

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

-----  
:
  
In the Matter of the Petition of :
  
:
  
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO :
  
:
  
Involving Certain Employes of : Case 24
  
: No. 41660 ME-312
  
: Decision No.
  
24261-D
  
TAYLOR COUNTY :
  
:
  
-----

Appearances:

- Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, N-419 Birch Lane, Hatley, Wisconsin 54440, appearing on behalf of Taylor County Courthouse Employees Local 617-A, AFSCME, AFL-CIO.
- Mr. Charles A. Rude, Personnel Director, Taylor County, Taylor County Courthouse, 224 South Second Street, G-50, Medford, Wisconsin 54451-1899, appearing on behalf of the County.

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

On October 25, 1989, Council 40, AFSCME, AFL-CIO, on behalf of Taylor County Courthouse Employees Local 617-A, AFSCME, AFL-CIO, filed a petition with the Wisconsin Employment Relations Commission requesting the Commission to clarify a bargaining unit of municipal employes of Taylor County by including the position of Assistant Airport Director and Assistant Emergency Government Director. Scheduling in the matter was held in abeyance pending settlement discussions between the parties. On June 12, 1990, the Commission was advised that the parties were unable to resolve the matters in dispute. On July 6, 1990 the Commission, by Examiner Coleen A. Burns, a member of the Commission's staff, scheduled a hearing on the petition. Hearing on the petition was held on August 23, 1990, in Medford, Wisconsin. The record was closed on October 29, 1990, upon notification that the Union would not be filing a post-hearing brief. Being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, and its affiliated Taylor County Courthouse Employees Local 617-A, AFSCME, AFL-CIO, hereinafter collectively the Union, are labor organizations. The Union has a mailing address of N-419 Birch Lane, Hatley, Wisconsin 54440.

2. Taylor County, hereinafter County, is a municipal employer and has its offices at the Taylor County Courthouse, Medford, Wisconsin 54451.

3. In Taylor County, Dec. No. 24261-C (WERC, 6/89), the Wisconsin Employment Relations Commission, hereinafter Commission, certified the Union as the exclusive bargaining representative of certain employes of the County in the following collective bargaining unit:

All regular full-time and regular part-time non-professional employes of Taylor County employed in the Courthouse, Highway Department, Courthouse Annex, Human Services Department and related departments, including regular full-time and regular part-time Correctional Officers and maintenance employes, but excluding professional, confidential, supervisory, managerial, craft and elected officials and employes in existing bargaining units.

4. On October 25, 1989, the Union filed a petition for unit clarification with the Commission requesting inclusion of the positions of Assistant Airport Director and Assistant Emergency Government Director in the bargaining unit it represents. At the hearing held on August 23, 1990, the parties agreed that the two positions in dispute are appropriately identified as Airport Relief Manager, which position is currently occupied by Phil Sulko, and the SARA Project Person/Deputy Emergency Government Coordinator, which position is currently occupied by William Clare. The County opposes the inclusion of each of the two positions on the basis that the occupant of each position is a managerial employe. The parties agree that if the Commission determines that the employes occupying the two positions in dispute are not managerial

employees, then it would be appropriate to include the two positions in the collective bargaining unit represented by the Union.

5. The position of SARA Project Person/Deputy Emergency Government Coordinator has the following job description:

Desirable Qualifications

Education and Experience :

1. Five years of progressively responsible full-time experience in government, industry, education or military experience.
2. Not less than two years in an administrative or planning capacity; or any equivalent combination of education experience.

Knowledge and Ability Requirements

1. Considerable initiative and imagination.
2. Considerable knowledge of the methods of organization, planning, management and supervision.
3. Considerable knowledge of the structure, function, and interrelationships of state and local governments.
4. Knowledge of the background and objectives of the Federal, State and local emergency government system.
5. Ability to deal effectively with state and other local government officials.
6. Ability to write clearly and concisely, and to speak effectively before groups.
7. Ability to exercise good judgment, evaluate situations and make decisions.
8. Knowledge of office equipment to include computer trained.
9. Leadership qualities and dedication to the job.
10. Able to maintain records and promote confidence in the system.
11. Adequate knowledge of mathematics and chemistry.
12. Willingness to travel for conferences and meetings.
13. Carry out all requirements of the Superfund Admendment (sic) Reauthorization Act of 1986 (SARA) as prescribed by the State Emergency Response Commission (SERC).

