

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. 55596
ME-906

Decision No. 24261-F

Appearances:

Mr. Philip Salamone, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 7111 Wall Street, Schofield, Wisconsin 54476, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Mr. Charles A. Rude, Personnel Director, Taylor County, 224 South Second Street, Medford, Wisconsin 54451-1899, appearing on behalf of Taylor County.

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

On September 23, 1997, 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 employees of Taylor County by the inclusion of the position of Real Property Lister. The County opposed the petition contending that the position is supervisory. Hearing was held in Medford, Wisconsin, on January 8, 1998, before Examiner Coleen A. Burns, a member of the Commission's staff. A stenographic transcript was prepared and the parties submitted post-hearing written argument by March 3, 1998.

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

No. 24261-F

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. 24261-C (WERC, 6/89), 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. The Real Property Lister position description accurately reflects the duties of the position and states as follows:

Purpose of Position

The purpose of this position is to develop, implement and maintain property tax records for Taylor County.

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.

Drafts county tax parcel maps.

Creates or corrects legal real property descriptions defining parcel size and boundaries. Assigns parcel numbers, school district and other real estate tax related codes such as tax incremental, forest land, sewer district, lake management, etc.

Maintains and updates a variety of map records such as property transfer, certified survey, plats of surveys, tax receipt, assessment and tax roll.

Balances assessment rolls.

Proofreads documents and information for accuracy and completeness.

Posts recorded documents from Register of Deeds to assessment/tax rolls to establish ownership. Updates maps to reflect subdivision, highway, annexation and platting surveys.

Provides information to and assists assessors. Researches ownership, boundary and tax-related questions and provides answers to assessors, Realtors, lending institutions, surveyors, abstractors, attorneys, the general public, and municipal, County and State personnel and officials.

Provides informational assistance to municipal clerks regarding mill rate calculation, collection and disbursement of taxes and preparation of State-mandated documents. Reviews and corrects mill rate calculations submitted by municipalities.

Consults with computer software consultants regarding automated information systems. Notifies consultants of legislative changes affecting tax records.

Authorizes printing and distribution of real property tax-related information including tax rolls, assessment rolls, tax statements, sale books, special tax district reports, mailing labels, etc. from compiled data.

Plans and monitors property lister budget. Approves purchases and expenses. Orders supplies and forms for assessors, tax-assessment rolls, tax receipts, envelopes, receipt forms and other forms.

Maintains knowledge of current requirements from State Departments and programs affecting property listing and taxation such as Farmland Preservation, DNR and DOT programs.

Researches and prepares tax deed information on delinquent tax parcels.

Minimum Training and Experience Required to Perform Essential Job Functions

Associate degree in Accounting or real estate with one year real estate document experience, or any combination of education and experience that provides equivalent knowledge, skills, and abilities.

Physical and Mental Abilities Required to Perform Essential Job Functions

Language Ability and Interpersonal Communication

Ability to analyze and categorize data and information in order to determine the relationship of the data with reference to established criteria/standards. Ability to compare, count, differentiate, measure and/or sort data, as well as assemble, copy and record and transcribe data and information. Ability to classify, compute and tabulate data.

Ability to persuade, convince, and/or train others. Ability to advise and provide interpretation regarding the application of policies, procedures and standards to specific situations.

Ability to utilize a variety of advisory data and information such as a variety of maps, bills, invoices, time sheets, budgets, deeds, tax rolls and receipts, assessment summaries, State statute Chapter 70, Wisconsin Property Assessment Manual, procedures, guidelines and non-routine correspondence.

Ability to communicate orally and in writing with attorneys, appraisers, real estate personnel, other Real Property Listers, other County personnel and the general public.

Mathematical Ability

Ability to calculate percentages, fractions, decimals, volumes and ratios. Ability to interpret basic descriptive statistical reports. Calculates acreages.

Judgment and Situational Reasoning Ability

Ability to use functional reasoning in performing influence functions such as supervising, managing, leading, teaching, directing and controlling.

