequaine's absence, Moore supervises the day-to-day running of the Agency. As a part of the reorganization, two new Account Clerk positions were added to the CSA bringing the total work force (excluding the Director and the Child Support Supervisor) to five — four of whom are bargaining unit members (Child Support Specialist, two Account Clerks, Clerk/Typist) and one of whom (the Parent Locate Specialist) is not.

Moore assigns work to the five positions below her on a daily basis and changes their work assignments as events dictate. If staff have questions about what to do, they generally come to Moore for guidance. Moore monitors the work product of the staff and counsels individuals about mistakes and directs changes when she deems them necessary. She retrieves reports from the computer system and distributes them to appropriate staff for action and follows up on the employee's work related thereto.

Moore has the authority to verbally reprimand employees. At present, she generally reports her concerns to Dequaine. She has investigated employee wrongdoing and made recommendations to the Director as to disciplinary consequences. She is expected to bring potentially significant disciplinary problems to the Director's attention.

In the event of disputes between/among bargaining unit members, Moore has the authority to exercise independent judgment and discretion to make decisions relative to the resolution of the dispute.

Moore has been, and will continue to be, directly involved in the hiring process. She is a part of the interview team composed of herself, Dequaine, the County Clerk and the County Human Resources Director. She reviews resumes, ranks the applicants and makes recommendations regarding which applicant should be selected for the position. Her recommendation was followed in the one hiring process in which she has participated. She is the only bargaining unit member who participates in this process. She is also responsible for training new employees.

In Dequaine's absence, Moore signs all time cards and approves sick leave and vacations. She is also authorized to approve family medical leave and funeral leave in the absence of the Director. Lunch breaks are established by the collective bargaining agreement but any changes requested by staff are approved by Moore in Dequaine's absence. Moore is not replaced by any other bargaining unit member in her absence and her wages exceed other bargaining unit members' wages by about \$3.00 per hour.

Moore carries a caseload of approximately 600 cases which she monitors and works in addition to her supervisory duties. She spends approximately 50% of her time performing supervisory duties.

The Child Support Supervisor has supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

5. Parks Lead Worker This position is currently filled by Steve Simonar. The job description for this position is as follows:

. . .

GENERAL SUMMARY:

Under supervision of the Parks Manager. Performs and completes maintenance and repairs on parks grounds, facilities and equipment. Oversees and directs crews and projects.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

1. Maintains and performs repairs on parks grounds such as: mowing grass, brush and weed cutting, trash clean up and removal, tree cutting and trimming, etc.
2. Maintains and repairs Parks facilities such as painting, repairing and replacing a variety of facilities and building accessories such as toilets, doors, roofs and windows.
3. Inspects parks and facilities for cleanliness, vandalism, weather damage and safety.
4. Operates, maintains and performs repairs on equipment which includes: lawn mowers, vehicles, snow removal equipment, small engines, chain saws, etc.
5. Oversees seasonal crews and plans work of crew based on written or verbal orders/instructions from Parks Manager.
6. Maintains good public relations.
7. Enforces County and department safety regulations and security.
8. Build and/or assemble equipment or facilities such as chain or wooden fences, shelters, picnic tables, etc.

9. Analyzes and resolves work problems, or assists workers in solving work problems. Suggests changes in working conditions and use of equipment to increase efficiency of work crew.
10. Operates a variety of mechanized equipment such as a backhoe, skid steer, dump truck, forklift, front-end loader, farm tractor, snowmobiles and snow removal equipment.
11. Installs, maintains and repairs municipal buildings plumbing and electrical systems, including replacing wiring or defective parts such as switches and fuses.
12. Maintains and repairs wooden parts of buildings.
13. Replaces worn or damaged parts such as hoses, wiring and belts in machines and equipment such as truck, tractor and riding lawn mower.
14. Design and fabricate tools and structures as requested by Parks Manager.
15. Repair small engines and associated equipment.
16. Diagnoses, repairs and maintains Park's fleet.
17. Operates a variety of hand-powered tools and other related equipment such as surveyor's transit.
18. Assist Parks Manager with budget preparations.
19. Performs related work as assigned.