William Clare has occupied the position of SARA Project Person/Deputy Emergency Government Coordinator since March of 1989. Clare is a part-time employe who works 17 hours per week on a flexible schedule, which Clare determines on the basis of whether or not he needs to perform work that day. Clare works in the Office of the Emergency Government and shares that office with the Emergency Government Coordinator, Roland Sacho. The position of Emergency Government Coordinator is a half-time position. SARA stands for Superfund Amendment and Reauthorization Act and is a federal program enacted to deal with hazardous substances. There is a distinction between hazardous substances and hazardous waste. The SARA program does not deal with hazardous waste. SARA delegates responsibility for regulating hazardous substances to the governor of each state. In Wisconsin, the Governor created the State Emergency Response Board to administer the SARA Program and the State enacted legislation delegating to each county the responsibility for creating a Local Emergency Planning Committee to administer the SARA Program on a county level. The County's Local Emergency Planning Committee (LEPC) is comprised of citizens from business, health services, emergency government, and protective services. The primary function of the LEPC is to develop plans to protect the community in the event that there is an emergency situation involving hazardous substances and to comply with SARA reporting requirements. Each LEPC is governed by federal statute, environmental protection agency administrative rules, state law and the county ordinance establishing the Local Emergency Planning Committee. While the County LEPC is authorized to request additional information from facilities and to go beyond federal or state law requirements, the LEPC is primarily involved in implementing federal and state law. The LEPC is scheduled to meet once a month, but if there is not enough business, the meetings are not held. In the previous year, the LEPC met on eight or nine occasions. Clare prepares the public meeting notice for the LEPC meeting, develops the agenda, and files material needed for the meeting. When the LEPC decided to develop its operational guidelines, the Chair of the LEPC directed Clare to develop proposed guidelines and

submit the proposed guidelines to the LEPC for review and approval. Following approval by the LEPC, the guidelines will be submitted to the County Corporation Counsel. Clare is the only employe who works for the LEPC. Clare's SARA duties primarily involve two areas, i.e., developing plans for managing hazardous substances and reporting on hazardous substances. The LEPC gives Clare direction as to which facilities involved with hazardous substances should be contacted and makes a determination as to whether or not there is a need to do a follow up. When Clare views a facility to prepare a plan, he determines the amount and kind of any hazardous substance, determines its location at the facility site, informs the facility representatives of their responsibilities under SARA and works with the facility manager to develop on site plans for emergency situations. In preparing off site plans, Clare determines how different agencies will respond and interact, the potential vulnerable zone, and the need for evacuation. After Clare develops such plans, the plans are submitted to the LEPC for approval. Upon approval by the LEPC, the plans are forwarded to the State. Clare also responds to requests for information from facilities on hazardous substance reporting requirements. The LEPC has delegated to Clare the administration of the SARA community right to know provisions. At the time of hearing, the LEPC was not involved in inspecting facilities to determine whether or not they were in compliance with hazardous substance laws or regulations. Clare predicts that, in the future, the LEPC will have compliance responsibilities. The Emergency Government Coordinator sits on the LEPC and attends LEPC meetings. On one occasion when Clare was working on a project for the LEPC, the Emergency Government Coordinator told Clare that it was not a necessary project and that he should not be expending time on the project. The LEPC told Clare to continue with the project and Clare did so. The LEPC oversees the SARA Project, but not the Emergency Government Office or the Emergency Government Coordinator. Approximately 90%-95% of Clare's work time is devoted to performing duties for the SARA program. The remainder of his time is devoted to performing his duties as Deputy Emergency Government Coordinator, which primarily involve covering for the Emergency Government Coordinator when the Emergency Government Coordinator is absent from work. In the absence of the Emergency Government Coordinator, Clare would assume the responsibility for operating the Emergency Operating Center. The Emergency Operating Center coordinates emergency activities involving a large disaster, by monitoring emergency situations, maintaining contact with other counties to obtain and provide information concerning emergency activities, and releasing information to the public via radio and television.