Ability to exercise the judgment, decisiveness and creativity required in situations involving the evaluation of information against sensory and/or judgmental criteria.

Physical Requirements

Ability to operate equipment and machinery requiring simple but continuous adjustments, such as computer terminal/typewriter, calculator/adding machine, blue print copy machine and photocopier.

Ability to coordinate eyes, hands, feet and limbs in performing skilled movements

such as rapid keyboard use.

Ability to exert very moderate physical effort in sedentary to light work, typically involving some combination of stooping, kneeling, crouching and crawling, lifting, carrying, pushing and pulling.

Ability to recognize and identify degrees of similarities or differences between characteristics of colors, forms, sounds and textures associated with job-related objects, materials and tasks.

Environmental Adaptability

Ability to work under safe and comfortable conditions where exposure to environmental factors poses little to no risk of 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.

5. Betty Blumenstein has been the Real Property Lister for four years. Blumenstein works in the County Tax Lister office, as does the Tax Assistant, Mary Quante. The Tax Lister office is adjacent to the County Treasurer's office. These two offices are connected by an open doorway. The Tax Lister office and the County Treasurer's office are within the Department of the County Treasurer. The elected County Treasurer, Mary Ann Kropp, is the head of the Department of the County Treasurer and is Blumenstein's immediate supervisor. The Deputy County Treasurer also works in the office of the County Treasurer. The County Surveyor, Robert Meyer, and a Land Information Assistant, work in a vault which is located in the Tax Lister office.

Blumenstein has been involved in the hiring of one employe, Mary Quante, the County Tax Assistant. Quante's position was posted and advertised by the County Personnel Department. The resulting applications were reviewed by Blumenstein, Kropp, and the County Surveyor. These three individuals selected the applicants to be interviewed; developed a test for the interview; interviewed and tested the selected applicants; and jointly decided to recommend that Mary Quante be hired for the position. This recommendation was made to, and accepted by, the County Personnel Department and the County Board Personnel Committee. If Blumenstein, Kropp, and Meyer had not been able to agree upon the applicants to be tested and interviewed, or the applicant to be recommended for hiring, Blumenstein would not have authority to make such decisions or recommendations.

Blumenstein trained Quante to perform the duties of the Tax Assistant. Following this training, Blumenstein seldom checked Quante's work.

Blumenstein has not been involved in the discipline, discharge, evaluation, transfer, layoff or recall of any employee and does not have any authority to discipline, discharge, transfer, evaluate, lay off, or recall any employee. If Blumenstein were to observe a County employe engaging in misconduct outside the presence of Kropp, Blumenstein would report the incident to Kropp and rely upon Kropp to take any further action which Kropp deemed necessary.

The collective bargaining agreement between the County and the Union contains a reclassification procedure in which the Department Head can accept or reject an employe's request for reclassification. For at least three years, the County Treasurer, the Surveyor, and Blumenstein have recommended that Quante be reclassified, but that recommendation has not been accepted by the County Board Personnel Committee.

The collective bargaining agreement between the County and the Union contains a grievance procedure which provides that Step 1 grievances are to be filed with the employe's immediate supervisor and Step 2 grievances are to be filed with the department director. Blumenstein is not a part of the grievance process and has never received a complaint or grievance from Quante.

Blumenstein does not have authority to authorize overtime, compensatory time, leave requests or vacation requests of County employes. Quante, Blumenstein, and the Deputy Treasurer understand that vacations can be taken only when there is sufficient coverage in the Tax Lister and Treasurer's offices and select their vacation time accordingly. Kropp, but not Blumenstein, has authority to deny a vacation or leave request made by Quante.

Quante, Blumenstein, and Kropp work the normal courthouse hours of 8:30 a.m. to 4:30 p.m., which work hours are negotiated in the labor contract and/or established by County Board policy. Blumenstein initials the weekly time sheet of Quante to indicate that those hours were worked in the Tax Lister's office and should be charged to the Tax Lister's account. Blumenstein, who is a salaried employe, earns approximately \$5,000/year more than Quante. Quante's wages are negotiated between the Union and the County. While Quante and Blumenstein perform some of the same duties, from 70 to 75 percent of Blumenstein's duties are not performed by Quante. Staff meetings are called by Kropp.

