

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
Involving Certain Employees of
TAYLOR COUNTY

Case 24
No. 54666 ME-861
Decision No. 24261-E

Appearances:

Mr. Phillip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, appearing on behalf of the Union.
Mr. Charles Rude, Personnel Director, Taylor County, 224 South Second Street, Medford, Wisconsin 54451, appearing on behalf of the County.

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

On December 2, 1996, Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, filed a petition with the Wisconsin Employment Relations Commission seeking the clarification of a bargaining unit of employes of Taylor County by the inclusion of the position of Conservation Technician. The County opposed the petition contending that the position is managerial.

Hearing was held in Medford, Wisconsin on March 5, 1997, before Examiner Debra L. Wojtowski, a member of the Commission's staff. A stenographic transcript was prepared by April 3, 1997. The County and Union waived the filing of briefs.

The Commission, being fully advised in the premises, hereby makes and issues the following

FINDINGS OF FACT

1. Wisconsin Council 40, AFSCME, AFL-CIO, hereinafter the Union, is a labor organization with offices at 7111 Wall Street, Schofield, Wisconsin.
2. Taylor County, hereinafter the County, is a municipal employer with offices at the Taylor County Courthouse, 224 South Second Street, Medford, Wisconsin.
3. In Taylor County, Dec. No. 24251-C (WERC, 5/89), the Wisconsin Employment Relations Commission, hereinafter the Commission, certified the Union as the exclusive bargaining

representative of certain employees of the County in the following collective bargaining unit:

All regular full-time and regular part-time non-professional employees 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 employees, but excluding professional, confidential, supervisory, managerial, craft and elected officials, and employees in existing bargaining units.

4. On December 12, 1996, the Union petitioned the Commission to clarify the unit described in Finding of Fact 3 above, to include the position of Conservation Technician in the Land Conservation Department.

5. The Conservation Technician position description reads as follows:

Purpose of Position

The purpose of this position is to perform planning, engineering and technical design tasks for a variety of soil and water conservation programs for the Taylor County Land Conservation Department.

Essential Duties and Responsibilities

The following duties are normal for this position. These are not to be construed as exclusive or all-inclusive. Other duties may be required and assigned.

- * Assists with administration and planning for Farmland Preservation, county tree and Stewardship incentive programs.
- * Gathers data for soil erosion data base. Develops, reviews and updates farm plans. Conducts technical, engineering surveys or provides assistance in surveying existing conditions.
- * Engineers, designs, estimates costs and supervises installation of conservation related practices such as manure pits, ponds, diversions, etc.
- * Monitors practices compliance with local, State and Federal

specifications. Gathers data for periodic reports.

- * Prepares and provides information regarding conservation programs and practices at educational events, workshops, field demonstrations, County Fair booth, seminars, etc.
- * Assists landowners with permit applications. Explains conservation project benefits to landowners.
- * Participates in on-going training and attends meetings on conservation matters as needed.
- * Monitors installed practices performance.
- * Seeks out and reviews new literature, undertakes training, and initiates contacts to keep current on applicable programs, laws, rules, regulations, conservation principles, practices and techniques.

Additional Tasks and Responsibilities

While the following tasks are necessary for the work of the unit, they are not an essential part of the purpose of this position and may also be performed by other unit members.

- * Performs clerical tasks such as filing, typing, photocopying documents, answering telephone.

Minimum Training and Experience Required to Perform Essential Job Functions

Associate degree in Agriculture, Soil Science, Conservation, Natural Resources or related field, with one to two years agriculture/natural resource management practice and design experience, or any combination of education and experience that provides equivalent knowledge, skills, and abilities. A valid Wisconsin motor vehicle operator's license required. Knowledge of conservation programs, laws, rules, and regulations required.

Physical and Mental Abilities Required to Perform Essential Job Functions

Language Ability and Interpersonal Communication

- * Ability to analyze data and information using established criteria, in order to determine consequences and to identify and select alternatives. Ability to compare, count, differentiate, measure and/or sort, as well as assemble, copy, record and transcribe data and information. Ability to classify, compute, tabulate, and categorize data.
- * Ability to persuade, convince, and/or train others, including the ability to act in a lead worker capacity. Ability to advise and interpret how to apply policies, procedures and standards to specific situations.
- * Ability to utilize a variety of advisory data and information such as SCS technical reports, soil surveys, aerial photos, topographical maps, schedules, expense reports, erosion reports, plat book, financial statements, SCS technical manual, engineering manuals, computer software operating manuals, statutes, procedures, guidelines and non-routing correspondence.
- * Ability to communicate orally and in writing with Land Conservation Committee members, SCS personnel, DNR personnel, farmers/landowners, engineers, contractors, DATCP personnel, USDA personnel and other land use/resource agency personnel.