6. Clare is involved in preparing the SARA Project budget. Clare prepares the budget by reviewing the preceding years' budget and determining whether there was too much or too little money to meet necessary expenditures. If he determines that too little or too much money had been allocated in the prior budget, Clare adjusts the new budget accounts accordingly. The LEPC sees the budget developed by Clare, but has not been involved to any great degree in the budget process. Authority for approving or rejecting the SARA project budget has rested with the County Board. In the past, accounts have been added to the budget because the County Board preferred that phone costs and office supplies not be assigned to "Miscellaneous". In developing the budget, Clare is continuing to fund programs that have existed in the past. Clare was not involved in the development of the initial SARA project budget. Clare was involved in the development of the previous years' budget and is involved in the development of the current years' budget. After Clare had prepared the previous years' budget, the County Board modified this budget. If the amount budgeted in an account were not sufficient to meet necessary expenditures, then Clare would have to request additional funding from the County Board or do without. If Clare determined that there should be some reallocation of money from one budget category to another, then he would request the County Board to reallocate the money. The SARA Project's primary funding source is State grants. The State specifies the manner in which the grant monies may be expended. At the direction of LEPC members, Clare has prepared other grant proposals, but to date, such proposals have not generated additional monies. When preparing grant requests, Clare generally utilizes a form prepared by the funding agency. When Clare determined that he needed radio equipment for his automobile, he concluded that monies were available from an existing budget line category, prepared a purchase order and submitted the purchase order to the County Board. On another occasion, Clare and the Emergency Government Coordinator determined that there was a need to purchase gas detection equipment. Clare prepared the purchase order and submitted the purchase order to the County Board. Clare generally makes the determination as to whether it is necessary to travel or attend meetings. The 1989 SARA Project budget is as follows:

		- - - - - APPROPRIATIONS - - - - -
SARA		
101.52420.0000.5111	REGULAR SALARIES & WAGES . . .	6,975.00
101.52420.0000.5115	TEMPORARY SALARIES & WAGES . . .	0.00
101.52420.0000.5141	PER DIEM . . .	500.00
101.52420.0000.5151	SOCIAL SECURITY . . .	464.00
101.52420.0000.5152	RETIREMENT . . .	729.00
101.52420.0000.5154	HEALTH INSURANCE . . .	0.00
101.52420.0000.5155	LIFE INSURANCE . . .	0.00
101.52420.0000.5159	DENTAL INSURANCE . . .	0.00
101.52420.0000.5160	HOSPITAL INSURANCE TAX . . .	14.00
101.52420.0000.5225	TELEPHONE . . .	0.00
101.52420.0000.5311	POSTAGE . . .	250.00
101.52420.0000.5313	PHOTOCOPIES . . .	400.00
101.52420.0000.5319	OFFICE SUPPLIES . . .	0.00
101.52420.0000.5321	LEGAL Notices & PUBLICATION . . .	100.00
101.52420.0000.5335	MEAL ALLOWANCE . . .	0.00
101.52420.0000.5339	TRAVEL EXPENSES . . .	200.00
101.52420.0000.5391	MISCELLANEOUS . . .	750.00
101.52420.0000.5512	SARA - EXERCISES . . .	600.00
101.52420.0000.5815	COMPUTER OUTLAY . . .	2,609.61
	TOTAL	13,591.61

The County Board determines the money to be appropriated to the budget category designated as "Regular Salaries and Wages".

7. Since May 1 of 1990, Tony Yaron has been the County Airport Manager. Prior to assuming this position, Yaron was an interim manager and the Airport Relief Manager. At the time of hearing, the Airport Relief Manager was Phil Sulko. Sulko assumed this position on the Monday before the hearing. While Yaron envisions that the Airport Relief Manager duties may change over time, at the present time, Sulko's duties and responsibilities are substantially the same duties and responsibilities that Yaron performed when he was the Airport Relief Manager. The Airport Manager's job description is as follows:

#### AIRPORT MANAGER

Under the general supervision of the Taylor County Airport and Rail Committee, provides general management, airport maintenance and fuel services at the Taylor County Airport.

#### Major Duties and Responsibilities

1. Meets regularly with the Airport and Rail Committee to review and report on airport operations. Makes recommendations for new policies, or revision of existing policies, pertaining to operation of the airport.

2. Monitors Fixed Base Operators to insure that they comply with FAA or Wis Dot regulations and with the Taylor County Code.

3. Sells and dispenses aircraft fuel, insuring that safety regulations are observed while fueling is in process.

4. Maintains records of County fuel purchases and reorders fuel supplies as necessary. Turns in cash receipts for fuel sales to the County Treasurer, and credit sales information to the County Clerk.

5. Cuts grass, or plows snow, on runways, taxiways, or public areas at the airport, at the intervals necessary to maintain safe operating conditions for aircraft and the safety of the general public. May arrange with Highway Commissioner for heavy snow removal equipment when necessary.