6. The Tax Assistant position description states as follows:

The individual employed in this position will assist the Real Property Lister with the development, implementation, and maintenance of property tax records for Taylor County, provide secretarial/clerical assistance to the County Surveyor, and assist the County Treasurer's office during peak periods.

Essential Duties and Responsibilities

The following duties are normal for this position, but are neither exclusive nor all inclusive. Other duties may be required or assigned.

1. Assists the Real Property Lister in the creation and/or correction of legal real property descriptions; maintains and updates a variety of map records, and performs data entry to maintain tax data base.
2. Assists public in their research of parcel information.
3. Prepares assessment rolls, tax rolls, or tax bill packages as needed.
4. Prepares miscellaneous reports, as needed, for assessors, individuals, public, or private businesses.
5. Maintains office file systems, prepares deeds for processing, prepares letters and forms on WordPerfect. Utilizes LOTUS 1.2.3 to prepare reports to check assessment and tax rolls.
6. Answers Surveyor's telephone calls and provides requested information, or refers inquiry to the Surveyor.
7. File maps or other documents for the Surveyor's office.
8. Types, using WordPerfect, correspondence, memos, or reports. Maintains office filing system.
9. Assists County Treasurer's office, generally during two annual peak periods, with collection, recording, and disbursement of taxes collected by Taylor County, and provides information related thereto, as requested.

Training and Experience Required to Perform Essential Job Functions

1. High school graduate, or equivalent, with bookkeeping training, able to type and to perform computer data input and retrieval. Ability to read real property descriptions is preferred.

Physical and Mental Abilities Required

1. Ability to keep and reconcile accounts.
2. Must become competent and accurate in maintenance of tax record system.

3. Ability to communicate effectively with a variety of people.

4. Ability to exert light physical effort, involving limited lifting, carrying, pushing, and pulling.
5. Ability to operate office equipment such as typewriter, calculator, copy machine, fax machine, computer terminal, and the like.
6. Ability to work inside in generally safe and comfortable conditions, with little exposure to environmental risk.

When Quante receives work assignments from the Surveyor, she gives this work an immediate priority. Ten percent of Quante's compensation is charged to the Surveyor's office. Blumenstein assists the Surveyor when Quante is not available. Quante's regular work schedule includes assisting with tax collection in the Treasurer's office in January, July and August. These tax collection duties usually involve four to six weeks per year. Quante also works in the County Treasurer's office to fill in for absent employees and to provide other assistance as the workload of the County Treasurer's office dictates.

Quante's Tax Lister office duties are not generally assigned by Blumenstein, but rather, are dictated by the tax cycle, e.g., deeds from the previous year are added to the tax rolls in January; the tax rolls are processed in early February; the assessment rolls are returned in May and are entered into the system; and tax bills are produced in December. At other times during the year, employees in the Tax Lister office perform miscellaneous work that the employees do not have time to do at other times of the year, as well as ongoing duties such as responding to information requests. At times, Quante asks Blumenstein for guidance on performing work duties. Less than two percent of Blumenstein's work time is devoted to directing the work of Quante. Represented employees, such as Quante, do not receive job evaluations. Non-represented employees, such as Blumenstein, are evaluated by their supervisor. Kropp evaluates Blumenstein. Quante maintains a record of her compensatory time and has the right to use that compensatory time as she wishes so long as Blumenstein is available to provide coverage for the Tax Lister office.

Kropp has the authority to recommend discipline to the County Personnel Committee, although she has never been told that she has such authority. Kropp has authority to make a recommendation to the County Board Personnel Committee on employee promotions, wage increases, reclassifications, and transfers, but does not have any authority to lay off employees.

7. Blumenstein does not exercise supervisory responsibilities in sufficient combination and degree to make her a supervisor.