KNOWLEDGE, SKILLS AND EXPERIENCE REQUIRED:

1. Knowledge of methods, materials and equipment used in parks, grounds and facilities installation; maintenance and repair to include basic knowledge of electrical, plumbing, woodworking/carpentry and landscape maintenance.
2. Ability to operate a wide variety of hand and power tools.
3. Ability to operate a wide variety of construction equipment.
4. Ability to perform heavy manual work.

5. Ability to work outdoors in various weather conditions.
6. Ability to make mechanical repairs.
7. Ability to read and understand Chapter 12 of the Door County Code.
8. Ability to understand and carry out written and oral instruction.
9. High school diploma or equivalent with five (5) years related experience working in maintenance, grounds maintenance or closely relate field. Must possess a valid Wisconsin Commercial Driver's License with air brakes and combination ratings.

PHYSICAL DEMANDS:

Over 75% of the day spent performing low to medium handling in the operation of tools and equipment. On any given work day, 25% of time is spent standing, walking, sitting, hearing, and using near and far vision. Approximately 10% or more time is spent stooping, kneeling, bending, twisting, reaching, and talking. Perform low to medium lifting (up to 50 lbs.) and performing low to medium carrying. In unusual situations, which may occur from several minutes to an entire day, includes performing, up to very high lifting (100 lbs. or more), up very high carrying, and up to very high pulling and pushing.

WORKING CONDITIONS:

Almost all of the time is spent outdoors with exposure to various weather conditions. Some exposure to noise and vibration in the operation of tools and equipment. Exposure to mechanical hazards is present on a daily basis. Exposure to chemicals, heights, fumes, dust, etc are present occasionally but can be minimized with proper safety precautions to limit potential for injury. Hours for snow removal may vary depending on severity of storm. Overtime hours may be required to perform emergency repairs and/or snow removal.

DISCLAIMER

"The above statements are intended to describe the general nature and level of work being performed by people assigned to jobs in this classification. They are not intended to be an exhaustive list of all responsibilities, duties and skills required of personnel so classified."

The Parks Department employs a total of nine seasonal workers. Eight of them compose four crews of two persons each and the remaining seasonal worker is permanently assigned to John Miles County Park, also known as the Fair Park. One of the crews handles mowing operations; another crew splits its time between mowing and cleaning operations; one crew handles cleaning and the fourth crew is a “project” crew. Their work sites vary from day to day.

Simonar meets with the Parks Department Director, George Pinney, and the seasonal employee crews each morning during the summer season for the purpose of assigning each crew its jobs for the day. Following this meeting, Simonar sends the crews into the field and goes from job site to job site supervising their progress when his own work allows. He does this by driving through the various parks where he is working and visually checking the work they have done. He does not have contact with the crews on a daily basis but tries to make such contact three or four times each week. During the seven months when seasonal employees are working, 20% of his time is spent supervising or “overseeing” the seasonal workers.

The seasonal employees are selected from applications sent to the Department and from those employees who worked for the Department in the past and wish to return. Most are students. Simonar reviews the applications with the Director and together they select new hires. The Director requests, and generally follows, Simonar’s advice regarding the qualifications of potential new hires. Simonar also evaluates the performance of past seasonal workers and gives his recommendations regarding the relative merits and weaknesses of each to the Director and makes specific recommendations as to whether they should be re-hired or not. These recommendations are generally followed. Returning seasonal employees characteristically receive a small increase in their hourly wage. This increase is not automatic. The decision to grant an increase to a returning seasonal employee is ultimately made by the Director with recommendations and input from Simonar.

Simonar has a wage rate of \$16.59 per hour as compared to a seasonal employee wage rate of \$9.00 — \$11.00 per hour.

Simonar has not had an occasion to discipline an employee thus far and is unsure as to the limits of his authority and discretion to administer such discipline. In the event of problems, he discusses the problem with the employee and reports the discussion to the Director.

During the winter months, Simonar prepares equipment for the next summer season, orders parts and selects new equipment if needed. Occasionally, part-time help is called in during the winter for projects such as painting garbage barrels and other odds and ends. On those rare occasions, Simonar oversees their work.

