

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of

TEAMSTERS LOCAL UNION NO. 579

Involving Certain Employes of

CITY OF WHITEWATER

Case 30

No. 53989 ME-837

Decision No. 24354-A

Appearances:

Mr. Darrell Shelby, President, 2214 Center Avenue, Janesville, Wisconsin 53546, appearing on behalf of Teamsters Local Union No. 579.

Mr. Gary W. Boden, City Manager, 312 West Whitewater Street, Whitewater, Wisconsin 53190, appearing on behalf of the City of Whitewater.

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

Teamsters Local Union No. 579 filed a Petition to Clarify Bargaining Unit on April 4, 1996, in a unit which the Union represents consisting of certain non-professional employes of the City of Whitewater. Hearing was held on the petition in Whitewater, Wisconsin, on October 3, 1996, by Examiner Lionel L. Crowley, a member of the Commission's staff. The only issue litigated at hearing was whether the Program Coordinator should be excluded from the unit as a supervisor. The hearing was transcribed and the Union filed its post-hearing brief on November 4, 1996. The City did not file a post-hearing brief and the record was closed on December 10, 1996. The Commission, having reviewed the matter and being fully advised in the premises, makes and issues the following

FINDINGS OF FACT

1. Teamsters Local Union No. 579, hereinafter referred to as the Union, is a labor organization, and has its offices at 2214 Center Avenue, Janesville, Wisconsin 53546. The Union is the certified exclusive collective bargaining representative for certain non-professional employes of the City of Whitewater.

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2. City of Whitewater, hereinafter referred to as the City, is a municipal employer, and has its offices at 312 West Whitewater Street, Whitewater, Wisconsin 53190.

3. The City seeks to exclude the position of Program Coordinator in the Parks, Recreation and Forestry Department from the unit on the basis that the position is supervisory. The Union opposes the exclusion.

4. Since 1991, the position in dispute has evolved from a part-time Senior Coordinator position which directed activities for senior citizens to a full-time Program Coordinator position responsible for a number of recreational programs for all the citizens of the City. The position of Program Coordinator is currently occupied by DeAnna Brunner. She plans, organizes and implements recreational programs for the City, including the aquatics program, the volleyball program, the baseball and softball programs, the ice rink and various seniors' programs. Brunner effectively recommends the hiring of between 65 and 100 part-time seasonal employees employed by the City in the various recreational programs. She schedules, supervises and evaluates these part-time employees and has effectively recommended discipline up to and including discharge. She is also responsible for training and promoting the part-time seasonals.

5. Brunner possesses supervisory authority in sufficient combination and degree to be deemed a supervisory employee.

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

CONCLUSION OF LAW

The occupant of the position of Program Coordinator is a supervisor within the meaning of Sec. 111.70(1)(o), Stats., and therefore, is not a municipal employee within the meaning of Sec. 111.70(1)(i), Stats.

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

ORDER CLARIFYING BARGAINING UNIT 1/

The position of Program Coordinator shall be, and hereby is, excluded from the bargaining unit described in Finding of Fact 1.

Given under our hands and seal at the City of Madison, Wisconsin, this 7th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

1/ Pursuant to Sec. 227.48(2), Stats., the Commission hereby notifies the parties that a petition for rehearing may be filed with the Commission by following the procedures set forth in Sec. 227.49 and that a petition for judicial review naming the Commission as Respondent, may be filed by following the procedures set forth in Sec. 227.53, Stats.

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025(3)(e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(Footnote 1/ continues on the next page.)

(Footnote 1/ continues from the previous page.)

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.

CITY OF WHITEWATER

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

Union's Position

The Union contends that the job description for the Coordinator has changed only slightly from its conception and the employe is not required to hire or discharge employes. It submits that the incumbent has had significant input into her job description in order to guarantee her own security. It submits that she is trying to exit the bargaining unit to keep other employes from taking this job at a later date.

The Union notes that although it has been stated that Brunner supervises between 65 and 105 employes, this does not represent any change in the job as it existed in 1988. The only distinction is that in 1988 the people were volunteers and now they are seasonal students who attend college and work.

The Union points out that in other City units there are working foremen who, like Brunner, do not have the right to hire or fire employes and who otherwise have the same duties as Brunner as far as supervising employes.

To the extent the City alleges that the Union made an agreement that the position should be excluded from the bargaining unit, the Union alleges the City failed to prove its claim. The Union requests that the position remain in the unit.

City's Position

The City contends that the Program Coordinator is a supervisor who therefore must be excluded from the unit.

DISCUSSION

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 employees, 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 that 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 employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his skills or for his supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees. 2/

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. 3/ A conclusion that a position is supervisory can be based upon the

2/ Milwaukee Public Schools, Dec. No. 6595-C (WERC, 5/96).

3/ Taylor County, Dec. No. 27360 (WERC, 8/92).

incumbent's exercise of such authority over non-unit employees. 4/

The record demonstrates that the recreation program in the City of Whitewater has greatly expanded in the past five years. The Program Coordinator position has gone from a part-time position that dealt with seniors only to a full time position responsible for a wide variety of recreational programs. The record established that the incumbent in the position, Brunner, is in charge of these programs, that she effectively recommends the hiring of between 65 and 100 seasonal employees each year. She is responsible for training them, evaluating their performance, and has effectively recommended the discipline of these employees including discharge.

While it is true that her supervisor, Tom Barnes, has actually signed the hire or discharge papers, this is merely a formality due to Brunner's current inclusion in a bargaining unit. Barnes testified that, in reality, the hiring, assessment, training, supervision and termination of employees in the various recreational programs are Brunner's responsibility.

4/ City of Two Rivers (Police Dept.), Dec. No. 21959-A (WERC, 2/91); and City of Lake Geneva, Dec. No. 18507 (WERC, 3/81).

Particularly in light of Brunner's authority to effectively recommend hire and discipline, we have concluded that the Program Coordinator possesses supervisory authority in sufficient combination and degree to warrant a finding that the position is supervisory. 5/ Her ability to effectively recommend hiring and discipline of employees significantly distinguishes her from the working foremen cited by the Union and from the part-time Coordinator position she once held when she directed volunteers.

We have therefore excluded the position from the bargaining unit described in Finding of Fact 1.

Dated at Madison, Wisconsin, this 7th day of February, 1997.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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

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

5/ See City of LaCrosse, Dec. Nos. 21361-A, 7833-C (WERC, 1/94).