Mathematical Ability

- * Ability to apply geometric, algebraic and trigonometric formulas. Ability to interpret inferential statistical reports and/or formulation and equation data.

Judgment and Situational Reasoning Ability

- * Ability to use functional reasoning and apply rational judgment in performing diversified work activities.
- * Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information

against measurable criteria.

Physical Requirements

- * Ability to operate, maneuver and/or steer equipment and machinery requiring simple but continuous adjustments, such as motor vehicle, drafting instruments, land surveying tools, soil augers, clinometer, camera, planimeter, computer terminal and scientific calculator.
- * Ability to coordinate eyes, hands, feet and limbs in performing semi-skilled movements.
- * Ability to exert moderate physical effort in sedentary to light work, typically involving some combination of climbing and balancing, stooping, kneeling, crouching, crawling, lifting, carrying, pushing, and pulling. Ability to sustain prolonged visual concentration.
- * Ability to recognize and identify degrees of similarities or differences between characteristics of colors, forms, sounds, odors and textures associated with job-related objects, materials and tasks.

Environmental Adaptability

- * Ability to work under moderately safe and comfortable conditions where exposure to environmental factors such as temperature variations and extremes, underground utilities, toxic agents, machinery and/or farm animals, may cause some discomfort and where there is a risk of minor injury.

Taylor County is an Equal Opportunity Employer. In compliance with the Americans with Disabilities Act, the County will provide reasonable accommodations to qualified individuals with disabilities and encourages both prospective and current employees to discuss potential accommodations with the employer.

Signature

Supervisor's Signature

Employee's

Date

Date

William Schmitz has occupied the position of Conservation Technician since April 11, 1994. Schmitz works in the Land Conservation Department and reports to the County Conservationist. These two positions and one part-time secretary comprise the Land Conservation Department. The County Conservationist reports to the Land Conservation Committee.

6. The Land Conservation Department is responsible for the administration of several environmental, conservation, and soil programs. These include the Farmland Preservation Acts, County Tree and Stewardship programs, and the Erosion Control program, along with other related State and Federal programs. Program participation is generally initiated by interested residents, who contact the Land Conservation Department. In its Tree program, the County offers trees for sale and disseminates pertinent material provided by the Wisconsin Department of Natural Resources. For this program, Schmitz picks up trees from nurseries and distributes them to participants. In a Wind Break program, Schmitz designs and plans windbreaks for requesting residents, who then plant trees. Schmitz also conducts status reviews for the Farmland Preservation program. Residents participating in this program are obliged to follow conservation plans in order to receive property tax credits. Schmitz only deals with Farmland Preservation participants who have been out of compliance for one year; those more seriously out of compliance are handled by his supervisor, the Land Conservationist. In the summer, the incumbent measures slopes and determines soil amounts lost on farm fields for the County Erosion Control program.

Schmitz' job duties involve the technical and practical application of the principles of conservation and land management, as well as understanding, explaining, and assisting participants in meeting the requirements of land programs. The programs themselves are chosen by the County upon recommendation from the Land Conservation Committee and the County Conservationist, or they are mandated by statute. Schmitz does not determine what level of service and programs are provided by the Department, or how the resources ought to be allocated through the programs. He has not made any recommendations to his supervisors with respect to changing the programs or policies the Department has followed since Schmitz began his County employment.

7. The budget for the Department is prepared by the County Conservationist. It is submitted to the Land Conservation Committee for approval and then proceeds to the County Board. Schmitz is not involved in the budget preparation. Schmitz has limited authority with respect to the expenditure of County money. Primarily, his authority is limited to use of a credit card for gasoline. Schmitz can also commit County resources for emergency truck repair. Schmitz monitors project construction and approves material uses, ensuring participants conform to regulations and specifications in order to achieve program goals. In many of these programs, applicants receive cost shares for their work from either the State or the County and Schmitz' role is to make sure that specific materials are of the quality or caliber established. He also ensures that materials meet design plans that he has helped draft with the applicants. He does not hire contractors or assign contracts on behalf of the County. He gives applicants lists of contractors that

they may chose from in order to undertake various conservation projects. When the County hires contractors, it is primarily on a bid basis as to which Schmitz has no input. Schmitz does not prepare applications for Department or County grants.