6. May do minor repairs on County owned equipment and buildings at the airport, including lights, sewer and water equipment, wind measuring instruments, fuel dispensing equipment and maintenance equipment. Advises Airport and Rail Committee of major repair needs, or the need for additional facilities or equipment.

7. Maintains administration building and airport grounds in a clean and orderly condition. Requisitions necessary cleaning and maintenance supplies from County Purchasing Agent.

8. Performs other functions related to the Taylor County Airport as may be requested or required by the Airport and Rail Committee, and/or by FAA or Wis Dot regulations.

9. If requested, advises arriving or departing aircraft of prevailing weather conditions, runway conditions, or other pertinent information pertaining to the safe movement of aircraft into or out of the Taylor County Airport.

10. Develops (sic) annual operating budget for the airport for presentation to the Airport and Rail Committee and the County Board.

#### Desirable Training and Experience

Prior experience as a Fixed Base Operator or Manager of a general aviation airport.

Thorough knowledge of FAA and Wis Dot rules and regulations applicable to general aviation airports.

Except for Items One and Ten, the Airport Relief Manager performs basically the same duties and responsibilities as those set forth on the Airport

Manager job description. The Airport Relief Manager works 30 hours per week on a flexible work schedule. While the previous Airport Relief Manager worked alternating weekends, the Airport Manager is willing to change the work schedule to accommodate the needs of the new Airport Relief Manager. The Airport Relief Manager does not have any authority to establish fuel prices, but may reorder fuel supplies as necessary from the airport's vendor, Phillips 66. In reordering fuel supplies, the Airport Relief Manager follows established guidelines, i.e., fuel is replaced when the tank falls below 1500 gallons. The Airport Relief Manager has authority to expend money from the following budget categories: Repair and Maintenance of Equipment, Snow Removal, Ground Upkeep, Repair and Maintenance of Buildings, Travel Expenses and Janitorial Supplies if the money in the budget accounts is sufficient to cover such purchases. The Relief Manager does not have authority to move money from one budget category to another. The Airport Manager expects the Airport Relief Manager to consult with him prior to expending more than \$100 or \$200. If a pilot stops for refueling and presents a credit card, the Airport Relief Manager has authority to reject that card and not refuel the plane. In determining whether or not to accept a credit card, the Airport Relief Manager refers to the monthly report on overdue, fraudulent or stolen credit cards which is prepared by the credit card companies. The Airport Relief Manager collects monies from sales and services such as fuel sales, tie-down fees, and hangar rents and prepares a daily account of the same. The Airport Manager determines whether or not the Airport Relief Manager travels to conferences and meetings. The airport has posted hours of 8:00 a.m. to 6:30 p.m. seven days a week. The Airport Manager and the Airport Relief Manager are not always present during the posted hours. When these employees are absent during posted hours, they leave instructions so that customers can contact the employees for services. The Airport Manager has a residence on the airport grounds.

8. The employees occupying the positions of SARA Project Person/Deputy Emergency Government Coordinator and Airport Relief Manager do not participate in the formulation, determination or implementation of management policy to a significant degree and do not have sufficient authority to commit the County's resources so as to render them managerial employees.

Upon the basis of the above Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. The occupant of the position of Airport Relief Manager is not a managerial employe, but rather, is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

2. The occupant of the position of SARA Project Person/Deputy Emergency Government Coordinator is not a managerial employe, but rather, is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT 1/

The positions of Airport Relief Manager and SARA Project Person/Deputy Emergency Government Coordinator shall be and hereby are included in the bargaining unit set forth in Finding of Fact 3.

Given under our hands and seal at the City of  
Madison, Wisconsin this 2nd day of January,  
1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairman

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner

(See Footnote 1/ on page 8)

---

---

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 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.



TAYLOR COUNTY

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

BACKGROUND

The Union seeks to include the position of SARA Project Person/Deputy Emergency Government Coordinator and Relief Airport Manager in the collective bargaining unit represented by the Union. The County opposes the inclusion on the basis that the employees occupying these two positions are managerial employees.

POSITIONS OF THE PARTIES

The County

The SARA Project Person/Deputy Emergency Government Director is a "one of a kind" position in the Taylor County government structure. The position is not supervised by the Emergency Government Director, nor does that person, or anyone else, approve the time reports, expense vouchers or work schedule of the employee occupying this position. The functional relationship between the Emergency Government Director and the SARA Project Person/Deputy Emergency Government Director is to serve as "backup" if one or the other is absent from work.