The Parks Lead Worker does not have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

6. Airport Lead Worker During the months of April through October, the Parks Department utilizes the services of the Airport Lead Worker, John White. The remainder of the year he works as Lead Worker in the Airport Department. His position description is as follows:

. . .

GENERAL SUMMARY:

Under supervision of the Airport Manager from November 1st - March 31st and under the supervision of the Parks Manager from April 1st - October 31st. Performs, operates, and completes maintenance and repairs on Airport grounds, facilities, runway lighting systems, and equipment Lighting systems capable of producing 5000+ volts. Performs related duties as assigned. (See Parks Lead Worker job description for Parks duties and responsibilities.)

ESSENTIAL DUTIES AND RESPONSIBILITIES:

1. Maintains, trouble shoots and repairs various runway lighting systems to include but not limited to REILS, PAPIS, Lead In Lights and MIRLS.
2. Ability to read electrical schematics, and have knowledge of relays, diodes, transformers, bridge rectifiers, resisters, capacitors, etc.
3. Oversee work of seasonal workers.
4. Operates, maintains and repairs snow removal equipment to include but not limited to 14' tow behind sweeper, single axle dump truck with 12' plow and unimog snow blower to remove snow from runways, taxiways, ramps and parking lots.
5. Patrols airport as needed during winter to control blowing and drifting snow.
6. Reports to NOTAMS to Green Bay Flight Services (runway conditions - ice, snow, patchy snow, etc.).
7. Completes mechanics duties on above listed equipment to include, but not limited to changing oil, greasing, changing plow blades, welding, cutting, electrical, adjusting clutch and hydraulics.

KNOWLEDGE, SKILLS AND EXPERIENCE REQUIRED:

1. Knowledge of methods, materials and equipment used at the Airport grounds and facilities installation; maintenance and repair to include knowledge of electrical, plumbing and woodworking/carpentry.

2. Knowledge of FAA rules regarding snow removal.
3. Ability to operate a wide variety of hand and power tools including knowledge of electrical multi meter, i.e. volts, ohms, and amps.
4. Ability to operate a wide variety of construction equipment.
5. Knowledge of FAA rules regarding aircraft flying or taxing.
6. Ability to perform heavy manual work.
7. Ability to work outdoors in various weather conditions.
8. Ability to understand and carry out written and oral instruction.
9. High school diploma or equivalent with five (5) years related experience working in maintenance, grounds maintenance or closely related field. Must possess a valid Wisconsin Commercial Driver's License with air brakes and combination ratings.
10. Ability to meet requirements of Parks Lead Worker job description.

PHYSICAL DEMANDS:

Over 75% of the day spent performing low to medium handling in the operation of tools and equipment. On any given work day, 25% of time is spent standing, walking, sitting, hearing, and using near and far vision. Approximately 10% or more time is spent stooping, kneeling, bending, twisting, reaching, and talking. Perform low to medium lifting (up to 50 lbs.) and performing low to medium carrying. In unusual situations, which may occur from several minutes to an entire day, includes performing, up to very high lifting (100 lbs. or more), up very high carrying, and up to very high pulling and pushing.

WORKING CONDITIONS:

Almost all of the time is spent outdoors with exposure to various weather conditions. Some exposure to noise and vibration in the operation of tools and equipment. Exposure to mechanical hazards is present on a daily basis. Exposure to chemicals, heights, fumes, dust, etc. are present occasionally but can be minimized with proper safety precautions to limit potential for injury. Hours for snow removal may vary depending on severity of storm. Overtime will be required Saturday, Sunday and holidays.

DISCLAIMER

"The above statements are intended to describe the general nature and level of work being performed by people assigned to jobs in this classification. They are not intended to be an exhaustive list of all responsibilities, duties and skills required of personnel so classified."

While working for the Parks Department, White is responsible for the operation of the Fair Park, which has soccer fields, a skateboard park, a horse ring and barns, a stock car race track with races each week during the summer season, professional go-cart races every week and other various scheduled events. One seasonal employee is assigned to the Fair Park full time and 2 two person crews rotate through the Park; one, the mowing crew, on a weekly basis and a cleaning crew on a daily basis.