8. The Conservation Technician does not have sufficient authority to commit the County's resources or participation in the formulation, determination and implementation of management policy to be deemed a managerial employe.

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

CONCLUSION OF LAW

The incumbent in the position of Conservation Technician is not a managerial employe within the meaning of Sec. 111.70(1)(i), Stats., and therefore is a municipal employe within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

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

The bargaining unit described in Finding of Fact 3 above is hereby clarified by the inclusion of the position of Conservation Technician.

Given under our hands and seal at the City of Madison, Wisconsin, this 28th day of July, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

(Continued)

1/ (Continued)

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,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT

Discussion

This position was created in 1994 and the Union filed a petition to seek its inclusion in the bargaining unit after it became aware of its existence. The County believes that the employee should be excluded on the grounds that there are managerial aspects to the programs for which he is responsible and that these job characteristics have been in place since the position was established.

The legislature has excluded "managerial" employees from the Sec. 111.70(1)(i), Stats., definition of "municipal employee", but it has not provided a statutory definition of that term. Thus, the definition of a managerial employee has been developed through case law.

There are two analytical paths to assess claimed managerial status. One considers the degree to which individuals participate in the formulation, determination and implementation of management policy; the other considers whether the individual possesses the authority to commit the employer's resources. 2/

For an individual to assume managerial status based on participation in policy, such involvement must be "at a relatively high level of responsibility" 3/ Managerial status based on allocation of the employer's resources necessarily entails significantly affecting the nature and direction of the employer's operations, such as the kind and level of services to be provided or the kind and number of employees to be used in providing services. 4/

We do not find sufficient indicia of managerial status to warrant the exclusion of this position from the bargaining unit. As his job title suggests, most of Schmitz' work involves application of technical skills. He gathers data, designs land use plans and land and soil management plans, conducts technical engineering surveys, or provides assistance in surveying existing conditions. There is a sizable amount of administrative work involved in these tasks and the incumbent must know the local, State, and Federal regulations and specifications for a wide variety of conservation programs administered by the County. He relies on this knowledge to assist land owners with program applications, and to explain project goals, benefits and requirements to them. He must also monitor compliance and prepare data for required reports. While Schmitz does

2/ Door County, Dec. No. 24016-E (WERC, 7/95).

3/ Nicolet Union High School District, Dec. No. 27353-B (WERC, 7/95).

4/ Crawford County, Dec. No. 278280-C (WERC, 8/95).

approve materials and plans, this is in the nature of enforcing applicant compliance with program requirements, none of which are set by the incumbent. None of these tasks, however, evinces significant policy involvement or discretion and authority to commit the County's financial resources.

The policies and programs administered by the Department were established prior to Schmitz' employment with the County. Furthermore, there are several levels of supervision that have significant input into those decisions including the County Board and the Land Conservation Committee and Schmitz' supervisor, the Land Conversationist. It does not appear from the record that Schmitz has any input into such determinations.

Furthermore, Schmitz does not participate in the preparation of a budget save for supplying the Land Conservationist with suggestions as to things he would like. He does not make determinations as to what staffing levels are needed or what program requirements would warrant in terms of the allocation of either human or financial resources. Although the incumbent does engage in work with contracts, he again is administering programs pursuant to established procedures. He does not have the authority to award County contracts, a procedure which is administered pursuant to a bidding process handled by others.

In sum, Schmitz does not significantly participate in the formulation, determination and implementation of management policy or have significant authority to commit the County's resources. Thus, Schmitz is not a managerial employe and is a municipal employe appropriately included in the bargaining unit described in Finding of Fact 3, above.

Dated at Madison, Wisconsin, this 28th day of July, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By James R. Meier /s/
James R. Meier, Chairperson

A. Henry Hempe /s/
A. Henry Hempe, Commissioner

Paul A. Hahn /s/
Paul A. Hahn, Commissioner