The SARA Project Manager/Deputy Emergency Government Director is responsible for preparing, presenting and implementing the annual budget for the SARA program. The proposed budget is submitted to the LEPC and then to the County Board's Budget Review Committee, in the same manner as budgets for any other County department. No budget review, or approval, is required from the Emergency Government Director for the SARA Project. The SARA Project Manager is a managerial position and, therefore, appropriately excluded from the bargaining unit represented by the Union.

In the absence of the Airport Manager, the Airport Relief Manager is in complete charge. The Relief Manager dispenses fuel to aircraft (collecting payments by cash or credit card); directs planes to parking areas and collects "tie-down" fees; monitors the intercom and, when requested, provides pilots with information regarding weather conditions, visibility and runway conditions; maintains the grass and paved runways according to the needs of the season and weather conditions; arranges for, or makes, repairs to runway or beacon lights; and takes steps necessary to enforce FAA, Wis DOT, and County regulations and rules to insure the safe movement of aircraft into or out of the airport. While the Relief Airport Manager does not have the budgetary responsibilities of the SARA Project Manager/Deputy Emergency Government Director, the employee occupying the position of Airport Relief Manager has significant overall managerial responsibilities and, therefore, is not appropriately included in the bargaining unit represented by the Union.

The Union

The Union asserts that neither position is managerial and thus that both positions should be included in the unit.

DISCUSSION

Section 111.70 (1)(i) of the Municipal Employment Relations Act (MERA) defines a "municipal employe" as "any individual employed by a municipal employer other than an independent contractor, supervisor, or confidential, managerial or executive employe". The term "managerial employe" is not defined in MERA. Thus, it has fallen to the Commission to provide a definition.

The Commission has found that managerial employees are excluded from MERA coverage because their relationship to the employer imbues them with interests significantly at variance with those of other employees. 2/ Such a divergence of interests has been found where the employee participates in the formulation, determination and implementation of management policy or has effective authority to commit the municipal employer's resources. 3/ To yield managerial status, the involvement with the municipal employer's policies must be "at a relatively high level of responsibility" 4/ and "to a significant degree". 5/

---

2/ Price County, Dec. No. 11317-B (WERC, 9/89); Village of Saukville, Dec. No. 26170, (WERC, 9/89).

3/ Milwaukee v. WERC, 71 Wis. 2d 709 (1976); Door County, Dec. No. 14810 (WERC, 7/76).

4/ City of Milwaukee, Dec. No. 11971 (WERC, 7/73).

5/ City of Milwaukee, Dec. No. 12035-A, (WERC, 6/73), aff'd Dane Co.

Effective authority to commit the employer's resources is evidenced by significant involvement in the establishment of an original budget or by the authority to allocate funds for program purposes which differ from the original budget. 6/ However, preparation of a budget, per se, is not sufficient to establish managerial status. To confer managerial status, an individual's budget preparation duties must involve allocation of resources in a manner which significantly affects the nature and direction of the employer's operations. 7/ Authority to significantly affect the nature and direction of the municipal employer's operations includes, inter alia, authority to determine the following: the kind and level of services to be provided; the kind and number of employees to be utilized in providing services; the kind and number of capital improvements to be made; and the systems by which the services will be provided, including the use of outside contractors. 8/

#### Airport Relief Manager

The record demonstrates that the Airport Relief Manager primarily functions as a maintenance worker and airport custodian. He does not have any budget preparation duties. The Airport Relief Manager does have authority to restock fuel supplies from the County's authorized vendor when a fuel tank falls below 1500 gallons. The Airport Relief Manager also has authority to expend money from the following budget categories: Repair and Maintenance of Equipment, Snow Removal, Ground Upkeep, Repair and Maintenance of Buildings, Travel Expenses and Janitorial Supplies if the money in the budget categories is sufficient to cover such purchases. However, the Airport Manager expects the Airport Relief Manager to consult with him prior to expending more than \$100 or \$200 on any item. Most significantly, the Relief Manager does not have authority to move money from one budget category to another. Given the foregoing, we are satisfied that the Airport Relief Manager does not have effective authority to commit the employer's resources.

As the issue of whether the Relief Manager has any policy responsibilities, we acknowledge that the Airport Relief Manager frequently works alone and, in the absence of the Airport Manager, may assume the routine duties of the Airport Manager. However, the Relief Manager has no policy making role in the management of the airport. Thus, it is evident that neither the assumption of the Manager's duties nor the performance of the Airport Relief Manager's normal duties involve the formulation, determination and implementation of management policy at a relatively high level of responsibility or to a significant degree.