White assigns work to the seasonal employee consistent with work lists approved by the Director and oversees the daily operation of the Park and the work of the seasonal employee.

Typically, White is assigned to a project and assigned seasonal workers with which to complete those projects. His job is to see that the various jobs relating to the project are completed in a satisfactory manner. He maintains equipment and, upon completion of one job, directs the seasonal employee(s) to the next one. If the seasonal(s) have problems with equipment or questions about how the job should be done, they contact White and he instructs them accordingly. About one-third of White's working day at the Parks Department is spent engaged in the supervision of various projects and work being done by the seasonal employee or the rotating crews. He also drives the department's service truck which is stationed at the Fair Park and, on occasion, will travel to other Park locations due to the fact that the welder is stored in this truck.

White has the authority to authorize seasonal employees to leave work early. He is in contact with management on a regular basis and, in the event he were to authorize a seasonal employee to leave work early, would inform management of his decision. His decisions in this regard are based on the work plan and such leave would be denied if it conflicted with that plan.

White can verbally counsel seasonal employees regarding their work and instruct them as to the proper way to do it, but is not authorized to take any administrative disciplinary action such as a written reprimand or beyond. His authority in this area is limited to observing the seasonal employee(s) and reporting problems to the Director. White has little, if any, input into the determination of seasonal employee compensation.

White has a wage rate of \$16.59 per hour as compared to a seasonal employee wage rate of \$9.00 — \$11.00 per hour.

White participates in the hiring process to a limited extent. He gives the Director his opinion about how the seasonal employee did during his/her employment and whether he thinks the employee should be “called back” for the next season. In the normal course of events, the majority of the seasonal workers return from year to year.

White’s duties as the Airport Lead Worker during the winter months consist primarily of snow plowing, maintaining the equipment and other odd jobs which come up during the winter. No seasonal workers are typically employed during these five winter months. In the event of a major snow storm or other unusually large winter project, temporary help may be brought in. In that event, White oversees their work.

The Airport Lead Worker does not have supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

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

CONCLUSIONS OF LAW

1. The Child Support Supervisor 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.

2. The Parks Lead Worker is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

3. The Airport Lead Worker is not a supervisor within the meaning of Sec. 111.70(1)(o)1, Stats., and therefore is a municipal employee within the meaning of Sec. 111.70(1)(i).

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

ORDER CLARIFYING BARGAINING UNIT

The Child Support Supervisor is hereby excluded from and Parks Lead Worker and Airport Lead Worker are hereby included in the bargaining unit identified in Finding of Fact 3.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

DOOR COUNTY

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

POSITIONS OF THE PARTIES

The County

Child Support Supervisor The County argues that the organizational structure set forth in Employer Exhibit A, which shows the Agency's table of organization in 1998 and the subsequent changes in that structure following its reorganization between 1998 and 2002, demonstrates the incumbent's supervisory role. Prior to the reorganization, the then Director spent 100% of her time working in the Agency and tending to supervisory duties while after the reorganization, and after the Director had been replaced with the current Director, Rodney Dequaine, he is able to spend only 50% of his time tending to those duties due to the fact that he fills not only that position but the position of Assistant Corporation Counsel. In effect, the County argues that Director Dequaine is "stretched too thin, and is not able to provide adequate supervision of CSA employees."

The reorganization also has had significant impact on the position at issue. The County asserts that the incumbent's job description plainly assigns Moore supervisory duties and responsibilities; that the need, and the County's expectation, that she assume these responsibilities is occasioned by the fact that the Director is away from the office for significant periods of time and is "otherwise overburdened by work;" that she is the only employee with supervisory authority (other than the Director); that she is paid at a higher level than other Agency employees and that this additional wage may reasonably be attributed to supervisory duties.

The County says that she exercises considerable supervisory authority as follows:

1. She may direct and assign work;
2. She is empowered to authorize overtime and compensatory time;
3. She may approve leave requests;
4. She is authorized to resolve scheduling conflicts;
5. She reviews and approves employee time cards;
6. Other employees perceive her to be their supervisor;
7. She is involved in the processes of hiring, evaluation, reclassification and discipline of employees. To the extent that she has not exercised such authority to date, the County expects that she will do so in the future and contends that the reason she has not done so thus far is due to her status as a bargaining unit member and the relatively brief time she has been vested with these responsibilities;
8. She is expected to act independently and exercise supervisory authority without consultation with the Director;

9. She attends oversight committee and department head meetings in the Director's absence and in his stead; and
10. She spends 40 to 50% of her time on supervisory tasks.