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

CONCLUSION OF LAW

Betty Blumenstein, the incumbent in the position of Real Property Lister, is not a supervisor within the meaning of Sec. 111.70(1)(o), 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

The bargaining unit described in Finding of Fact 3, above, is hereby clarified to include the position of Real Property Lister.

Given under our hands and seal at the City of Madison, Wisconsin, this 18th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

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

TAYLOR COUNTY

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

DISCUSSION

The County argues that the position of Real Property Lister should continue to be excluded from the collective bargaining unit represented by the Union on the grounds that there is a supervisory relationship between the Real Property Lister and the Tax Assistant. The Union denies that such a supervisory relationship exists and argues, therefore, that the position of Real Property Tax Lister is appropriately included in the collective bargaining unit represented by the Union.

Section 111.70(1)(o)1, Stats., defines a supervisor as:

. . . 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 employes, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Under the statute, the Commission considers the following factors in determining if the occupant of a position is a supervisor:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employes;
2. The authority to direct and assign the work force;
3. The number of employes supervised, and the number of other persons exercising greater, similar or lesser authority over the same employes;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employes;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employes;

6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and

7. The amount of independent judgment exercised in the supervision of employees. MILWAUKEE PUBLIC SCHOOLS, DEC. NO. 6595-C (WERC, 5/96).

In addition, the Commission has historically held that not all of the above-quoted factors need be present, and that if the factors appear in sufficient number and degree, the Commission will find an employee to be a supervisor. TAYLOR COUNTY, DEC. NO. 27360 (WERC, 8/92).

The record fails to establish that Blumenstein has authority to effectively recommend the promotion, transfer, discipline or discharge of any employee. The record does establish that Blumenstein was involved in the hiring of one employee, i.e., Quante. Specifically, Blumenstein was one member of a three member committee which selected the applicants to be interviewed; developed the test to be administered to the applicants; tested and interviewed the applicants; and made a recommendation to the Personnel Committee that Quante be hired.

The other two members of the three member hiring committee were the County Surveyor and Blumenstein's immediate supervisor, the County Treasurer. While it is evident that Blumenstein's opinion's were given consideration, it is not evident that Blumenstein's opinions were controlling. The evidence of Blumenstein's participation in the hiring process does not demonstrate that Blumenstein possesses, or has exercised, any significant hiring authority.

The record demonstrates that Blumenstein has authority to direct the work of one employee, the Tax Assistant. With the exception of the initial training period, Blumenstein has devoted no more than two percent of her work time to directing the work of the Tax Assistant. The County Treasurer and the County Surveyor also have authority to direct the work of the Tax Assistant. This authority of the County Surveyor and the County Treasurer is greater than that of Blumenstein.

Blumenstein earns approximately \$5,000/year more than the Tax Assistant. Neither Blumenstein's position description, nor any other record evidence, establishes that Blumenstein is compensated for supervising the Tax Assistant, rather than for her job skills.

Blumenstein initials the Tax Assistant's weekly time sheets to verify that the hours were worked in the Tax Lister office and should be charged to the Tax Lister account. Blumenstein does not have authority to: determine employee work hours; authorize overtime or the use of compensatory time; establish employee wages or effectively recommend promotions; approve employee vacation and leave requests; lay off or recall employees; or evaluate employees. Blumenstein does not have any authority to receive, or adjust, employee grievances on behalf of the County.

The Tax Assistant work which is supervised by Blumenstein is work which is primarily dictated by the tax cycle. Blumenstein does not devote a significant amount of her work time to supervising this work of the Tax Assistant. Blumenstein does not exercise a significant amount of independent judgment in supervising the Tax Assistant's work.

In conclusion, the factors of supervisory status are not present in sufficient number and degree to warrant the conclusion that Blumenstein is a supervisor within the meaning of the Municipal Employment Relations Act. Accordingly, the position of Real Property Lister, occupied by Betty Blumenstein, has been included in the collective bargaining unit represented by the Union.

Dated at Madison, Wisconsin, this 18th day of May, 1998.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

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

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