Given the foregoing, contrary to the argument of the County, the Airport Relief Manager is not a managerial employe within the meaning of the Municipal Employment Relations Act.

#### SARA Project Person/Deputy Emergency Government Coordinator

Under the provisions of the federally enacted SARA program, individual state governments are responsible for administering the SARA program. The Wisconsin state government has delegated this responsibility to individual county Local Emergency Planning Committees. The County's Local Emergency Planning Committee (LEPC) is comprised of citizens from business, health services, emergency government, and protective services. The LEPC is scheduled to meet on a monthly basis, but does not meet unless there is business to conduct. The primary function of the LEPC is to develop plans to protect the community in the event of an emergency situation involving hazardous substances and to comply with SARA reporting requirements.

As SARA Project Person, William Clare develops on site and off site plans for managing hazardous substances, prepares reports on hazardous substances and provides information to the public on SARA requirements. It is the LEPC, and not Clare, who determines which facilities will be contacted when formulating plans to deal with hazardous substances. It is the LEPC, and not Clare, who determines whether there is any need for follow up contacts. The plans prepared by Clare are submitted to the LEPC for review and approval. At the direction of the LEPC, Clare has developed guidelines for LEPC operations, which guidelines have also been submitted to the LEPC for review and approval. At the direction of LEPC members, Clare has prepared grant proposals. When preparing grant requests, Clare generally utilizes a form prepared by the funding agency. Given the foregoing, we are persuaded that Clare's duties as the SARA Project Person do not involve any significant participation in the

---

Cir. Ct. No. 142-170 (2/74); City of New London, Dec. No. 12170 (WERC, 9/73).

6/ Kewaunee County v. WERC, 141 Wis.2d 347 (1987); Eau Claire County v. WERC, 122 Wis.2d 363 (CtApp 1984); Milwaukee v. WERC, 71 Wis. 2d 709 (1976).

7/ Depere Unified School District, Dec. No. 26572 (WERC, 8/90).

8/ Jackson County, Dec. No. 17828-B (WERC, 10/86).

formulation, determination and implementation of management policy, but rather, are primarily advisory and ministerial. To the extent that the SARA program permits the County to formulate, determine and implement policy, we are persuaded that such authority rests with the County Board and the LEPC.

Clare did not develop the initial SARA Project budget. However, he has assisted in the preparation of the previous year's budget and is involved in the preparation of the current year's budget. Clare's budget preparation duties primarily involve (1) reviewing the previous budget to determine whether the amounts budgeted in each category exceeded or fell short of actual expenditures and (2) adjusting the new budget accordingly. While the LEPC sees the budget prepared by Clare, the LEPC is not actively involved in the preparation of the budget. Rather, it is the County Board which reviews and approves the budget presented by Clare. In the past, accounts have been added to the SARA project budget because the County Board preferred that phone costs and office supplies not be assigned to "Miscellaneous". After Clare had prepared the previous years' budget, the County Board modified this budget. While Clare has some authority to expend monies for the purposes for which they were allocated, he does not have authority to exceed the budgeted amounts or to reallocate monies between accounts. Given the foregoing, we do not consider Clare to have effective authority to commit the County's resources.

Thus, contrary to the argument of the County, Clare's duties as SARA Project Person do not confer managerial status.

Approximately 90 to 95 per cent of Clare's work time is devoted to his duties as the SARA Project Person. Clare's remaining work time is devoted to his duties as Deputy Emergency Government Coordinator, which duties primarily involve covering for the Emergency Government Coordinator when the Emergency Government Coordinator is unavailable. In the absence of the Emergency Government Coordinator, Clare would assume responsibility for operating the Emergency Operating Center. The Emergency Operating Center coordinates emergency activities in a large disaster, by monitoring emergency situations, maintaining contact with other counties to obtain and provide information concerning emergency activities, and releasing information to the public via radio and television. Assuming arguendo that the assumption of the duties of the Emergency Government Coordinator would provide Clare with significant

authority to formulate, determine and implement management policy, Clare's duties as Deputy Emergency Government Coordinator are performed on such a de minimis basis that such duties do not and would not warrant Clare's exclusion as a managerial employe.

Dated at Madison, Wisconsin this 2nd day of January, 1991.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/  
A. Henry Hempe, Chairman

Herman Torosian /s/  
Herman Torosian, Commissioner

William K. Strycker /s/  
William K. Strycker, Commissioner