The County cites Moore's 20 years of service in the Agency which provides her with perspective and insight into the operation and needs of the Agency, thus uniquely positioning her to assume this supervisory role.

Finally, the County argues that the evidence and the law do not support the Union's argument that Moore's supervisory activity is *de minimis* and contends that she possesses sufficient indicia of supervisory authority to be excluded from the bargaining unit.

Airport Lead Worker/Parks Lead Worker The County argues that the incumbents in each of these positions exercise supervisory duties as follows:

1. They have considerable discretion with respect to assignment of work;
2. They may effectively recommend discipline;
3. They may authorize overtime;
4. They may authorize leave time;
5. They may adjust hours of work;
6. They are involved with, and impact, hiring and compensation;
7. They supervise numerous crews at multiple work sites;
8. They are paid at a higher level (with the exception of the Directors) than other employees and this higher wage may rationally be attributed to supervisory duties; and
9. They are expected to, and do, exercise independent judgment and discretion with respect to their supervision of seasonal employees.

The County asserts that there is a "compelling need" for the supervisory role of both Lead Workers due to the extensive duties and responsibilities of the Airport and Parks Directors. The Directors are simply not able to adequately supervise these workers given their other responsibilities. The County says that limiting the role of these positions to non-supervisory work will unduly disrupt the operation of both Departments.

The County suggests that the seasonal nature of the Parks Department and, to a lesser extent, the Airport Department must be taken into account. It is the reduction in work load during the off-season which accounts for the Lead Worker's performance of non-supervisory duties rather than some inherently non-supervisory nature of the position. CITY OF RICE LAKE, DEC. NO. 20791 (WERC, 6/83).

The County concludes that the Lead Workers in the Parks and Airport Departments have more than a *de minimis* component of supervisory work and that they should be excluded from the bargaining unit.

The Union

Child Support Supervisor Following a review of the evidence and citations to relevant Commission case law, the Union argues that Moore is nothing more than a lead worker who performs some supervisory functions which are not in sufficient combination and degree to make her a supervisor. The Union says she lacks the effective authority to recommend the hiring, promotion, transfer, discipline or discharge of employees because in each of those instances higher management “evaluates the situation.” The Union asserts that her authority to direct and assign the work force is limited and in those instances where she takes sick calls and grants vacation/compensatory time off, her actions are merely rubber stamps upon established guidelines.

Moore’s role in the area of overtime and time card approval is ministerial since the Director eventually gets the overtime reports and determines how much overtime can be given from that point forward based upon the budget.

The Union asserts that the County and the Director exercise independent judgment in the supervision of Agency employees, particularly in the areas of hiring, promotion and more severe discipline.

Moore’s rate of pay reflects her status as a lead worker and there is no evidence that the additional pay she receives is related to supervisory duties. The Union says that the “vast majority” of her work time is devoted to a demanding case load and other assignments requiring greater skills than are possessed by other workers in the Agency.

Moore, when not working on her own assignments, supervises an activity as opposed to employees. In support of this allegation, the Union points to the July, 2001 Position Analysis Questionnaire (Employer Exhibit J) in which Moore indicates that she supervises the following types of activities:

- Assign work, add or delete duties.
- Plan work, establish priorities.
- Instruct and train in methods and procedures.
- Make hiring recommendations.
- Make recommendations regarding unsatisfactory employees.

What is more revealing about Exhibit J, according to the Union, are the types of activities Moore failed to indicate she supervises:

- Make final decisions on hiring.
- Prepare performance evaluations.
- Make final decisions to terminate for cause.
- Recommend salary adjustment.

- Make adjustments in compensation.
- Make promotional recommendations.
- Maintain staff records.
- Handle complaints and grievances.

The Union argues that the hiring recommendations provided by Moore or her disciplinary reports and recommendations for or against discipline are not “effective” recommendations. In short, Moore does not exercise independent judgment in the supervision of employees and she reports all significant aspects of personnel supervision to Dequaine, who reserves exclusive supervisory control and the exercise of independent judgment to himself.

The incumbent’s actual supervisory authority is less than depicted on the job description. She does not issue reprimands in spite of the authority to do so referenced in the description and the Director ultimately talks to employees if they are not doing their job. Although Moore participates in the interview process of new hires, ranks candidates and recommends candidates for hire, the Union argues that because other “high level” County officials also participate at each step of the hiring process, her input, regardless of whether her recommendations are accepted, is ineffective.

The Union cites RACINE COUNTY, DEC. NO. 7911-B (WERC, 1/95) in support of its argument that where higher authorities retain the supervisory “reins” in key areas, the deputy, in this case the incumbent, does not operate independently or even make effective recommendations.

In support of its assertion that Moore is a lead worker and not a supervisor, the Union points to the negotiations for the 2002-2004 collective bargaining agreement and the fact that there is no evidence of record that any portion of Moore’s wages were attributed to supervisory work.

Finally, the Union says that this case is unusual because the County has suggested that more supervisory authority would be conferred upon the incumbent in the event the Commission orders the position excluded from the bargaining unit. Since there are no assurances of this, the Union urges the Commission to act on the basis of existing authority and not upon conjecture.

Airport Lead Worker/Parks Lead Worker The Union believes that the position of Airport Lead Worker and that of Parks Lead Worker should be considered separately even though both job descriptions contain similar language and evidence the Lead Workers’ limited supervisory responsibilities.

Airport Lead Worker The Union argues that the position description itself makes no mention of the exercise of independent judgment in the supervision of employees but requires only that the applicant possess the ability to understand and carry out written and oral

instructions. It is similar to the job description of the Parks Lead Worker in that it details the limited amount of oversight responsibility (“Oversees and directs crews and projects . . . under the supervision of the . . . Parks Manager” and “Oversees seasonal crews and plans work of crews based on written or verbal orders/instructions from Parks Manager”). The Airport and Parks Director position descriptions themselves confirm that actual supervisory responsibility in both departments is reserved by the Directors by stating “supervises the countywide park system” and stating that the Director is “Responsible for hiring, evaluating, training and disciplining regular and seasonal subordinate staff.”

According to the Union, the level of compensation of both Lead Workers, while greater than the seasonal employees they oversee, is no greater than, and in fact is less than, other Lead Worker positions in the County. For example, the Parks and Airport Lead Workers are paid 1.2% to 4.3% less than comparable Lead Workers in the Highway Department and 2.8% less than the Child Support Lead Worker in the CSA. Hence, the County’s claim of a supervisory bonus is not credible.

The testimony as a whole supports the argument that the Parks and Airport Lead Workers have narrow responsibilities for oversight of the seasonal workers and that supervisory responsibility is reserved to the Directors. The fact that the Airport Lead Worker works for the Parks Department during the summer months when the two airport seasonal workers are employed, bolsters the notion that the Lead Worker has no meaningful or regular supervisory responsibilities over them. While employed at the Fair Park, White has some limited supervisory roles primarily involving the occasional supervision of the work of seasonal employees, not the employees themselves.

Regarding the distribution of work assignments to seasonal employees, the record shows that these assignments are made by the managers (Directors) in conjunction with the Lead Workers and that the Lead Worker’s role is minor. Any changes in location of work assignments are occasioned by changes in projects and changes in projects are made jointly with the Directors. In short, the Lead Workers do not exercise independent judgment in this respect. The seasonal employee assigned to the Fair Park has a set schedule of tasks which only require review infrequently and, in any event, the Lead Worker only oversees the work of the seasonal and not the seasonal himself.

As for scheduling work hours and leave time, the Union asserts that the Lead Worker’s role is limited to approving unforeseen early departures and subsequently informing the Director of his actions. Seasonals consult the Director to schedule future days off, not the Lead Worker.

The Lead Worker has very limited authority in the area of discipline. He may counsel an employee but may not take any formal disciplinary action. His role is observational. He may make recommendations to the Director regarding discipline but the Director retains the ultimate authority to investigate the circumstances and to decide on the extent of discipline, if any.

The Lead Worker's responsibilities relating to the hiring and recall process are similarly limited. The Lead Worker's role is to evaluate the seasonal employee's performance during the season and to discuss this with the Director. He may recommend that the seasonal employee is deserving of the wage "bump" upon recall or he may recommend to the contrary, but the final decision rests always with the Director.

Parks Lead Worker Although the Parks Director claims that the Parks Lead Worker spends up to one-third of his time supervising seasonal employees, the Union questions his math. It points out that the Director failed to distinguish between supervising "work" and supervising "employees" and so the one-third estimate is suspect. It also observes that the Director testified that supervision is limited and that the seasonal employee's work is assigned to them; that management trusts they are getting it done and that the supervisory element is confined to checking up on the employees to see that the work is done. The vast majority of the supervision provided by the Parks Lead Worker is the supervision of work, not employees.

Like the Airport Lead Worker, the Parks Lead Worker's responsibility in the area of work distribution and assignment is limited to joint decisions made by the Lead Worker and the Director and, thus, the Lead Worker does not exercise independent authority to direct and assign work.

The Union argues that, again like the Airport Lead Worker, the Parks Lead Worker has little or no authority in the area of employee discipline. He may discuss issues with employees and relay that information to the Director, but may not exercise authority beyond that point. Also, the record contains no evidence that the Director, once informed of employee disciplinary problems by the Lead Worker, is in any way compelled to act on that information.

While the Parks Lead Worker has input into the Director's decision to hire new seasonal employees or to recall old ones, the final decision rests with the Director alone and the Lead Worker's opinion is only one of the factors the Director considers when making the decision. Even though the Lead Worker is present during interviews and reviews applications for employment, the Director reserves the authority to make the final decision. As for the wage "bumps" generally received by returning seasonal employees, these increases are standard and the Lead Worker's input is *de minimis*.

DISCUSSION

The statutory definition of a supervisor in Sec. 111.70(1)(o)1, Stats., is:

. . . 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 exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When interpreting this statutory language, we consider the following:

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 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/her skill or his/her supervision of employees;
5. Whether the supervisor is supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he/she spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98)

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

Child Support Supervisor (Moore)

As to Factor 1, Moore has played and will continue to play a central role in the hiring of regular employees. She is a member of the interview panel and as such she reviews candidates' resumes and ranks them in order of hiring preference following the interview. Her hiring recommendation was followed in the most recent (and only) hire as to which we have evidence. However, given the pivotal role which the Director also plays in the hiring process, we are satisfied that Moore's hiring authority falls short of being "effective recommendation."

Moore's activity in the area of employee discipline has been limited, partially because she has been reluctant to exercise such authority given her present status as a bargaining unit member and partially because there has been little need for such action. However, even if she is removed from the unit as a supervisor, we are persuaded that Director Dequaine will retain and exercise disciplinary authority beyond the level of a verbal reprimand.

As to Factors 2 and 3, Moore has authority to direct and assign work to the other five employees in the Child Support Agency. She uses independent judgment in making determinations as to whom to assign work in the absence of another worker. She monitors the overall work product of the individual staff members and uses independent judgment as to when, and to what extent, individuals must be counseled about their work.

The Child Support Supervisor has the authority to sign time cards and to approve sick leave and vacations. She is authorized to approve family medical leave, funeral leave and overtime within the confines of the County's budget. She is also authorized to grant changes to the lunch break schedule which is established by the collective bargaining agreement. These functions are generally performed by Moore in the absence of the Director.

As to Factor 4, Moore's pay is substantially above that of other employees in the Child Support Agency and we are satisfied this disparity, even though established through the collective bargaining process, is at least partially related to her supervisory responsibilities.

As to Factors 5 – 7, Moore spends approximately 50% of her time directing the work of/supervising the five employees for whom she is responsible in the Director's absence. When doing so, we are satisfied that she is primarily supervising employees-not an activity.

Considering all of the foregoing, we find that Moore has a significant role in the hiring process but quite limited disciplinary authority, exercises substantial independent judgment in the day-to-day operation of the Agency and the supervision of its employees, and is paid at a level that at least partially reflects her supervisory responsibility. Particularly in light of the Director's absence from the office for at least 50% of each work week, we conclude that Moore is a supervisor.

The Union argues that this case is analogous to RACINE COUNTY, DEC. NO. 7911-B (WERC, 11/95) because Moore exercises her supervisory authority only in the absence of the Director and thus she should not be considered a supervisor. However, unlike the fact situation in RACINE COUNTY, where the Deputy Register of Deeds was more of a "supervisory trainee" under the tutelage of a full time Register of Deeds who had reserved virtually all supervisory authority to herself (and what remained for the Deputy required little, if any, independent judgment), the Director here spends, at best, one half of his time in the Child Support Agency and depends upon Moore, and fully expects Moore, to exercise her supervisory authority in his absence. If she were not to do so, the Agency would operate without supervision half of the time.

Parks Lead Worker

As to Factor 1, we conclude the Parks Lead Worker's significant involvement in the hiring process falls short of the authority to effectively recommend hiring and that his disciplinary authority is quite limited.

As to hiring, the Parks Lead Worker reviews applications, participates in the interview of new hires and makes a recommendation to the Director. Similarly, when decisions are made as to whether to invite a current seasonal employee to return the following year, his opinion is sought and those seasonal employees whose return he recommends are generally employed the following year. However, the Parks Director testified that in the event of a disagreement between himself and the Parks Lead Worker, the Director would likely overrule the Lead Worker's preference. From this testimony, we conclude that the Lead Worker does not effectively recommend hiring.

As to discipline, the Parks Lead Worker's independent authority is limited to verbal reprimands. As was true for hiring, while the Director will certainly consult with the Lead Worker as to more significant disciplinary action, we are persuaded from the record as a whole that the Lead Worker does not effectively recommend significant disciplinary action.

To the extent the seasonal employees are "promoted" through receipt of a discretionary wage increase (generally when they are invited to return to work the following year) and "transferred" by changing work crews, the Parks Lead Worker advises the Director as to these matters.

As to Factor 2, the Parks Lead Worker has some authority to direct and assign the seasonal employees but it is noteworthy that the Parks Director is present each morning when the work assignments are made.

As to Factor 3, the Parks Lead Worker directs the work of eight or nine seasonal employees during the approximately seven months of the year that they are employed. During the remaining five months, the Parks Lead Worker does not direct the work of anyone. The Director exercises greater authority over the seasonal employees than does the Lead Worker.

Regarding Factor 4, the Parks Lead Worker is paid substantially more than the seasonal employees but we are satisfied that this pay differential reflects the Lead Worker's full-time status and skills rather than his supervision of employees.

Turning to Factors 5, 6 and 7, the record as a whole persuades us that the Lead Worker is primarily supervising an activity, does not spend a majority of his time directing the work of the seasonal employees, and does not exercise a significant amount of independent judgment when directing that work.

Considering all of the foregoing, we conclude the Parks Lead Worker is not a supervisor but instead a skilled and effective working foreman.

Airport Lead Worker

Our analysis of the Airport Lead Worker generally parallels that applicable to the Parks Lead Worker. However, he routinely directs the work of only one seasonal employees (who

works with him at the Fair Park) and plays a less significant role in the hiring/return of seasonal employees. Thus, as was true for the Parks Lead Worker, we conclude the Airport Lead Worker is a skilled and effective working foreman but not a supervisor.

CONCLUSION

The question of whether the three employees are supervisors presents a very close question. In our judgment, the most significant factor that distinguishes the Child Support Supervisor from the Lead Workers is the amount of time (50%) she is responsible for the day-to-day operation of the Child Support Agency due to the absence of the Director.

In contrast, the Lead Workers spend a substantial majority of their time performing their own work assignments.

In closing, we note that the County expressed its concern that in the event we were to find the two Lead Workers not to be supervisors, the County Parks Department's and the Airport Department's operations would be unduly disrupted. This should not be the case. The County is free to continue to utilize the two Lead Workers as it does now.

Dated at Madison, Wisconsin this 28th day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner